

Received on : 06-02-2021  
Registered on : 06-02-2021  
Decided on : 08-04-2026  
Duration : 05 02 02  
Years Months Days

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN),**

**AT : PATAN.**

**M.A.C.P.No.36/2021**

**Exh.: 68**

**APPLICANT:-**

**Desai Ashaben Sunilbhai**

Aged about 25 years,

Occupation : Sewing work and animal husbandry,

R/o. Desaivas, Bhalgam, Ta. Kankarej, Dist. B.K.

**Versus**

**OPPONENTS :-**

1. **Owner of Truck No.GJ-02/X-0517:**

**Jadidshah Reshnshah Fakir**

R/o. Madresha Area, Chandroda, Ta. Becharaji,

Dist. Mahesana.

2. **Insurance Co. of Truck No.GJ-02/X-0517:**

**~~IFFCO Tokiyo General Insurance Co. Ltd.~~**

~~Address : Vrundavan Market, Opp.Bageswar Mahadev,~~

~~Station road, Patan, Ta. Dist. Patan.~~

~~{Deleted as per order below Exh.17}~~

3. **Owner of Car No.GJ-8/BF-1778:**

**Desai Sunilkumar Babubhai**

R/o. Desaivas, Bhalgam, Ta.Kankrej, Dist.B.K.

4. **Insurance Co. of Car No.GJ-8/BF-1778:**

ICICI Lombard General Insurance Co. Ltd.  
Address : Oshish Complex, Upon Woodland Show-room,  
Nr.Rajkaml Petrolpump, High way road, Mahesana,  
Ta. Dist. Mahesana.

5. **Insurance Co. of Truck No.GJ-02/X-0517:**

**Bajaj Allianz Gen. Insurance Co. Ltd.**  
New Address – Shop No.8, Yash Complex,  
Siddhpur Cross Road, Patan.  
{Amendment as per order below Exh.33}

**Appearance:**

\*\*\*\*\*

Mr. V.D.Zala, learned advocate for Applicant.

Opponent Nos.1 & 3 - Ex-parte.

Opponent No.2 – Delete.

Mr. D.P.Khamar, learned advocate for Opponent No.4.

Mr. H. N. Patel, learned advocate for Opponent No.5.

\*\*\*\*\*

**-: J U D G M E N T :-**

1. The applicant has filed this application to get compensation of Rs.4,00,000/- along with interest from the opponents for the injury sustained in the vehicular accident which occurred on 07/11/2019, under the provisions of Section 166 of the Motor Vehicles Act, 1988.

2. The factual matrix leading to the present proceeding are as under :

**OCCURRENCE OF ACCIDENT:**

2.1 It is the say of the applicant that, on 07/11/2019, applicant went in Swift Car bearing RTO Registration No.GJ-8/BF-1778 (herein-after referred to as "car") with her husband and daughter to Becharaji and after praying Goddess, they were going towards Delmal, at that time, her husband was

driving the car with moderate speed and correct side of the road and when they reached on canal road at about 3.00 hours of afternoon, one Truck(407 Tata) bearing RTO registration No.GJ-02/X-0517 (in short "truck") come from village Khorsam, drove by its driver in rash and careless manner and hit the car of applicant, as a result, applicant sustained grievous face injuries, so immediately she took Chanasma CHC Hospital for primary treatment in private vehicle, then she admitted as an indoor patient in Pruthvi Surgical Hospital for further treatment. Thus, the accident in question occurred due to rash and negligent driving of truck driver.

2.2 It is further say of the applicant that at the time of accident, he was 23 years 11 months and 23 days old, she was healthy and well builded person before the accident and was earning Rs.15,000/- per month from doing sewing work and animal husbandry. It is further submitted that, she suffered great amount of trauma, pain and agony due to sustain fracture injuries. At the same time for curing the injuries, the applicant had to spent huge amount towards medical expenses. It is further stated that, the applicant had also sustained expenses for special diet, transportation and attendant charges. It is also claimed by the applicant that due to injuries and treatment requires for injuries, she had to remain indoor patient for sizable days and even thereafter

she was advised to take continuously treatment till cure. So, for all this time period her future amenities will affect.

2.3 Conjointly for above heads, applicant has claimed compensation of **Rs.4,00,000/-** with 18% interest from the opponents.

3. The summonses of the claim petition were served upon the opponents. The learned advocates for opponent No.5 & 4 have produced the written statements vide Exhs.41 & 60 in which they have denied all the facts of accident, age and income of applicant and averments made in the claim petition in toto.

**Written statement of opponent No.5:-**

3.1 Mr.H.N.Patel, appearing for opponent No.5-Insurance company of truck has produced written statement vide Exh.41 in which he has denied the facts of accident as well as involvement of his vehicle. It is submitted that the driver of truck was not holding a valid and effective driving licence at the time of accident and, therefore, has contravened the proviso of the M.V.Act and has committed the breach of the contract made by the opponent No.1, hence insurance company is not liable to pay any compensation to the applicant. He has also denied the age, income of applicant and involvement of truck.

**Written Statement of Opponent No.4:-**

3.2 The learned advocate Mr.D.P.Khamar, appearing on behalf of opponent No.4 – insurance company of car has denied the facts mentioned in plaint in toto in written statement Exh.60 and submitted that the alleged accident took place due to the sole

negligence on the part of the driver of truck and the charge-sheet has been filed against the driver of truck after investigation. Moreover, at the relevant time of accident, the driver of insured vehicle has not held valid and effective driving licence and was not qualified for holding or obtaining such driving licence and, therefore, insurance company is not liable to pay any compensation to the applicant.

4. Mr.D.P.Khamar & Mr.H.N.Patel, learned advocates for Opponent Nos.4 & 5 have given application u/s.170 of the M.V.Act for obtaining the necessary permission for cross-examining the witnesses on all points which was permitted by the tribunal on 26/11/2025 vide Exhs.42 & 43.

5. The learned advocate for applicant has produced oral as well as documentary evidence as under:

**ORAL EVIDENCE:-**

5.1 The applicant Desai Ashaben Sunilbhai has produced her affidavit vide Exh.28.

**DOCUMENTARY EVIDENCE :-**

5.2 The applicant has produced the following documentary evidence with lists :

No.	Documents	Exh.
1.	Certified copy of Complaint	44
2.	Certified copy of Panchnama of place	45
3.	Copy of Charge-sheet	46
4.	Copy of Medical Certificate (Chanasma CHC Hosp.)	47
5.	Certified copy of Medical Certificate (Pruthvi	48

	Surgical Hosp., Patan	
6.	Copy of R.C.Book of truck	49
7.	Copy of Insurance Company of truck	50
8.	Copy of driving licence of truck driver	51
9.	Copy of R.C.Book of car	52
10.	Copy of Insurance Company of car	53
11.	Copy of driving licence of car	54
12.	Certified copy of Disability Certificate of applicant	55
13.	Closing pursis	56

6. The learned advocate for opponent No.5 has produced insurance policy of truck vide Exh.65.

7. The learned advocate for opponent No.4 has submitted Closing purshis vide Exh.61.

8. From the above referred pleadings, MACT (Auxi), Patan had framed following issues vide Exh.24 for consideration:-

### ISSUES

1. Whether it is proved that the applicant sustained injuries on account of rashness and negligence driving on the part of the driver of the involved vehicle in the accident ?
  2. What amount the claimants are entitled to, by way of compensation and from which of the opponents ?
  3. What order and award?
9. My findings to the above issues are as under:
1. In the affirmative.
  2. As per final order.
  3. As per final order.

10. The learned advocate for opponent No.5 has produced written arguments vide Exh.67.

11. I have heard learned advocates for both the parties at length.

~: REASONS :~

**ISSUES NO.1 & 2:-**

12. These both issues are interlinked by common facts and, therefore, to avoid overlapping of reasons, I propose to decide them analogously.

12.1 The present claim petitions have been preferred by the claimant u/s.166 of Motor Vehicles Act, 1988 and hence it is sine qua non on the part of the claimant to prove that the accident in question has occurred due to the rash and negligent driving of tortfeasors.

12.2 After travelling through the pleadings as well as evidence led by the parties, it appears that vehicular accident took place between two vehicles, whereupon applicant was travelling in car. Thus, issue of negligence of the drivers of offending vehicles would be construed as composite negligence.

12.3 Before I advert to decide the issue of composite negligence of the drivers involved in the vehicular accident, let refer the case of **Khenyei v/s New India Assurance Com. Ltd**, reported in **2015 ACJ 1441** has laid down following guidelines in the cases composite negligence and apportionment of inter se liability of joint tortfeasors.

*(i) In the case of composite negligence, plaintiff*

*/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.*

*(ii) In the case of composite negligence, apportionment of compensation between two tortfeasors 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 tortfeasors 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 tortfeasors 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 tortfeasor 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 tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.*

13. Looking to principle set by the Hon'ble Supreme Court in case of composite negligence, claimant is entitled to claim compensation from both or anyone of the joint tort-feasors. Liability of joint tortfeasor or anyone of them is joint and several.

14. To determine the liability of each wrongdoer after keeping in mind the aforesaid settled principle of law, let go through the

documentary evidence produced by the applicant in petition.

**NEGLIGENCE:-**

14.1 The applicant has produced the certified copy of complaint vide Exh.44. The complaint in respect to the accident is given by the husband of applicant – driver of car against the driver of truck who fled away from the place of accident. In his complaint, he has stated that when he and his wife and daughter was going to Delmal via Ambala village and at about 3 hours of afternoon, one truck come on service road of Narmada Canal with full speed and he was trying to cross the road, the truck hit his swift car, so his wife Asha sustained head injury and other injuries on her jaw portion and he sustained simple injury, so he come out from the car and saw the number of vehicle as 407 No.GJ-2X-0517 thereafter he called his brother-in-law who took them government hospital and then admitted in the hospital of Dr.Sevantibhai Patel, Patan. Thus, the driver of truck was driving his vehicle in rash and negligent manner and hit his swift car, as a result, he sustained injuries and his wife sustained fracture injuries on her face. So he filed complaint against the driver of truck. Looking to the Panchnama of place of accident Exh.45, both the involved vehicles lying at the place of accident in damage condition. Front glass of truck found in total broken and front and back tyre of truck on empty side of car. Front glass of Swift car and light total in damage. It's bonnet found in bent as well as it's radiator and engine totally broken. Air bag of car found in open. Thus, the car was found in total damage worth of Rs. 3,10,000/-. The charge-sheet has been filed against the driver of truck Fakir Chandsha Noorsha vide Exh.46. Looking to the

injury certificate of applicant Exh.47, applicant was admitted on 07/11/2019 at about 4.15 pm for treatment due to sustain injuries in accident near Delmal-Ambala canal road.

14.2 The applicant has given deposition vide Exh.28 in which she has reiterated the same facts as mentioned in plaint. In her cross-examination, she has admitted that she was travelling in swift car which was driving by her husband who hold the valid and effective driving licence. It is true that one truck come on Khorsam canal with full speed and dashed with their swift car, thus the said accident occurred due to sole negligent driving of truck driver. It is true that there was cross road at the place of accident. It is true that they had to cross the road and truck also crossed the road from the side road(service lane).

15. Looking to the overall evidence on record, it appears that, the driver of truck has not stepped into witness box for his defence. The charge-sheet has been filed against the driver of truck who fled away from the place of accident and, therefore, adverse inference drawn against driver of truck. Furthermore, applicant being injured eye witness of accident is admitted in her cross-examination that the accident occurred when the truck was coming on service road with full speed and careless manner and their car was crossing the road towards opposite road. Thus, the applicant has proved the accident and involvement of vehicles. Moreover, the applicant herself injured eye witness of the accident, in such circumstances, her testimony has proved the facts of accident and involvement of the vehicles also. Thus, looking to the evidence on record, it transpires that if drivers of

both the offending vehicles would have been taken proper care and caution, the accident in question had not been occurred. The above *iota* of evidence points finger towards drivers of both the vehicles in causing accident and foregoing evidence earmark the negligence of truck driver upto **80%** and that of swift car up to **20%** and it would be just and proper. Hence, I hold issue No.1 accordingly in affirmative.

## **ISSUE NO.2**

**ENTITLEMENT OF COMPENSATION :-**

**QUANTUM OF THE COMPENSATION :-**

**AGE AND MULTIPLIER :**

16. Looking to the documentary evidence on record, the learned advocate for applicant has produced her Aadhar Card with her affidavit-in-chief vide Exh.28, in which her birth date mentioned as 30/12/1995, calculating with the date of accident 07/11/2019, she was 23 years 10 months and 8 days old at the time of accident and consider the same. Thus, multiplier of **18** would applicable as per guidelines set in case of **Sarla Verma V/s DTC 2009(6) SCC 121**.

**INCOME OF APPLICANT :**

17. As per affidavit of applicant Exh.28, she was earning Rs.15,000/- per month out of doing sewing work & animal husbandry. But she has not produced any cogent evidence related her income, in such circumstances, this tribunal consider **Rs.8,060/-** per month as per minimum wages of un-skilled person in year 2019.

**DISABILITY OF APPLICANT :-**

18. Disability Certificate is produced at Exh.55, whereupon both the parties have voluntarily accepted 8% disability body as a whole, so this tribunal consider **8%** disability body as a whole.

**FUTURE LOSS OF INCOME :-**

19. In these circumstances, if we calculated loss for future income, it would come as **Rs.8,060/- X 12 months X 18 multiplier X 8% disability = Rs.1,39,276/-** being amount for future loss of income and it is just and reasonable amount and I award the same.

**ACTUAL LOSS OF INCOME :**

20. In absence of specific evidence qua actual loss of income, looking to the Injury Certificates of applicant Exhs.47 & 48, she was admitted on 07/11/2019 and discharged on 09/11/2019 from the hospital of Dr.S.K.Patel. Thus, applicant was admitted for two days in the hospital and taken treatment of both angle & left paramedial # mandible and operated, so this Tribunal is of the opinion that, at least for two(2) months, the applicant may have not joined her work properly as before and, therefore, actual loss of **two(2) months income Rs.16,120/-** is granted as actual loss of income.

21. The applicant has not produced original bills of medical expenses, so this tribunal is not granted any amount towards medical expenses. Looking to the time period of hospitalization and fracture mandible at left paramedial and on both angle, as a result she faced pain, swelling, looking ugly & deformed, sever

restricted mouth opening and unable to chew even routine food property, I grant **Rs.18,004/-** towards the compensation for pain, shock and suffering. For transportation, nutritious diet, attendant charge etc., this tribunal grant **Rs.17,000/-** towards the compensation. Thus, in total, applicant is entitled to get the compensation of **Rs.1,89,400/-** from the opponents.

22. Calculation of the compensation is figured in following table....

Sl. No.	Heads	Calculation
1	Future loss of income	Rs.1,39,276.00
2	Compensation for pain, shock and suffering	Rs.0,18,004.00
3	Compensation for special diet, attendant charges & transportation	Rs.0,17,000.00
4	Actual loss of income ( two months)	Rs.0,16,120.00
	<b>Total amount of compensation awarded</b>	<b>Rs.1,90,400.00</b>

23. In total, applicant would get compensation of **Rs.1,90,400/- (One Lakh Ninety Thousand Four Hundred rupees only)** and it is just and reasonable amount and I award the same.

24. As the applicants have prayed compensation Rs.4,00,000/- but as per judgment of Hon'ble Supreme Court compensation should be just and fair. Thus, the total awardable amount of compensation to the applicants is **Rs.1,90,400/- (One Lakh Ninety Thousand Four Hundred rupees only)** and same shall be recovered from the opponents.

### **LIABILITY:-**

25. The applicant has joined owner & insurance company of truck No.GJ-02/X-0517-opponent No.1 & 5 and owner and

insurance company of car – opponent Nos.3 & 4. Opponent No.2 is deleted as per order below Exh.17. She has produced the copy of R.C.Book of truck vide Exh.49 in which the name of opponent No.1 Jadidshah mention as owner of truck and looking to the insurance policy of truck Exh.65 produced by Opponent No.5, it appears that the policy is commenced from 08/11/2018 to 07/11/2019 midnight and the so called accident occurred on 07/11/2019 at about 3.00 hours of afternoon, it means the policy in question is in-existence at the time of accident, in such circumstances, insurance company is liable to pay compensation to the applicant. Looking to the R.C.Book of swift car Exh.52, the name of opponent No.3 is mentioned as driver cum owner of car and as per insurance policy of car Exh.53, it is commenced from 16/03/2019 to 15/03/2020 and the accident in question occurred on 07/11/2019 i.e. the policy is in-existence at the time of accident and, therefore, opponents No.1, 3, 4 & 5-owner of truck, driver cum owner and insurance companies of car and truck are jointly and severally liable to pay the compensation amount to the applicant. However, as noted earlier this extent of *inter se* liability would be composited liability and applicant being third party would be entitled to claim compensation from both joint tort-feasors or from any one of them jointly and severally.

26. As per the decision of the Hon'ble Supreme Court in case of “**Municipal Corporation of Delhi v/s Association of Victims of Uphar Society**” [2012 ACJ 48(SC)], it would be just and proper to award an interest @ 9% per annum on the compensation awarded in favour of the claimants and therefore, the claimant is

entitled to get interest at the rate of 9% p.a. from the date of filing the present claim petition.

**ISSUE No.3 :-**

27. In view of above said discussions, made in issue Nos.1 & 2, pass the following final order.

**// O R D E R //**

- (1) MAC petition No.36 of 2021 is hereby partly allowed.
- (2) The claimant is entitled to get compensation of **Rs.1,90,400/- (One Lakh Ninety Thousand Four Hundred rupees only)** from the opponents No.1, 3, 4 & 5 with proportionate costs and running interest at the rate of 9% per annum from the date of filing of the claim petition till its realization jointly and severally.
- (3) Opponents are hereby directed to deposit the aforesaid amount before this Tribunal within one month from the date of this order. Further, in view of the directions of the **Hon'ble Supreme Court of India in Writ Petition (Civil) No.534/2020, titled Bajaj Allianz General Insurance Co. Ltd. v/s Union of India. and the directions of the Hon'ble High Court, Opponents/Insurance Company/ AMTS/State Transport Corporation, as the case may be, are directed to deposit the aforesaid amounts by way of Direct Bank Transfer through NEFT or RTGS only to the below mentioned Current Bank Account of this Claims Tribunal as directed in Circular No. 08/2022 dated 01/02/2022. The particulars of the Current Bank Account is as under :-**

<b>Name of Bank</b>	<b>:</b>	<b>Bank of Baroda, Market Yard Branch, Patan</b>
<b>Account Name</b>	<b>:</b>	<b>Motor Accident Claims Tribunal (Main), Patan</b>
<b>Current Account No.</b>	<b>:</b>	<b>08410100036624,</b>
<b>IFSC Code</b>	<b>:</b>	<b>BARB0MARPAT (fifth character is zero)</b>
<b>MICR Code</b>		<b>384012082</b>
<b>Branch Code</b>	<b>:</b>	<b>MARPAT (Last Six Characters of IFSC Code)</b>

Further, after deposit of the awarded amount, the opponents are instructed to ensure that deposit of the awarded amount, by way of direct bank transfer to the above said Current Bank Account in compliance of the Award passed by the Tribunal is accomplished by furnishing the following information in the format prescribed herein below along with bank payment advice to the Registry/Nazir Branch of this Court, for maintaining the account MACP Deposits by this Court. A copy of the same be also served to the claimant or his counsel as the case may be.

<b>1</b>	<b>MACP Number</b>	
<b>2</b>	<b>On the File of (Claims Tribunal Name)</b>	
<b>3</b>	<b>Date of Award</b>	
<b>4</b>	<b>Compensation Amount</b>	
<b>5</b>	<b>Income Tax Deduction at Source</b>	
<b>6</b>	<b>Bank Transaction Reference No./ Unique Transaction Reference (UTR) No.</b>	

- (4) The deficit amount of court fees shall be recovered first. Then the amount of interim compensation, if any, awarded and paid, be deducted and adjusted in the above said amounts.

- (5) Disbursement of the amount shall be made at the time of the deposition of the awarded amount by the opponents in the Tribunal.
- (6) The disbursal of compensation amount shall be made directly to the credit of the bank account of the claimant, as the case may be by **NEFT or RTGS**. The claimant is directed to furnish his/her following information in the format prescribed herein below to the Registry/Nazir Branch of this Court, for direct credit of the compensation amount to his/her account.

Aadhaar Card No.	
PAN Card No.	
Bank Name & Branch	
Bank Address	
<b>Name and address of Account holder (claimant)</b>	
Bank Account No.	
IFSC Code	
First page of passbook with photograph of the claimant duly attested by Bank be attached	

- (7) The opponents are directed to follow the guidelines of the Hon'ble Gujarat High Court in the judgment reported in **2007 ACJ 1897**, in the case of **Smt. Hansagauri Prafulchandra Ladhani & Others v. The Oriental Insurance Co. Ltd. & Others**, while calculating and deciding T.D.S.
- (8) In case of Tax deduction at source, Form 16-A of the Income Tax Act be provided to the claimants/ victim on

whose behalf the deduction has been made so as to enable him/her seek refund of tax deducted, if any.

(9) Registry/opponents shall ensure compliance of Hon'ble Supreme Court's directions in **Writ Petition (Civil) No.534/2020, titled Bajaj Allianz General Insurance Co. Ltd. v/s Union of India.**

(10) Award be drawn accordingly.

Signed & Pronounced in the open Court today on this 8<sup>th</sup> day of April 2026.

Date : 08/04/2026  
Place: Patan.

(Prashantkumar H. Sheth)  
Judge, MACT (Main), Patan  
UNIQUE ID CODE NO.GJ00524