

Filed on:	11.06.2009		
Registered on:	11.06.2009		
Decided on:	17.08.2024		
Duration:	Yrs	Mts	Dys
	15	02	06
Exhibit:			

IN THE (SPECIAL) MOTOR ACCIDENT CLAIMS TRIBUNAL,

KACHCHH AT BHACHAU.

MAC PETITION NO.95/2020

Applicant:

- 1 Pravinchand Babulal alias Liladhar Khandor,**
An adult, Hindu, Occu. Jor/Business,
R/o. Bhimasar, Rapar-Kachchh

VERSUS

Opponents:

- 1 Kadar Nurmamad Ghanchi,**
Driver of Truck No.GJ.12.T.9426,
Residing at : Makhel, Rapar-Kachchh.

Jagabhai Raydhan Koli,
Aged about 40 years, Occupation – Transport,
Residing at : Makhel, Rapar-Kachchh.
- 2 HDFC ERGO Insurance Co. Ltd.,**
(Insurance Company of Truck No. GJ.12.T.9426)
Gandhidham-Kachchh.

Appearance:

Ld. Adv. Mr. R R Vora, for the Applicant.

Ld. Adv. Mr. V K Madhavi for the opponent No.1 and 2.

Ld. Adv. Mr. S H Sachade for the opponent No.3 - insurance company.

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

1. THE SUBJECT MATTER ::

This is Motor Accident Claim Petition filed U/s.166 of the Motor Vehicle Act, 1988 (hereinafter referred to as “the Act”) by the applicants to obtain an award of Rs.8,00,000/- as compensation.

2. THE CASE OF PETITIONER ::

As per the claim petition

Date & time of accident : 13/04/2009 at 14.30 hours

Place of accident : Near about Bhimasar Village,
Vehicle involved Truck No.
GJ.12.T.9426.

3. The case of the petitioners in nutshell is as follows :-

On 13/04/2009, the applicant namely **Pravinchand Babulal alias Liladhar Khandor** was coming back from Varnu Village to Bhimasar by Truck No.GJ.12.T.9426 after purchasing black cotton from various farmers on behalf of his master and at that time near about Bhimasar Village, Samakhiyali, the opponent no.1 driver of Truck bearing registration no.GJ.12.T.9426, and at that time, due to rash

and negligent driving of the driver, the driver had lost control of the speeding vehicle resulting in the accident and the truck turned turtle and consequently, the claimants sustained injuries. Thus, the said accident occurred due to the negligence of Opponent No.1. In this regard, the complaint was lodged by Jagdishchandra Babulal Thakkar in Rapar Police Station, vide 1st Crime Registered No. 30 of 2009 under Section 279, 337, 338 of the Indian Penal code and under Section 177, 184 of the Motor Vehicles Act against the driver of Truck bearing registration No.GJ.12.T.9426. It is further stated that the applicant was treated as an indoor patient at the Bhachau Vagad Welfare Hospital and for further treatment he was admitted at Vishwas Orthopedic Hospital, Bhuj and therefore the injured person had undergone treatment for 1-2 months. It is also stated that as a result of the accident, the applicant injured sustained severe injuries including Fracture on his left leg and other injuries on other body part. It is further alleged that the accident occurred solely on account of rash and negligent driving of the driver of Truck being GJ.12.T.9426.

Hence, the claimant has filed this claim petition for demanding compensation for an amount of Rs.8,00,000/- along with interest from the opponents with their joint and several liabilities.

4. **THE DEFENCE OF OPPONENTS**

The opponent No. 1 & 2 appeared through their Ld. Advocate at Ex.23 and had filed written statement vide Ex.25. The opponent no.3, the Insurance Company has appeared through their Ld. Advocate at Ex. 35 and filed its written statement at Ex. 86 and in their written statement they generally denied all the allegations and averments made by the claimants in their petition, and ultimately prayed to dismiss the petition.

In their written statement they also contended that there was a breach of the terms and conditions of the policy. In such a circumstances, the insurance company is not liable to pay any compensation.

Further they also contended that, they does not know as to who was driving the vehicle at the time of the accident, and whether the person driving the vehicle had valid and effective driving license to drive the vehicle. In such a

circumstances, the insurance company is not liable to pay any compensation.

Further, they also contended that, such accident did not happen due to negligence on the part of opponent No.1 and no strict proof placed by the applicants to prove that in such accident the injured had sustained injuries. Hence Insurance Company is not liable to pay any compensation and the petitioners are not entitled to get any compensation from opponent No.3. Ultimately, it is prayed that this petition may be dismissed.

5. **EVENTS HAPPENED DURING THE TRIAL::**

The Opponent No.3 has filed application vide Ex.42 under section 170 of MV Act and requested to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made and the said application was allowed by this tribunal.

6. **THE EVIDENCE OF THE APPLICANTS::**

Oral Evidence:-

1	Affidavit of the claimant Pravinchand Liladhar Khandor	Ex. 41
2	Affidavit of the Rajendrasinh V Jadeja	Ex. 50

3	Affidavit of the Valabhai M Solanki	Ex. 52
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Documentary Evidence

1	Copy of Commission Letter	Ex.51
2	Certified copy of Janvajog at Rapar Police Station	Ex. 55
3	Certified copy of FIR	Ex. 56
4.	Certified copy of place of panchnama.	Ex. 57
5.	Copy of Charge-sheet	Ex. 60
6.	Copy of Deposition of applicant at Rapar Court	Ex. 61
7.	Copy of Medical Paper	Ex. 62
8.	Copy of Case Paper	Ex. 63
9.	Copy of Doctor's Prescription	Ex.64
10.	Copy of Case Paper	Ex.65
11	Copy of Discharge Summary	Ex.66
12	Copy of Medical Paper	Ex.67
13	Copy of Medical Certificate	Ex.68
14	Copy of Doctor's Prescription	Ex.69
15	Copy of Case Paper	Ex.70
16	Copy of Doctor's Prescription	Ex.71
17	Copy of Case Paper	Ex.72
18	Copy of X-ray report	Ex.73
19	Copy of Discharge Summary	Ex.74

20	Copy of Case Paper	Ex.75
21	Copy of Doctor's Prescription	Ex.76
22	Copy of Medical bills (Total 31)	Ex.77
23	Copy of Expenses of Treatment	Ex.78
24	Copy of Applicant's Adhar card	Ex.79
25	Copy of Medical Certificate of Disability	Ex.80
26	Copy of Driving License of Opponent no.1	Ex.81
27	Copy of RC Book of Truck no. GJ-12-T-9426	Ex.82
28	Copy of Salary Slip of applicant	Ex.83

7. **THE EVIDENCE OF THE OPPONENTS ::**

Oral Evidence:

Opponents – Nil

Documentary Evidence:

The opponent no.1 & 2 have not produced any documentary evidence as they did not appeared before this tribunal.

The opponent no.3 has produced following documents.

Sr. No	Description of documents	Exhibit
1	Copy of Insurance Policy	Ex. 93
2	Copy of Police Statement of Pravinchandbhai	Ex. 94

Closing Pursis ::

- The L.A. for the opponent No.3 has filed closing Pursis at Exhibit 96.

During the course of argument Ld. Advocate for the claimants and Ld. Advocate for the opponent No.3 has submitted written arguments vide Ex.95, which is taken into consideration.

The Ld. Advocate for the opponent no. 3 had submitted that a truck is a goods carrying vehicle in which passengers are not allowed to travel and since the applicant was travelling in the truck as a gratuitous passenger, the insurance company is not liable to pay compensation and in support of the arguments, she relied upon following citations which are as under :-

- 1) 2016 (0) AIJEL HC 235710, in The Hon'ble Gujarat High Court, in case of Oriental Insurance Co. Ltd. Vs. Ganeshbhai Babanbhai Bhalekar.
- 2) 2014 (0) GLHEL HC 231333, in The Hon'ble Gujarat High Court, in case of United India Insurance Co. Ltd. Vs. Minor Mahesh Kanubhai.

3) 2018 (0) AIJEL HC 239653, in The Hon'ble Gujarat High Court, in cas of United India Insurance Co. Ltd. Vs. Bai Savitaben Wd/o. Mohanji Devaji Marvadi.

Both the Ld. Advocate mostly relied upon the evidence produced on the record, therefore, I have carefully gone through the entire evidence produced on record.

8. **ISSUES ::**

In view of the above facts, the following issues were framed at **Exhibit 13:-**

1. Whether the applicant/s prove/s that the applicant sustained injuries on account of rashness or negligence in driving on the part of the driver of the vehicle/s involved in the accident ?
2. What amount, if any, applicant's is/are entitled to get by way of compensation and from which of the opponent ?
3. What order and decree ?

My findings on the above issues are as under:-

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

-:: REASONS ::-**ISSUE NO.1****9. INVOLVEMENT OF VEHICLE, NEGLIGENCE AND INJURY DUE TO THE ACCIDENT::**

So far as the involvement of vehicle, negligence are concerned, Ld. Advocate for the claimants on the basis of evidence produced on record, mainly submitted that such accident occurred due to rash and negligent driving of the opponent No.1 i.e driver of Truck No.GJ.12.T.9426.While Ld. Advocate for the opponent No.3 on the basis of the evidence produced on record and written argument submitted that such accident was not occurred due to sole negligence on the part of the Truck No.GJ.12.T.9426.

Both the Ld. Advocates largely relied upon evidence produced on record. Ld. Advocate for the claimants relied upon oral evidence of claimant, F.I.R., Panchanama, etc. While Ld. Advocate for the opponent No.3 by and large relied upon the F.I.R.

I have gone through such argument as well as evidence produced on record.

No doubt where both the Ld. Advocate generally relied upon evidence produced on record. In such a circumstances, it is necessary to consider each and every evidence produced on record and on the perusal of such entire evidence following things are become clear.

To prove the involvement of vehicle and negligence of opponents, the claimants have produced following evidence.

Examination in Chief in form of Affidavit

The claimant has filed his affidavit under order 18 rule 4 of CPC at Exhibit 41. In his affidavit, while reiterating the contents of the claim petition the applicant specifically stated that the accident occurred due to rash and negligent act of the Truck No.GJ.12.T.9426. In his affidavit, he further stated that due to the accident he had sustained fracture below the knees of the left leg and as per the opinion of the Dr. H M Hadiya, he had suffered permanent disability of 35 % of the left lower limb. The applicant further stated at the time of the accident he was earning Rs.5,500/- Per Month by doing private work.

No doubt Ld. Advocate for the opponent No.3 had cross examined the petitioner but nothing emerged on record to suggest that the claimant was traveling as a gratuitous passenger in the cabin of the truck. Further it also emerged in the cross examination that the claimant was to pick up more laborers on the way for the loading of the goods.

FIR

The applicant has produced the certified copy of FIR at Exhibit 56, which was lodged by Jagdishchandra Thakkar at the Rapar Police Station, wherein the complainant had stated that on 13/04/2009 he was coming back from Varnu Village to Bhimasar by Truck No.GJ.12.T.9426 and at that time near about Bhimasar Village, Samakhiyali, the opponent no.1 driver of Truck bearing registration no.GJ.12.T.9426, was driving the truck in rash and negligent manner in excessive speed and so, the accident occurred, in which the applicant sustained severe injuries.

Panchnama

The claimant has produced the copy of the panchnama at Exhibit 57, the panchamam states that on the said place

one truck being registration no. GJ-12-T-9426 was lying in a turtled position and the spare parts of the truck were scattered on the roadside.

Charge-Sheet

The claimant has also produced the copy of charge sheet which shows that the investigation officer had filed the charge-sheet against the opponent No.1 after finding that the opponent No.1 was negligent in the accident.

Negligence

Therefore on the perusal of the oral and documentary evidence it transpires that the claimant was a traveling as the representative of the owner of the black cotton which was transported in the truck. Further as per the deposition of the claimant it transpires that the tyre of the truck no. GJ-12-T-9426 got burst and due to which the driver of the truck lost contron over the steering and consequently the truck turned turtle and this fact substantiates that the truck was involved in the accident and further from the perusal of the F.I.R. and charge sheet it transpires that the truck was involved in the accident. Therefore on the basis of the evidence on record it can be concluded that truck no.

GJ-12-T-9426 was involved in the accident in which the claimant had sustained injuries. Even otherwise also the claimants, who have been cross-examined by the learned advocate for the opponent no. 1, 2 and 3 but nothing adverse surfaced against the claimant, but the stance of the claimant that he was traveling in the aforesaid truck, got established the owners of black cotton/goods or as the labourers on the truck. Therefore in view of clear provisions contained in Section 147 of the Motor Vehicles Act, the risk of the persons, who were traveling on the truck as labourers as well as the owner of the goods thereof is statutorily covered in the insurance policy itself and therefore the contention raised by the learned advocate for the insurance company that the aforesaid person was traveling on the truck as unauthorized passengers is liable to be rejected.

Further vide Ex. 80 the Ld. Advocate for the claimant had given a pursis declaring that the permanent disability of the claimant be treated as 13 % as a body of whole and the Ld. Advocate for the opponent no. 3 had seen it without admitting any liability. Therefore when the

claimant had himself reduced the disability percentage and therefore in view of the admission the disability of the applicant will be treated as 13% as a body of whole.

Therefore in absence of any reason to discard the claimants evidence, as well as where it is establish that the opponents were responsible for such accident. In such a circumstances, **the issue No.1 is decided in the affirmative.**

ISSUES NO.2

10. QUANTUM OF COMPENSATION::

According to the applicant, he was 40 years old and was sound and healthy and earning Rs.5,500/- per month from private work at the time of the accident and looking to the documentary evidence produced at Ex.83, the income is shown as Rs.5,500/-. So, this tribunal assumes the income of the petitioner was Rs.5,500/- per month.

The disability certificate at Exhibit 80 it transpires that the petitioner had sustained Right Tibia fracture and was operated and installed rod on the right leg and the said certificate issued by the Dr. H M Hadiya shows permanent 35% disability of the body as a whole. Therefore, looking

to the documentary evidence, I deemed it fit to assess final value of permanent physical impairment of claimant as 13 % of whole body, and computing annual income of the petitioner at Rs.66,000/-, the annual future income loss on account of such permanent disability comes at Rs.8580/- ($RS.66000 \times 13/100$). In light of the settled legal position and in light of the ratio laid down by the Hon'ble Apex Court in **Sarla Verma's case, 2009 (6) SCC 121**, multiplier of 14, as provided for the age between 41 to 45 years, be applied in the present proceedings, and therefore, looking to the annualized loss of Rs.8580/-, total future income loss comes to the tune of Rs.120120/- ($RS.8580 \times 14$).

(B) It is urged by the Ld. Advocate for the applicant that he has sustained injury and fracture in his right leg and other bodily injuries and treated at Vishwas Orthopedic Hospital. The applicant has been admitted as an indoor patient for the treatment and the follow up. It is submitted that as a natural consequence, the applicant was unable to get up and attend his routine activities and more particularly, his economic activity. The applicant should be

compensated for the period for loss of income under this count. Looking to the extent and nature of injury, and disability certificate, it is natural that healing would take some time and therefore, I am of the opinion that it is required to be presumed and accepted that the applicant was unable to do his daily routine work as also economic activity for a period of 2 months accepting the monthly income of the applicant at Rs.5500/-, an amount of Rs.11,000/- awarded under this head.

(C) Compensation has also been claimed on behalf of the claimant under the head of pain, shock and suffering, considering the facts of the applicant having sustained injury and fractured in leg and other bodily injuries as well as looking to the disability certificate, I find it just and proper to award Rs.10,000/- under the head of pain, shock and suffering.

(D) Original medical bills and dressing and investigation charges has been produced by the applicant at Exhibit 77 total of Rs.50,502/-. So, the tribunal deems it just and proper to award Rs.50,502/- towards the medical expenses.

(E) The applicant had claimed an amount of Rs.4,821/- towards attendance allowance, special diet and for transportation. There is obviously no evidence to support such claim, no supporting witnesses have also been examined to support the claim of their being attendance who have continuously attended to the applicant and as a result, have been deprived of their earnings on account of such attendance there is also no medical or expert opinion which suggested any such diet for the treatment of injuries sustained by the present applicant in my opinion, no doubt, some amounts might have been spent by the applicant towards transportation for the follow-up treatment, the same naturally, is not supported by any documentary evidence. In the circumstances, it would be unsafe to grant any such amount to the applicant as claimed, and instead, I propose to award an amount of Rs.5,000/- as a global lump sum amount covering all such heads. Thus, the break-up of total compensation awarded as under :

Sr. No.	Descriptions	Amt.(in Rs.)
1.	Future loss of income	120120

2.	Actual loss of income	11000
3.	Pain, shock and suffering	10000
4.	Medical expenses	50502
5.	Healthy diet, attendant and transportation	5000
	Total Amount	1,96,622/-

In above all the circumstances, it is proved that the claimant had suffered the total loss of **Rs.1,96,622/-** (Rupees One Lakh Ninety Six Thousand Six Hundred Twenty Two Only).

11. **LIABILITY OF OPPONENTS TO PAY COMPENSATION**

On the perusal of the entire record, it is established that, the driver of Truck No. GJ.12.T.9426 was involved in the accident. Further at the time of the accident the Truck No. GJ.12.T.9426 was insured with opponent No.3.

Further the opponent No.1 was the driver of the such Truck No. GJ.12.T.9426 which caused the accident and the opponent No.2 was the owner of such truck and hence, opponent No.2 being the owner of such vehicle involved in the accident is held vicariously liable to pay compensation for the tortuous Act of his driver and where the Truck No. GJ.12.T.9426 was insured with the

opponent No.3, the opponent No.3 is also liable to pay compensation to the claimant.

Therefore, its become clear that, the opponent no.3 being the insurer of the truck is solely liable to pay compensation to the claimant. Hence, this tribunal decided the issue No.2 in the affirmative and accordingly.

In such a circumstances its also become clear that all the claimant's are also entitled for such compensation.

Insofar as the case laws relied by the Ld. Advocate for the insurance company is concerned, I have applied the law laid down in those cases to the facts of present case, however the factual matrix of those case laws is different from the facts of the present case and hence they can be distinguished on the basis of the factual matrix.

12. **ADMISSIBLE RATE OF INTEREST ::**

Looking to the circumstances of the case as well bank rates for the interest, I do believe that the if interest awarded at the rate of 7.5 % it will be proper and just.

13. **COURT FEES ::**

The claim petition was filed by the applicants in forma paupers under Order 33 Rule 1 of the Civil Procedure

Code and while the the petitioner has succeeded in his case, and hence, Court Fee is required to be deducted under Order 33 Rule 10 of the Civil Procedure Code. The office is directed to deduct applicable Courts Fees accordingly.

14. **CONCLUSION / ORDER::**

In view of the forgoing discussion, I have decided Issues No.1 and 2 are in affirmative and accordingly. Hence, pass the following final order:-

ORDER

1. This claim petition Under Section 166 of the Motor Vehicles Act is partly allowed.
2. The Opponent no. 3 shall pay an amount of **Rs.1,96,622/-** (Rupees One Lakh Ninety Six Thousand Six Hundred Twenty Two Only) with interest at the rate of 7.5% per annum from the date of this petition till payment or realization of the amount.
3. NFL amount, if any, paid, be deducted from the awarded amount.

4. The Opponent no.3 shall deposit the amount of compensation with interest and cost as above, within 30 days from the date of the order.
5. On depositing the amount, after deducting the Court Fees etc., the remaining amount be paid to the claimant.
6. Award be drawn accordingly.
7. The copy of this Award to be sent to the insurance company by E-Mail.

Pronounced in the open Court on 17th Day of August, 2024.

Date: 17.08.2024

Place: Bhachau

(ANDLEEP TIWARI)
SPECIAL MACT (AUX.) JUDGE,
KACHCHH AT BHACHAU
UNIQUE ID CODE NO.GJ01587

A. R. Makwana

Eng. Steno