**Ex.**

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| Received on | |
| Registered on | |
| Decided on | |
| Duration | D. M. Y. |
| | |

# BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN) ARVALLI, AT MODASA.

***M.A.C.P. No.376 of 2015 (Old No.529 of 2006)***
***along with***
***M.A.C.P. No.377 of 2015 (Old No.530 of 2006)***

**APPLICANTS:~**

(1) **M.A.C.P.No.376 of 2015 (Old No.529 of 2006)**
Patel Kodarbhai Kamalbhai
Age : 50, Occupation : Agriculture
Residence : Dahegamda, Tal.Bhiloda
Dist.Sabarkantha. Now Dist.: Arvalli.

(2) **M.A.C.P.No.377 of 2015 (Old No.530 of 2006)**
(added pursuant to order below Ex.83)
Heirs of the deceased Punamchand Maganlal Patel
1/1. Kailashben Punamchand Maganlal Patel, Age : 53,
1/2. Naynaben Punamchand Maganlal Patel, Age : 51,
1/3. Minabe Punamchand Maganlal Patel, Age : 46,
1/4. Pankajbhai Punamchand Patel, Age : 44,
All residence : Dahegamda, Tal.Bhiloda
Dist.Sabarkantha. Now Dist.: Arvalli.

***Versus***

**OPPONENTS :**
**In M.A.C.P.No.376 of 2015 (Old No.529 of 2006)**

**Parties of Motorcycle No.GJ.09.Q.9717**

1 Punamchand Maganlal Patel
Age : 60, Occupation : Agriculture
Residence : Dahegamda, Tal.Bhiloda
Dist.Sabarkantha. Now Dist.: Arvalli.

2 Pankajkumar Punamchand Patel
Adult, Occupation : Agriculture
Residence : Dahegamda, Tal.Bhiloda

Dist.Sabarkantha. Now Dist.: Arvalli.
3 The United India Insurance Co.Ltd.
Himmatnagar, Tal.Himmatnagar, Dist.Sabarkantha.

**Parties of Car No.GJ.12.P.3695**
Owner cum Driver:
4 Husen Fidadi Padri
Adult, Occupation : -
Residence : Near S.T.Division, Minara Fali, Jamnagar.
5 The New India Insurance Co.Ltd.
The summons be serve to Himmatnagar branch.

**OPPONENTS**:
**In M.A.C.P.No.377 of 2015 (Old No.530 of 2006)**

**Parties of Motorcycle No.GJ.09.Q.9717**
1 Pankajkumar Punamchand Patel
Adult, Occupation : Agriculture
Residence : Dahegamda, Tal.Bhiloda
Dist.Sabarkantha. Now Dist.: Arvalli.
2 The United India Insurance Co.Ltd.
The summons be serve to Himmatnagar branch.

**Parties of Car No.GJ.12.P.3695**
Owner cum Driver:
3 Husen Fidadi Padri
Adult, Occupation : -
Residence : Near S.T.Division, Minara Fali, Jamnagar.
4 The New India Insurance Co.Ltd.
The summons be serve to Himmatnagar branch.

**Appearance** :

| | |
|---|---|
| For The Petitioners. | Ld. Advocate Shri S.B.Dandhwani |
| For the opponent No.3/2 | Ld. Advocate Shri P.K.Shah. |
| For the opponent No.5/4 | Ld. Advocate Shri G.K.Bhavsar. |

## : *C o m m o n J u d g m e n t* :

1 Both the present Motor Accident Claim Petition are preferred under Section-166 of the Motor Vehicle Act,

1988 for getting compensation.

2 Both the Claim Petitions have arisen out of one and same motor accident and incident, the facts and law involved are the same, the evidence lead by the parties and arguments submitted by the respective Ld. Advocates for the parties are similar, hence in order to avoid inconvenience to the parties and Ld. Advocates, the petitions have been consolidated vide Ex.38 and disposed of by this common judgment.

3 The brief facts of the present cases are as under :

3.1 That on 28.8.2005, both the claimants were going towards Shamlaji from village Dahegamda riding on motorcycle bearing registration No.GJ.9.Q.9717. It is the case of claimants that, Punamchand Maganlal Patel was riding the said motorcycle on correct side of the road and the claimant Kodarbhai Kamjibhai Patel was pillion rider on the said motorcycle. It is further case of the claimants that, when they were passing through the place of accident i.e near village Ansol, National Highway No.8, at that time, the opponent No.1, came driving his Car bearing registration No.GJ.12.P.3695, in rash and negligent manner and hit the Motorcycle of claimants. Due to the impact both the claimants fall on the road and sustained with serious injuries including fracture.

4 The summons of the claim petitions were served upon the opponents. The opponents No.1 and 4 chose not to appear before this Tribunal. The drivers of owners of both the vehicles chose not to present before this tribunal. The Ld. advocate for the United India Insurance Co. and Ld.

advocate for the New India Insurance Co. and appeared before this tribunal and filed their written statements vide Ex.11 and Ex.15 respectively, *inter alia,* contending therein that the accident did not take place as contended by the claimants and denied the age, income and facts of the claimants made in the claim petitions.

5 In order to prove case, claimants have produced following oral as well as documentary evidences :

| **No.** | **Description of Document** | **Exhibit/ Mark** |
|---|---|---|
| 1 | Copy of Complaint | 52 |
| 2 | Copy of Panchnama | 53 |
| 3 | Copy of driving licence of claimant Punamchand Patel | 57 |
| 4 | Copy of insurance premium collection receipt of Car No.GJ.12.P.3695 (Issued on 25.08.2005) | 58 |
| 5 | Copy of insurance policy of motorcycle No.GJ.9.Q.9717 (from 12.03.2005 to 11.03.2006) | 59 |
| 6 | Copy of R.C.Book of Car No.GJ.12.P.3695 | 60 |
| 7 | Copy of driving licence of Car driver | 61 |
| | | |
| | **M.A.C.P No.376 *of 2015* *(Old No.529 of 2006)*** | |
| 8 | An Affidavit of chief examination | 42 |
| 9 | Copy of injury certificate | 74 |
| 10 | Disability Certificate | 71 |
| 11 | Discharge-Summary | 73 |
| | | |
| | **M.A.C.P No.377 *of 2015* *(Old No.530 of 2006)*** | |
| 12 | An Affidavit of chief examination | 41 |
| 13 | Copy of Injury certificates | 54,55 |
| 14 | Disability Certificate | 62 |
| 15 | Discharge-Summary | 56 |

6 From the above referred pleadings, this Tribunal had

framed following common issues:-

1 Whether it is proved that the claimants sustained injuries on account of rashness of negligence in driving on the part of the driver of the vehicle involved in the accident ?

2 What amount, if any, the claimants are entitled to by way of compensation and from which of the opponents ?

3 What order ?

7 My findings to the above issues are as under :

1 In affirmative.
2 Partly in affirmative.
3 As per final order.

**R E A S O N S**

**Issue No.1** :

8 It is the case of claimants that on 28.8.2005, both the claimants were going towards Shamlaji from village Dahegamda riding on motorcycle bearing registration No.GJ.9.Q.9717. It is the case of claimants that, Punamchand Maganlal Patel was riding the said motorcycle on correct side of the road and the claimant Kodarbhai Kamjibhai Patel was pillion rider on the said motorcycle. It is further case of the claimants that, when they were passing through the place of accident i.e near village Ansol, National Highway No.8, at that time, the opponent No.1, came driving his Car bearing registration No.GJ.12.P.3695, in rash and negligent manner and hit the Motorcycle of claimants. Due to the impact both the claimants fall on the road and sustained with serious

injuries including fracture.

8.1 While deciding a claim petition, the quantum of proof of negligence is preponderance of probability as has been held in the judgment viz. (i) Bimla Devi v/s H.R.T.C., reported in AIR 2009 SC 2819 and (ii) Parmeshwari Devi v/s Amir Chand, reported in 2011 (11) SCC 635.

8.2 Heard, Ld. advocates for the respective parties on the point of negligence. In support of the claim petition, claimants have produced affidavit of chief examination at Ex.41 and Ex.42 and reiterated the averments made in the claim petitions. The claimant has also place on record copy of F.I.R. at Ex.52. Copy of panchanama is at Ex.53. As per the Panchnama, both the vehicles lying in damaged condition. It further appears from the Panchnama that car was damage on its front left side. Considering the above referred facts, it appears to this Tribunal that the car driver dashed his car behind the motorcycle. It is also required to be noted that claimants were cross-examined by the Insurance Companies, but nothing fruitful to the case of opponents could be traced-out from their cross-examinations. The Insurance Company has not examined the driver of car to prove and point out that he was not negligent in causing the above referred accident. Since Insurance Company has not examined the car driver, adverse inference is required to be drawn. Considering the above referred discussions, I hold that the car driver i.e opponent No.3/4, was solely negligent in causing the above referred accident. In view of the above referred discussions, I decide issue No.1 in affirmative.

**Issue No.2 :-**

**In M.A.C.P.No.376 of 2015 (Old No.529 of 2006)**

9 It is the case of the claimant that at the time of accident, he was earning Rs.5000/- p.m by way of agriculture as well selling milk and milk product. In support of his case, claimant has produced certificate issued by the Dahegamda Milk Produce Co-operative Society Ltd, at Ex.79, wherein it is mentioned that claimant was selling milk to said society and society paid him up to Rs.12,000/- per months. However, it is required to be noted that claimant has not examined any authorized person of above referred society to prove the said certificate. Therefore, it cannot be said that the certificate Ex.79 is properly proved by the claimant. The claimant has also produced village form No.8-A abstracts (Ex.78) of the land situated at Village Dahegamda, Ta.Bhiloda, District : Sabarkantha to show that he is the owner of the said agricultural land. According to this Tribunal these documents are not enough to arrive at the conclusion that claimant's monthly income was about Rs.5,000/-. Claimant could have produced the receipt of agricultural product sold by him to any merchant but claimant has not produced any such evidence.

9.1 It is not in dispute that even after the accident, claimant has continued to earn from above referred agricultural land and animal husbandry work. Even if it is presumed that, claimant himself was working as a labourer in his field and even if it is presumed that he is not in a position to work as a labourer after the injuries sustained by him in the above referred accident, then also the core facts, which cannot be denied is that claimant can employee some labourer to do the same work, which he was doing immediately before the accident. Even claimant has not produced any evidence to show that after the accident, he employed some labourers to perform the work, which he was earlier used to do. However, assuming the the fact that claimant was working in the field as agriculturist and not as super-wiser and further considering the fact that accident took place in the year 2005 and at that point of time claimant was earning his livelihood by doing agricultural work and selling milk and milk product, monthly income of the claimant can be assessed as Rs.2300/- per month.

9.2 It is averred by the claimant that at the time of accident he was aged about 50 years. Claimant has place on record his discharge summary vide Ex.73 wherein, his age is mentioned as 50 years. Considering the medical certificate, age of the claimant might between 46-50 years at the time of accident, therefore, he is entitled to get multiplier of '13' as held by the Hon'ble Apex Court in the case of National Insurance Co. Ltd vs Pranay Sethi on 31 October, 2017.

9.3 Claimant has produced disability certificate at Ex.71. In the disability certificate Doctor has opined that claimant has sustained permanent partial impairment as 10%. However, Ld. Advocates for the respective parties have agreed to assess permanent partial impairment of the claimant as 4% of whole body, which is endorsed by learned advocates of both the sides on disability certificate. In view of above referred discussion, claimant is entitled following amount under the head of loss of future income : (Rs.2300/- p.m. x 12 months x 13 multiplier x 4% disability) = Rs.14,352/-

9.4 Deposition of claimant is recored at Ex.42. From his deposition it clearly appears that claimant has sustained permanent impairment and, therefore, in my view claimant is entitled to get following amount under the heads like pain, shock & suffering and special diet, attendance & transportation. Therefore, I award Rs.5,000/- & Rs.3,000/- respectively under the said heads respectively.

9.5 The claimant has claimed huge amount under the head of actual loss of income. Claimant has produced the injury certificate vide Ex.68, from the injury certificate, it appears that claimant was treated as indoor patient. Considering the said fact, it becomes clear that claimant must not have worked for about 1 months and, therefore, he is entitled for Rs.2,300/-.

9.6 Claimant has produced original medical bills at Ex.75 amounting to Rs.8203 and Ex.77 amounting to Rs.1240/-. Considering the medical bills and injuries sustained by the claimant, claimant is entitled to get lump-sum amount of Rs.9500/- under the head of medical expenditure and future treatment. In view of above the claimant is entitled for following amount as compensation :

| | | |
|---|---|---|
| Rs. | 14,352/- | Future economic loss |
| Rs. | 5,000/- | Pain, shock and sufferings. |
| Rs. | 9,500/- | Medical. |

| | | |
|---|---|---|
| Rs. | 3,000/- | Special diet, attendant & transportation. |
| Rs. | 2,300/- | Actual loss for a month. |
| **Rs.** | **34,152/-** | **Total Compensation.** |

**<u>In M.A.C.P.No.377 of 2015 (Old No.530 of 2006)</u>**

10 It is the case of the claimant that at the time of accident, he was earning Rs.5000/- p.m by way of agriculture as well selling milk and milk product. In support of his case, claimant has produced certificate issued by the Dahegamda Milk Produce Co-operative Society Ltd, at Ex.65, wherein it is mentioned that claimant was selling milk to said society and society paid him up to Rs.16000/- per months. However, it is required to be noted that claimant has not examined any authorized person of above referred society to prove the said certificate. Therefore, it cannot be said that the certificate Ex.65 is properly proved by the claimant. The claimant has also produced village form No.8-A and village form No.7/12 vide Mark-48/4 to Mark-48/7 of the land situated at Village Dahegamda, Ta.Bhiloda, District : Sabarkantha to show that he is the owner of the said agricultural land. According to this Tribunal these documents are not enough to arrive at the conclusion that claimant's monthly income was about Rs.5,000/-. Claimant could have produced the receipt of agricultural product sold by him to any merchant but claimant has not produced any such evidence.

10.1 It is not in dispute that even after the accident, claimant has continued to earn from above referred agricultural land and animal husbandry work. Even if it is presumed that, claimant himself was working as a labourer in his field and even if it is presumed that he is not in a position to work as a labourer after the injuries sustained by him in the above referred accident, then also the core facts, which cannot be denied is that claimant can employee some labourer to do the same work, which he was doing immediately before the accident. Even claimant has not produced any evidence to show that after the accident, he employed some labourers to perform the work, which he was earlier used to do. However, assuming the the fact that claimant was working in the field as agriculturist and not as super-wiser and further considering the fact that accident took place in the year 2005 and at that point of time claimant was earning his livelihood by doing agricultural work and selling milk and milk product, monthly income of the claimant can be assessed as Rs.2300/- per month.

10.2 It is averred by the claimant that at the time of accident he was aged about 60 years. Claimant has place on record his MLC vide Ex.54 wherein, his age is mentioned as 60 years. Considering the medical certificate, age of the claimant might between 56-60 years at the time of accident, therefore, he is entitled to get multiplier of '9' as held by the Hon'ble Apex Court in the case of National Insurance Co. Ltd vs Pranay Sethi on 31 October, 2017.

10.3 Claimant has produced disability certificate at Ex.62. In the disability certificate Doctor has opined that claimant has sustained permanent partial impairment as

9%. However, Ld. Advocates for the respective parties have agreed to assess permanent partial impairment of the claimant as 5% of whole body, which is endorsed by learned advocates of both the sides on disability certificate. In view of above referred discussion, claimant is entitled following amount under the head of loss of future income : (Rs.2300/- p.m. x 12 months x 9 multiplier x 5% disability) = Rs.26,220/-

10.4 Deposition of claimant is recored at Ex.41. From his deposition it clearly appears that claimant has sustained permanent impairment and, therefore, in my view claimant is entitled to get following amount under the heads like pain, shock & suffering and special diet, attendance & transportation. Therefore, I award Rs.5,000/- & Rs.3,000/- respectively under the said heads respectively.

10.5 The claimant has claimed huge amount under the head of actual loss of income. Claimant has produced injury certificate vide Ex.55, from the injury certificate, it appears that claimant was treated as indoor patient. Considering the said fact, it becomes clear that claimant must not have worked for about 1 months and, therefore, he is entitled for Rs.2,300/-.

10.6 Claimant has produced original medical bills at Ex.64 amounting to Rs.7247/-. Considering the medical bills and injuries sustained by the claimant, claimant is entitled to get lump-sum amount of Rs.7250/- under the head of medical expenditure and future treatment. In view of above the claimant is entitled for following amount as compensation :

| | | |
|---|---|---|
| Rs. | 26,220/- | Future economic loss |
| Rs. | 5,000/- | Pain, shock and sufferings. |
| Rs. | 7,250/- | Medical. |
| Rs. | 3,000/- | Special diet, attendant & transportation. |
| Rs. | 2,300/- | Actual loss for a month. |
| **Rs.** | **43,770/-** | **Total Compensation.** |

11 **Liability**:

So far as liability of compensation is concerned, as discussed above, the driver cum owner of car bearing registration No.GJ.12.P.3695 is held solely negligent for the occurrence. Hence he is vicariously liable to pay compensation to the claimants. The claimants have place on record Copy of insurance premium collection receipt of the Car No.GJ.12.P.3695 vide Ex.58 which is issued on 25.08.2005. It is required to be noted that accident took place on 28.08.2005. The Car No.GJ.12.P.3695 being insured with the Insurance Company is not in dispute, there are no technical defenses which can be said to be breach of policy, therefore the Insurance Company of the said car will have to indemnify the owner. Hence the driver cum owner and insurance company of the Car No.GJ.12.P.3695 are jointly and severally liable to pay awarded compensation amount to the claimants. Hence, I decide issues No.2 partly in affirmative.

12 **INTEREST**:

The awarded amount shall carry interest at the rate of 9% per annum from the date of the application till realization, and hence Issue No.3. Following is the order in the interest of justice :-

**: O R D E R :**

1 Both the claim petitions are partly allowed.

2 The Claimant of M.A.C.P.No.376 of 2015 (Old No.529 of 2006) is entitled to recover **Rs.34,152/-**(Rupees Thirty Four Thousand One Hundred and Fifty Two Only) from the opponent Nos.4 and 5 jointly and severally with the proportionate cost and with interest at the rate of 9% per annum, from the date of the claim petitions till realization

3 The claimants of M.A.C.P.No.377 of 2015 (Old No.530 of 2006) are entitled to recover **Rs.43,770**/-(Rupees Fourty Three Thousand Seven Hundred and Seventy Only) from the opponent Nos.3 and 4 jointly and severally with the proportionate cost and with interest at the rate of 9% per annum from the date of the claim petitions till realization.

4 The insurance co. of Car No.GJ.12.P.3695-New India Insurance Co.Ltd. is hereby directed to deposit awarded amount within 30 days of the order.

5 In M.A.C.P No.377 of 2015 (Old No.530 of 2006), since the claimant expired during the pendency of the case and his heirs are brought on record, therefore the awarded amount be equally distributed amongst claimants.

6 Considering the ratio laid down by the

Honourable Apex Court in the case of **A.V.Padma Vs. R. Venugopal, reported in 2012(1) G.L.H (SC), 442,** the order of investment is not passed because the applicants are neither minor nor illiterate.

7 Deficit court fees stamp, if any, be recovered from the awarded amount and interim amount if paid be adjusted. Thereafter remaining amount of compensation shall be paid to all the applicants by account payee cheque forthwith.

8 In view of the ratio laid down by **Hon'ble Gujarat High Court, in the case of Smt. Hansagauri P. Ladhani v/s The Oriental Insurance Company Ltd., reported in 2007(2) GLH 291,** total amount of interest, accrued on the principal amount of compensation is to be apportioned on financial year to financial year basis and if the interest payable to claimant for any financial year exceeds Rs.50,000/-,insurance company/owner is/are entitled to deduct appropriate amount under the head of 'Tax Deducted at Source' as provided u/s 194A (3) (ix) of the Income Tax Act, 1961 and if the amount of interest does not exceeds Rs. 50,000/- in any financial year, registry of this Tribunal is directed to allow the claimant to withdraw the amount (as directed above) without producing

the certificate from the concerned Income-Tax Authority.

9 Award be drawn accordingly in the above petitions.

10 The copy of this Judgment be kept in both the above claim petitions.

Order signed and pronounced in the open Court today.

Date: 18/10/2019.
Modasa.

**(RIZVANA A.BUKHARI-GHOGHARI)**
M.A.C.T. (Main)
Arvalli at Modasa.
Code No.GJ00916