

JUDGMENT

Presented on : 15-09-2008

Registered on: 15-09-2008

Decided on : 21-03-2018

Y M Ds.

Duration :

**IN THE MOTOR ACCIDENT CLAIM TRIBUNAL(Aux.-) &
ADDL.DISTRICT JUDGE, AT ANAND.**

(Shri R.T.Panchal)

MAC PETITION NO.385/2008.

Exh. __.

Applicant:-

1. Dineshbhai Gotabhai Bhoi
Age:25 Yrs., Occu.:Camel Cart,
Resi.at: Bajkipura,
Tal.Umreth, Dist.Anand.

VERSUS

Opponents:-

1. **Owner of Three Wheel Tempo No.GJ-7 W-422:-**
Chavda Kesarisinh Chatursingh
Resi.at: Jesapura, Ta.Thasra,
Dist. Kheda.
2. **Ins.Co. of Three Wheel Tempo No.GJ-7 W-422:-**
The New India Assurance Co. Ltd.,
Opp.: Amul Dairy,
At Anand, Dist.Anand.

Appearance:-

- L.A. Shri Y.I.Vahora for the applicant.
L.A. Shri V.R.Thakor for the Opponent No.1.
L.A. Shri R.P.Dwivedi for the Opponent No.2.

: J U D G M E N T :

1. This petition has been filed by the applicant under Section 166 of the Motor Vehicles Act, 1988 for compensation for the injuries sustained by him in a vehicular accident by the offending vehicle as alleged in the petition.
2. The facts of the petition in brief are as under:-
It is the case of applicant that, on **28-05-2008**, at about

10-00 a.m., present applicant was riding his camel-card at a moderate speed and on left and correct side of the road and was passes nearby Sim of Village-Bechri, at that time, the driver of Three Wheel Tempo No.GJ-7 W-422 came by driving his tempo in a rash and negligent manner and due to which, he came on the wrong side of the road and dashed with the camel-cart of applicant and thus, a vehicular accident taken place. As a result of this accident, the applicant has sustained serious injuries on her person. The applicant has alleged that the present accident occurred due to negligence on the part of driver of Tempo.

3. It is further stated by the applicant that he was hale and healthy at the time of accident and she used to earn Rs.3,000/- p.m. by running camel-cart. According to him, she sustained serious injuries and permanent disability too. According to applicant, due to the injuries and disablement, he is unable to do his work which he was doing prior to the accident and has suffered a great economic loss. The applicant has also stated in claim petition that he has also undergone tremendous pain, shock & suffering and was required to spend Rs.20,000/- a huge amount for his treatment. Besides this, the applicant was also required to spent huge amount for special diet, transportation charges, attendance charges, etc. Thus, on all these grounds, the applicant has claimed Rs.1,00,000/- as compensation from the Opponents jointly and severally.
4. The Opponent No.1 appeared before the Tribunal by filing the written statement at Exh.15 contending inter alia therein that, the contents stated in the claim petition by the applicant are not true and correct and therefore, it is not admitted to them. He

has denied the age, income and occupation of the applicant in toto. The applicant has to prove the same by adducing cogent and reliable documentary evidence.

As a matter of fact, it has been submitted by them that on the date of accident, the Opponent No.1 has insured his vehicle with the Opponent No.2 – Insurance Company and hence, there is no responsibility casted upon the Opponent No.1, but the Opponent No.1 has been exonerated from making payment of such awarded amount of compensation. At the end, he prayed to dismiss the claim petition against him.

5. The Opponent No.2 – The New India Assurance Co.Ltd., has filed it's written statement at Exh.24 and inter alia denied all the averments made by the applicant in his claim petition. It has further denied the happening of the accident in question and the resultant injuries suffered by the claimant. It has further denied the age, occupation and income of the claimant. It has denied the alleged medical expenditure occurred to the applicant. It has been further denied the insurance of involved vehicle with them.

As a matter of fact, it has been submitted by it in para-17 that the applicant has shown the vehicle No.GJ-7 UU-422 in his claim petition, while vehicle alleged to be involved in the vehicular accident was GJ-7 W-422 which itself proves and self-explanatory that at the time of present accident, Vehicle No.GJ-7 W-422 was not insured with this Opponent No.2. It has been further submitted by it that at the time of vehicular accident, the driver of Tempo(Opponent No.1) was not holding valid and effective driving license to drive the vehicle at the

relevant time and they are not liable and responsible to pay any amount of compensation to the applicant. On all the above grounds, the Opponent No.2 – Ins. Co. has prayed to dismiss the claim petition against them.

6. The Tribunal has heard the Learned Advocates for the applicant as well as Opponent No.2- Ins.Co. The Tribunal has also gone through the documentary evidence produced in the claim petition.
7. In this petition, following issues have been framed by the then MAC Tribunal(Aux.), Anand at Exh.20 :-
 - (1) Whether applicant proves that he suffered injuries due to the rash and negligent driving of driver of offending vehicle involved in this accident?
 - (2) Whether applicant is entitled to get any amount as compensation? If yes, from whom ?
 - (3) What order and Award ?
8. My findings on the above issues are as under :-
 - (1) In the negative.
 - (2) In the negative.
 - (3) As per final order.

:: R E A S O N S ::

ISSUE NO.1 – Negligence :-

9. The applicant has filed her affidavit under Order-18, Rule-4 of CPC at Exh.25 in this petition. The applicant has produced the copy of complaint of alleged incident at Exh.30. The complaint is lodged by one Shalambhai Jesingbhai Solanki wherein he has narrated how the accident had occurred. Moreover, on bare perusal of contents of complaint, it can be seen that the vehicle i.e. Tempi No.GJ-7 W-422 is found, whereas the applicant has shown the offending vehicle i.e.Tempo No.GJ-7 W-422 in his claim petition. Moreover, on bare perusal of Registration Book(Ex.32) of involved vehicle is shown as

GJ-7 422. The copy of Insurance Policy(Exh.33) of involved vehicle is shown as GJ-07 UU-0422 and hence, the applicant has grossly failed to prove the involved vehicle. Thus, looking to the documentary evidence Exh.33 which is a copy of Insurance Policy of Opponent No.2- Insurance Co., wherein the Registration No. of vehicle is mentioned as GJ-07 UU-422, whereas in claim petition, the applicant has mentioned the involved vehicle i.e. GJ-7 W-422 and thus, the applicant has not joined the owner and Insurance Co. of vehicle No.GJ-07 W-422. Therefore, present applicant himself has produced the contradictory evidence about the vehicle no. and therefore, present claim petition is not tenable in the eye of law. In these circumstances, looking to the documentary evidence and pleading of applicant himself. In these circumstances, the claim petition filed by the applicant is requires to be dismissed. Therefore, answer of Issue Nos.1 & 2 are replied in the negative.

10. In view of above findings, the following final order is passed in term of Issue No.2.

O R D E R

1. The claim petition is hereby dismissed accordingly.
2. Parties shall bear their own cost of claim petition.
3. Award be drawn accordingly.

Pronounced in the open Court today this 21st day of
March, 2018.

Date:21/03/2018
Place: Anand.

[Rameshkumar Thakorbhai Panchal]
M.A.C.Tribunal (Aux.-) &
Addl.District Judge,
Anand.

(Code: GJ-00413)