


GJPM010004002020 	Received on :	31/12/2019		
	Registered on :	04/02/2020		
	Decided on :	01/04/2026		
	<u>Duration :</u>	06	01	28
	Years	Months	Days	

**IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL(Aux.),
DISTRICT PANCHMAHALS, AT GODHRA**

Motor Accident Claim Petition No.43/2020

<u>Applicant:</u>	<u>Age</u> (Yrs.)	<u>Occu.</u>	<u>Resi.</u>
Minor Gopal Shanabhai Khant appeared through his guardian & next friend Shanabhai Manabhai Khant	12	Study.	At Aniyad, Lalsari faliyu, Ta.Shahera, Dist. Panchmahals.

V/s

<u>Sr.</u> <u>No</u>	<u>Opponents:</u>	<u>Age</u>	<u>Occu.</u>	<u>Resi:</u>
[Driver & owner of rickshaw No.GJ-17-VV-0306]				
1.	Ranvatbhai Bhathibhai Parmar	Adult	Driver	At Aniyad, Ta.Shahera, Dist. Panchmahals.
2.	Jashvatbhai Lakhabhai Khant	“	Owner	At Aniyad, Lalsari, Ta.Shahera, Dist. Panchmahals.
3.	The New India Assurance Co. Ltd.		Insurer	Prabha road, Godhra.

[Driver, owner & Insurer of motorcycle No.GJ-17-BK-1074]

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|----|--|---------|---|
| 4. | Mukeshkumar
Kanubhai Parmar | “ Owner | Vaas na muwada,
at Dhanitra,
Ta.Godhra, Dist.
Panchmahals. |
| 5. | ICICI Lombard
General Insu. Co.
Ltd. | Insurer | Dahod road,
Godhra. |

Ld. Advocate for the Applicant	:	Mr. A. H. Rathod
Ld. Advocate for the opponent No.1 & 2:		Mr. V. B. Rathva
Ld. Advocate for the opponent No.3:		Mr. M. R. Desai
Ld. Advocate for the opponent No.4:		Mr. G. K. Chauhan
Ld. Advocate for the opponent No.5	:	Mr. T. N. Purani

**[PETITION UNDER SEC.166 OF THE MOTOR VEHICLE ACT,
1988 CLAIMING COMPENSATION OF Rs.5,00,000/-]**

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J U D G M E N T

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1. The petitioner has preferred present petition under sec.166 of the Motor Vehicle Act, 1988 seeking relief of compensation worth Rs.5,00,000/- for the injuries sustained by him in motor vehicular accident.

2. The short facts of present claim petition is as under:

That on dt.20.04.2019, the claimant & others were travelling in rickshaw No.GJ-17-VV-0306. At about 21:00 Hours, when they were passing Guneli cross road, Aniyad, at that time, the opponent driving his vehicle in a rash & negligent manner. Due to excessive speed, the opponent

No.1 lost control over his vehicle and then dashed with motorcycle No.GJ-17-BK-1074. Thus, the accident was occurred in this manner. The claimant had sustained injuries in this accident, and hence, he has preferred the present claim petition. The offence of this incident, has been lodged at Shahera Police Station, *vide* I-C.R.No.57/2019.

3. As per the case of the applicant, at the time of accident, he was studying. It is averred that, due to accident, he is facing much difficulties in his daily work and is not able to work as he used to perform earlier before the accident. It is further averred that, he had taken treatment as an indoor & outdoor patient for long period; he has incurred expenses towards treatment, special diet, transportation, etc. In view of above, the claimant has filed present claim petition seeking compensation of Rs.5,00,000/- from the opponents.
4. The opponents were duly served with notices. Thereafter the opponent No.1, 2 & 4 have appeared, but they have not filed written statement. The opponent No.3- the Insurance Company of rickshaw No.GJ-17-VV-0306, has filed written statement at Exh.-24 and has denied the age, income, injuries sustained by the applicant and rash & negligent driving on the part of driver of rickshaw No.GJ-17-VV-0306. It is contended that the accident was occurred due to rash & negligent driving on the part of driver of motorcycle No.GJ-17-BK-1074. Further, the

driver of rickshaw No.GJ-17-VV-0306 did not hold valid & effective driving license at time of accident. Lastly, the opponent No.3 has requested to dismiss the petition. The opponent No.5 i.e. the Insurance Company of motorcycle No.GJ-17-BK-1074 has filed written statement *vide* Exh.25. The opponent No.5 has denied the age, income, injuries sustained by the applicant. It is contended that the accident was occurred due to rash & negligent driving on the part of driver of rickshaw No.GJ-17-VV-0306. The driver of motorcycle No.GJ-17-BK-1074 did not hold any type of driving license at the time of accident. Upon above defence, the opponent No.5 has requested to dismiss the petition with costs.

5. The following issues are framed for determining the case *vide* Exh.26.
 1. Whether the Claimant proves the involvement of the vehicle in this accident as alleged in petition?
 2. Whether the claimant proves that he sustained injuries because of rash and negligent driving of the driver of the vehicle involved in the accident?
 3. Whether the claimant is entitled to any amount of compensation? If yes, to what extent ?
 4. Who are liable to pay aforesaid compensation?
 5. What order and award?

6. The findings of this Tribunal on the above issues for the reasons stated herein are as under:

1. In the affirmative.
2. In the affirmative
3. As per final order.
4. As per final order.
5. As per final order.

7. Following evidence is produced by the parties to this claim petition:

: Evidence from the applicant side :

-// ORAL EVIDENCES \\\-

Sr. No.	Particular	Exh. No.
1.	Affidavit of applicant.	Exh.-33

-// DOCUMENTARY EVIDENCES \\\-

1.	Copy of complaint with index.	Exh.-37
2.	Copy of Panchnama.	Exh.-38
3.	Copy of driving license of opponent No.1.	Exh.-39
4.	Copy of R. C. Book of offending rickshaw No.GJ-17-VV-0306.	Exh.-40
5.	Copy of Insurance Policy of offending rickshaw No.GJ-17-VV-0306.	Exh.-41
6.	Copy of Injury Certificate.	Exh.-42

7.	Copy of aadhar card of applicants.	Exh.-43 & 44
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-// **ORAL EVIDENCES** \\-

Sr. No.	Particular	Exh. No.
1.	Affidavit of Charmi Dharmesh Shah, Legal Officer I.C.	29

The opponent No.5, insurance company has submitted following documentary evidence:

1.	Copy of Insurance Policy of offending motorcycle No.GJ-17-BK-1074.	Exh.-32
2.	Online case status of CC No.75/2019.	Exh.-33
3.	Copy of online order passed in CC No.75/2019.	Exh.-34

8. Heard the Id. Advocates appearing on behalf of respective parties. Perused the record of petition. Perused the written arguments of opponent No.5 filed vide Exh.-37.

: REASONS :

Issue No. 1:

Negligence:

9. It is settled position of law that, while deciding the point of negligence, the Tribunal has to borne in mind that, aspect of negligence in claim petition under Section 166 of the Motor Vehicles Act is to be decided only on the touch

stone of preponderance of probability and not beyond the reasonable doubts. The above position of law is laid down by the Hon'ble Apex Court in the following cases:

- (i) *Bimladevi vs. H.R.T.C., AIR 2009 SC 2819.*
- (ii) *Parmeshwari Devi vs. Amirchand, (2011)11 SCC 635.*

Looking to the citation which is the case before *hon'ble Supreme Court* between *Surender Kumar and another v/s Manoj Bisla (Dr.) and others, 2012 A.C. 180 (SC)*, wherein it is held that in claim petition filed under sec.166 of the Act, the burden lies on the claimants to establish negligence of the driver or the owner of the vehicle concerned but if the petition is filed under sec.163 then the compensation is to be awarded in terms of schedule without calling upon the victim or his dependents to establish any negligence or default on part of driver or owner of vehicle.

10. In the instant case, to prove the involvement of offending vehicles & negligence on the part of drivers of involved vehicles, the applicant has deposed *vide* Exh.33, wherein he has reiterated the averments of the accident as mentioned in the claim petition. Further, oral testimony of the applicant is corroborated by the documentary evidence, *viz*, complaint Exh.37; spot panchnama Exh.38; injury certificate Exh.42. No rebuttal evidence is produced on behalf of any opponents against the above referred

evidence. Moreover, in this case, opponent Nos.3 & 5 have not examined the drivers of the said both the vehicles. So from the rival submissions of learned advocates for both the sides, it leads to believe that there is no dispute with respect to occurrence of accident between the said two vehicles and there is no dispute with regards to the fact that the applicant was travelling in rickshaw No.GJ-17-VV-0306. Even looking to the complaint, there is mentioned that the applicant was travelling in rickshaw No.GJ-17-VV-0306. when it has met accident with the motorcycle. Therefore since it is undisputed fact that the applicant is a third party to the incident, so the applicant becomes the victim due to fault of someone else and therefore, the issue of negligence would be treated as an issue of composite negligence for the applicant herein. The applicant would be entitled to recover the compensation from any of the opponents / tort-feasors jointly or severally and this inter-se negligence will not operate as res judicata in any other claim petition, if any. [See: The judgment of hon'ble Supreme Court in the case of **Pawan Kumar v/s M/s. Harkishan Dass Mohan Lal** reported in 2014(3) SCC 590(SC).]

11. From the above evidence on record, at the out set it is clear that it is the case of an accident involving two or more vehicles, where a third party – applicant / victim (other than the drivers and/or owners of the vehicles are involved in the accident) have claimed damages for negligence,

hence, this is a case of ‘composite negligence’. Therefore, it is apt to refer the judgment of hon'ble Supreme Court in case of *Khenyei v/s New India Assurance Co. Ltd. & Ors.* reported in *2015 ACJ 1441*, wherein the hon'ble Supreme Court has held as under:

"(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any of the joint tort feisor and to recover the entire compensation as liability of joint tort feisor joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tort feisor vis-a-vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tort feisors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter-se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feisors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment /extent of their negligence has been determined by the court/tribunal, in main case one joint tort feisor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feisors. In such a case, impleaded joint tort feisor should be left, in case he so desires, to sue the other joint tort feisor

in an independent proceedings after passing of the decree or award."

12. Thus, from the above dictum it is clear that in the case of 'composite negligence' it is not necessary for the applicant to establish the extent of responsibility of each wrongdoer separately and even it is not necessary for the Tribunal to determine the extent of liability of each wrongdoer separately. Hence, **issue no.1 & 2** answered in **"affirmative."**

Quantum of compensation:

13. Now when it is proved that the accident in question was occurred due to sole negligence of the driver of offending vehicle i.e. the luxury bus and the applicant mentioned herein has sustained injuries and has also suffered permanent disablement, so he has become entitled for compensation. In order to arrive at the conclusion that what should be the amount of compensation then as per the provisions of sec.168 of the M. V. Act, it is prime duty bestowed on the Tribunal that claimants get "just compensation". For that aspect the Tribunal has to decide factors such as future loss, actual loss, age & income of applicant on the date of accident. It is duty of the Tribunal to award just, equitable and fair compensation to the claimant. The expression 'compensation' is comprehensive term which includes a claim for damages. The hon'ble Apex Court in *Sarla Verma & Ors. v/s Delhi Transport*

Corporation & Anr. reported in *2009 A.C.J. 1298*, has discussed as under:

"..... just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit."

14. The claimant has deposed that the injured claimant was minor and studying at the time of accident. The applicant has produced aadhar card of injured vide Exh.-44, which shows his birth date "24.10.2006". Thus, it is established that the applicant was 13 years old at the time of accident. So far as disability is concerned, the applicant has produced Injury Certificate vide Ex.42, wherein it is stated that the applicant has sustained grievous fracture injury. Looking to disability certificate produced vide Mark 35/1 issued by Dr. Mahesh V. Dama (M.S. Ortho.), wherein the Doctor has assessed permanent partial disability @ 35% of right lower limb. However, the Ld. Advocate for the applicant has submitted pursis vide Ex.45 to consider disability @ 15% for body as a whole. The Ld. Advocate for the insurance company, has made necessary endorsement on the said pursis. In this circumstance, it is just & proper to assess the disability of applicant @ 15% for the whole body.
15. At his juncture, it is required to refer and discuss the judgment which is the case before *Hon'ble Supreme Court*

between *Master Mallikarjun v/s Divisional Manager, The National Ins. Co. Ltd., (2014) 14 SCC 396.*, wherein, in Para-12, it is held that:

"Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc. should be, if the disability is above 10% and upto 30% to the whole body, Rs. 3 lakhs; upto 60%, Rs. 4 lakhs; upto 90%, Rs. 5 lakhs and above 90%, it should be Rs. 6 lakhs. For permanent disability upto 10%, it should be Rs.1 lakh, unless there are exceptional circumstances to take different yardstick."

16. The Hon'ble Supreme Court has held that if disability is up to 10%, then Rs.1 lakh and disability is up to 30% for the whole body then Rs.3 lakhs and up to 60% Rs.4 lakhs and if the disability is above 60% and up to 90% Rs.5 lakhs and above 90%, it should be Rs.6 lakhs, are required to be awarded, unless there are exceptional circumstances to take different yardstick. Herein also the when the cause of action has arose at that time the claimant was minor so the present case is required to be adjudicated on basis of ratio of above judgment. Further at the age of 13 years, the injured had no source of income. The applicant has not produced any bills for medical expenditure. But considering the injury it can be presumed that some expense might have been incurred after treatment and medicine. The aspect of pain, shock and suffering is also

required to be considered since at that moment claimant was only 9 years old. So, looking to over all facts and considering the disability suffered by the claimant which is admitted and adopted as 15% by the Ld. advocates, hence this Tribunal is the opinion that this is a fit case, where it should award **Rs.1,50,000/-** under all the heads which includes pain and suffering undergone, mental and physical shock, hardship, inconvenience and discomforts, loss of amenities in life on account of permanent disability, Special Diet, Attendant and Transportation Charges and Medical Expenses. Thus, the applicant is entitled to get in total **Rs.1,50,000/-** as compensation under all heads.

Liability:

17. It is argued by the opponent No.5 that the rider of motorcycle No.GJ-17-BK-1074 was minor and he has no driving license at the time of accident. The opponent No.5 has examined Legal Officer of Insurance Company vide Exh.-29. The opponent No.5 has relied upon order passed by the Id. President, Juvenile Justice Board, Godhra in Juvenile Case No.75/2019. The rider of motorcycle has accepted the offence registered in this matter. Thus, it can be presumed that the rider of motorcycle No.GJ-17-BK-1074, was minor at the time of accident and obviously, he was not holding any type of driving license at the time of accident. Thus, I am of the opinion that no liability could have been fastened on the insurance company to pay the compensation. So far as the direction to pay the

compensation to the claimant in the first instance and to recover it from the driver & owner is concerned, this Tribunal, has gone through the Judgement of the Hon'ble Supreme Court in the case *Pappu and others Vs. Vinodkumar Lamba & anothers, Civil Appeal No.20962 of 2017(SC), & in the case of Iffco-Tokio Gen.Insu.Co. Ltd. Vs. Kaljibhai Janabhai Rathva and others, reported in 2020 ACJ 2294*, wherein the Hon'ble Supreme Court has held that direction to pay the amount first and then to recover such amounts from the driver/owner of the vehicle.

18. It is established from the record that the opponent No.1 was the driver the opponent No.2 was registered owner of rickshaw No.GJ-17-VV-0306 at the time of accident. The said vehicle was insured with the opponent No.3 and policy covered the date & risk of occupant at the time of accident. Moreover, it is established from the record that the opponent No.4 was the owner & opponent No.5 is the insurer of motorcycle at the time of accident. The opponent No.5 is liable to indemnify the amount of compensation to the opponent No.4, who in turn liable to pay compensation to the applicant. Thus the insurer (opponent No.5) shall pay the claim amount awarded by the Tribunal to the applicant in the first instance, with liberty to recover the same from the owner of the vehicle (opponent No.4) in accordance with law.
19. So far as the point of liability is concerned, as discussed in the Issue No.1, it is a case of composite negligence and

the applicant was a third party for both the vehicles involved in accident Therefore, the opponent No.1 to 5 are jointly & severally liable to pay compensation to the applicant as per principal laid down by the Hon'ble Apex Court in the case of *Khenyei v/s New India Assurance Co. Ltd. & Ors.* reported in *2015 ACJ 1441*.

Interest:

20. Now what will be the appropriate rate of interest on the awarded amount of compensation is required to be decided. In pursuance to the same it is required to refer the citation which is the case between *Abati Bezbaruah v/s Dy. Director, Geological Survey of India and Another, (2003) 3 SCC 148*, wherein the hon'ble Supreme Court has held that:

"The rate of interest must be just and reasonable depending upon the facts and circumstance of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering loss of future income, loss of enjoyment of life, etc., into consideration."

21. Thus, having regards to the facts and circumstance of the present case, in light of the above referred judgment, it would be just and proper to award the simple interest at the rate of 9% p.a., accordingly the applicant will be entitled to get simple interest at the said rate. So the reply to issue No.2 is given accordingly and in view of the above

discussion, the following final order is passed for issue No.3 in larger interest of justice.

ORDER

1. This claim petition is hereby partly allowed against the opponent No. 1 to 5.
2. The opponent Nos.1 to 5 are hereby jointly & severally ordered to pay **Rs.1,50,000/- (Rupees One Lakh fifty thousand only)** as an amount of compensation to the applicant with interest at the rate of **9% p. a.** and proportionate costs, from the date of claim petition till its realization.
3. The insurer (opponent No.5) shall pay the claim amount awarded by the Tribunal to the applicant in the first instance, with liberty to recover the same from the owner of the vehicle (opponent No.4) in accordance with law, in case of deposit amount.
4. Accordingly, the above opponents shall jointly and severally deposit the amount of compensation as above together with interest @ 9% per annum from the date of filling of the claim petition till realization, along with proportionate cost before the registry of this Tribunal within one month from the date of this Judgment.
5. The opponents are hereby directed to deposit before the registry of this Tribunal the above amount of award, to the extent of the liability fixed herein above, after deducting the amount of interim compensation, if any, paid u/sec.140 of M.V. Act, within one month from the date of this order.
6. On deposit of the above amount of award by the opponents before this Tribunal, the amount of Court Fees, recoverable if any, be recovered from the awarded amount and the same be considered under the head of the costs of the petition.

7. The order of disbursement and payment of the deposited amount will be passed then after.
8. The petitioner/s is/are directed to submit following details within one week from today:
 - Name of the petitioners/victim with address:
 - Name of the Bank & Branch, Bank IFSC Code, Account Number of the Petitioners/Victim.
 - First page of the Bank pass-book, which contains the photograph of the petitioners/victim, duly attested by the Bank concerned, should be made available.
 - Wherever the petitioners/victim is impleaded as respondents, before the claims tribunal, their account details, as above, will have to be furnished.
9. The Insurance Company / Transport Corporations and such other entities shall deposit the amount as directed *vide* letter No. A/c.319/2023, dated 27.07.2023, in the Bank of Baroda, Main Branch, Godhra, A/c. Name: **MACT GODHRA**, A/c. No. **01820100027160**, IFSC Code : **BARB0GODHRA** and on such deposits being made, the Insurance Companies / Transport Corporations and such other entities shall submit a letter to the Registry of District Court, Panchmahals at Godhra, enclosing a copy of the said bank advice, in prescribed format, as per which the deposit was made to the bank account of the Claims Tribunal, to enable the Claims Tribunal to keep tab on the deposits made and the MACPs for which they were made, which is a fundamental need for smooth implementation.
10. The Payment Advice for remittance of compensation is as under:

PAYMENT ADVICE FOR REMITTANCE OF
COMPENSATION

From : (Name of the Bank)

To : (Name of the Court)

11. We confirm remittance of compensation as follows on instructions of Insurance Company / Transport Corporation.

1.	M.A.C.P. Number
2.	On the file of (Name of Claims Tribunal)
3.	Place
4.	Date of Award
5.	Amount Deposited
6.	Income Tax Deduction at Source, if any Unique Transaction Reference (UTR) No.

12. The Insurance Companies / Transport Corporations and such other entities making such deposit, shall also send a copy of the payment advice in the aforesaid clause to the Claims Tribunal concerned and serve a copy of the same on the claimants or their counsel as the case may be.
13. In view of the judgment delivered by the Division Bench of Hon'ble Gujarat High Court in the case of ***Oriental Insurance Co. Ltd. v/s Chief Commissioner of Income Tax (TDS), Special Civil Application No. 4800 of 2021***, the interest awarded by the Motor Accident Claims Tribunal U/Sec.171 of the Motor Vehicle Act, 1988, is not taxable under the Income Tax Act, 1961.
14. The award be drawn accordingly.

Pronounced in the open Court today,
i.e. on this 1st day of April, 2026.

Date: 01.04.2026
Place: Godhra.

(Vaibhav Vasant Mondhe)
Motor Accident Claims Tribunal (Aux.)
Panchmahals at Godhra
Code No. GJ00852