| M.A.C.PETITION NO.40/05 | |
|---|---|
| FILED ON | |
| REGISTERED ON | |
| DECIDED ON | |
| DURATION | DTS - MTS - YRS |
| | |

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN) OF DAHOD, AT DAHOD**

**MOTOR ACCIDENT CLAIM PETITION NO.40/2005**
**EXH.**

**JITHARI KALIYA DAMOR,**
AGED - 29 YEARS,
OCCUPATION - AGRICULTURE,LABOUR,
RESIDENT OF BHITODA, TAL.DAHOD,
DIST.DAHOD.

**....APPLICANT**

**VERSUS**

**(**DRIVER, OWNER AND INSURER OF TRUCK NO.GJ-16 T-8915) :-

1. **RATILAL MAGENBHAI VASAVA,**
   AGED – ADULT,
   OCCUPATION – DRIVER OF VEHICLE,
   RESIDENT OF GUNDEELA,
   TAL.ZAGADIYA, DIST.BHARUCH.

2. **DIPAKBHAI GANPATBHAI RANA,**
   AGED – ADULT,
   OCCUPATION – OWNER OF TRUCK,

RESIDENT OF BHAVESHNAGAR, SOCIETY, ZADESHVAR, DIST.BHARUCH.

3. **UNITED INDIA INSURANCE COMPANY LIMITED,**
INSURER,
AT JAIN SOCIETY, GODHRA, PMS.

**....OPPONENTS**

**SUBJECT :- PETITION TO RECOVER COMPENSATION UNDER SECTION-166 OF THE MOTOR VEHICLE ACT, 1988**

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**MR. M. P. DHANEKAR**
LEARNED ADVOCATE FOR APPLICANT

**OPPONENTS NO.1 AND 2**
SERVED AND ABSENT

**MR. S. P. MEHTA**
LEARNED ADVOCATE FOR OPONENT NO.3
**(UNITED INDIA INSURANCE COMPANY LIMITED)**

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## -: JUDGMENT :-

(1) The present claim petition is preferred by the applicant - claimant under Section-166 of the M. V. Act, 1988 and she has claimed compensation of Rs.50,000/- from the opponents.

(2) The claim petition emanates from the following facts :

(3) On 17-02-1996, the applicant Jithariben Kaliyabhai Damor was traveling in truck No.GJ-16 T-8915 with her household kits and goods on making payment of hire charges to the opponent No.1, who was driving the said truck in rash and negligent

manner. At 20.30 hours, when they reached in the sim of village Chikhodra on Rajpardi to Zagadia Road, the opponent No.1 lost control over truck, as a result, the truck came on wrong side and dashed with a tree, and then turned turtle, whereby the applicant and others sustained injuries. The accident took place due to rash and negligent driving of the opponent No.1. So, the complaint was lodged with Zagadia police station vide 1st C.R.No.28/96 regarding the accident.

(4) It is the case of the applicant that, in this accident, she sustained severe injuries, for which, she remained in the hospital for long time and she sustained permanent disability. She was earning income from the agriculture / labour, but due to the injuries, the disability has seriously affected her daily income. She has suffered severe mental pain, shock and agony and incurred expenses towards her treatment. Thus, in all on different counts, the applicant has claimed compensation as mentioned in claim petition from the opponents No.1 Ratilal Maganbhai Vasava, No.2 Dipakbhai Ganpatbhai Rana and No.3 United India Insurance Company Limited being the driver, owner and insurer of truck No.GJ-16 T-8915.

(5) The summon and notice of the claim petition were served upon the opponents. The opponents No.1 and 2 though served with notice, did not appear before the Tribunal and they have not defended the claim petition. United India Insurance Company Limited appeared through the learned Advocate Mr. S. P. Mehta vide Exh.9.

(6) Here in this case, this Tribunal has framed issue at Exh.10 on 23-08-2017. Then-after, the matter was fixed for recording of evidence of applicant on 06-09-2017, 16-11-2017, 14-12-2017, 20-01-2018 and 31-01-2018, but the applicant has not preferred to come before the Tribunal to adduce her evidence. So far as the provision of Order-17 Rule-3 of the Civil Procedure Code is concerned, this Tribunal has remained two options either to proceed with the matter or to dismiss the petition for default. But the present petition is filed under the provision of the M. V. Act, which is beneficial legislation, so instead of dismiss the claim petition, this Tribunal is of the opinion to close the right of evidence for the applicant and to proceed with the matter. Then, the matter was kept for the evidence of opponent. The learned Advocate Mr. S. P. Mehta is present today i.e. 01-02-2018 and he has made endorsement on D.E. list (Exh.4) that, he has no objection, if the documents relied on by the applicant may be exhibited and read in evidence. The matter was kept for recording of evidence of opponent today, but no evidence is adduced by the opponent. As the matter is of year 2005 i.e. 13 years old matter. So, this Tribunal is of the opinion to decide the matter from the available record.

(7) After considering the averments, made in the petition, the Tribunal has framed the following issues at Exh.10 to determine this claim petition.

ISSUES

1. Whether it is proved that, the claimant sustained

injuries on account of rashness or negligence in driving on the part of driver of the vehicle involved in the accident?

2. What amount, if any, the claimant is entitled to by way of compensation and from which of the opponents ?

3. What order and award ?

(8) My findings on the above issues are as under :

1. In the affirmative.
2. In the affirmative. Rs.7,500/- from the opponents No.1 2 and 3.
3. As per final order.

**-: REASONS :-**

Issues No.1 & 2

(9) Issue No.1 and 2 are connected with each other and in order to avoid repetition of facts, discussion as well as the submissions, both the issues are required to be decided jointly. Hence they are decided jointly.

Factual Metrics :-

(10) Applicant Jithariben Kaliya Damor has filed this claim petition (Exh.1) and prayed to award Rs.50,000/- as compensation for the injury sustained by her in alleged accident.

As discussed above, neither oral evidence has been adduced nor affidavit has been filed by the applicant in support of her claim petition. So, this claim petition is being decided by this Tribunal on the basis of claim petition as well as documentary evidence, as produced vide D.E. list (Exh.4). Vide list (Exh.4), the applicant has produced documents i.e. FIR at Exh.11, Panchnama of place of occurrence at Exh.12, Insurance Policy at Exh.13, Treatment Certificate of applicant at Exh.14, Ration Card at Exh.15.

(11) I have heard the arguments of the learned Advocate Mr. M. P. Dhanekar for the applicant and the learned Advocate Mr. S. P. Mehta for United India Insurance Company Limited.

(12) As per claim petition, on 17-02-1996, she along-with others were going to Zagadia in truck No.GJ-16 T-8915 along-with household goods; it was driven by the opponent No.1 in rash and negligent manner and at 20.30 hours, when they were passing village Chikhodara, due to speedy and careless driving of the opponent No.1, the truck dashed with a tree, whereby she and others sustained injuries, hence, they were treated in C.H.C., Zagadia and complaint was lodged with Zagadia police station vide Ist C.R.No.28/96. For this averment, now if we may peruse the F.I.R. (Exh.11), lodged by Kanaiyabhai Varsingbhai Damor on the same day, then it reveals that, he is a labourer and maintaining his family by doing labour; he was accompanied by about 15 labourers of his village in doing labour work; on that day, at 20.15 hours, he and other labourers started to go to Zagadia from Rajpardi cross-road in truck No.GJ-16 T-8915 and at 20.30

hours, they were near to Chikhodara, at that time, one person on cycle was coming and while saving him, the truck alighted from the road on left side and dashed with a tree and then turned, so he, Shakriben Mihiya, daughter of Narsing Mansing and others sustained injuries; daughter of Narsing died; all the injured were admitted in Zagadia hospital.

(13) Looking to the contents of FIR, the accident appears to have occurred due to alighting of truck on side and as it dashed with a tree and turned, when the driver of truck tried to save a cyclist. The accident took place Zagadia-Rajpardi road. The offending vehicle is a truck, i.e. heavy vehicle. While driving such a heavy vehicle on road, the driver of vehicle is expected to drive with care and caution, so that no any accident may occur. Here the truck was loaded with various persons. In such a situation, the driver of truck was to drive with more care, but such type of care does not appear to have taken by the driver of truck and this accident has happened. Looking to the entire facts of accident, it transpires that, there was rashness and negligence on the part of the driver of vehicle truck and due to speedy and careless driving of the driver of truck, this accident occurred.

(14) Medico-Legal Certificate of applicant (Exh.14) shows accidental injuries on her body and she was treated by Medical Officer, C.H.C., Jhagadia for the said accidental injuries.

(15) It is not disputed that, the opponent No.1 was the respective driver of truck No.GJ-16 T-8915. There is no contrary fact on

record that, the truck No.GJ-16 T-8915 was not involved or there was no rashness or negligence in driving by the driver of truck No.GJ-16 T-8915. At the same time, the opponents No.1 and 2 have not appeared before the Tribunal and not challenged rash and negligent driving on the part of opponent No.1 or not challenged the involvement of vehicle truck No.GJ-16 T-8915 in the accident.

(16) In view of the above discussion, from the available evidence on record, this Tribunal is of the opinion that, due to rash and negligent driving of the opponent No.1 in driving truck No.GJ-16 T-8915, the accident occurred, wherein the applicant sustained injuries. I therefore reply the Issue No.1 accordingly in the affirmative.

(17) As per claim petition, applicant Jithariben sustained injuries as mentioned in injury certificate and was treated in C.H.C., Jhagadia as indoor patient and then, treated as outdoor. She was operated and plates & nails were fitted and plaster was applied. She has sustained permanent disability.

(18) She has relied on Medico Legal Certificate, produced herein this matter at Exh.14. Looking to this Medico-Legal Certificate, which appears to have been issued by Medical Officer C.H.C., Zagadia, multiple scratches on back right side, abrasion over left forehead and multiple scratches over right leg have been noted. As per this Certificate, the patient was admitted in the hospital and discharged on 18-02-1996 and the injuries require about 5 to

7 days to recover. Looking to the Injury Certificate, there is no fracture injury and even, no Disability Certificate has been produced by the applicant here in this claim petition. The injury certificate shows that, she was treated as indoor for two days. No documentary evidence has been produced to show the expenses, incurred towards her treatment, transportation, attendants or even on special diets. But, considering the nature of injury, the applicant would have suffered pain, shock and agony during the treatment period. At the same time, looking to the treatment in government hospital and other relevant circumstances, the claimant might have incurred some expenses towards medical treatment, attendants, transportation and diets too.

(19) Taking into consideration all aspects, this Tribunal is of the opinion to award lump-sum Rs.7,500/- to the claimant under all the heads and it is just and reasonable amount of compensation in the present claim petition, hence, I award the same to the applicant.

(20) So far as the interest is concerned, as per the judgment of Honourable Supreme Court in the case of Yeramma & others V/s. G. Krishnamurthy and another, reported in **2014 ACJ - 2161**, the interest @ 9% should be awarded.

(21) So far as the liability to pay awarded amount is concerned, it is pertinent to note that, the opponent No.1 Ratilal Magenbhai Vasava being the driver of truck No.GJ-16 T-8915 is held rash and negligent in driving his vehicle and for occurrence of

accident. Neither Driving License of opponent No.1 nor R. C. Book of offending vehicle has been produced by the applicant. But, the applicant has produced Motor Acceptance Advice Cum Receipt of United India Insurance Company Limited at Exh.13. As per this document, the Tata vehicle bearing No.GJ-16 T-8915 in the name of Deepakbhai Ganpatbhai Rana the opponent No.2 was insured with the Insurance Company for the period from 28-12-1995 to 27-12-1996. So, the insurance policy of offending vehicle truck was in force on the day of accident.

(22) Here it is not out of place to mention that, as per Insurance Policy, the offending vehicle was a goods carrying vehicle and from the evidence, it reveals that, the applicant was traveling in goods vehicle as passenger, which was not permissible. In absence of cogent evidence, it can be said that, the applicant was gratuitous passenger in goods vehicle. Here if we may refer the recent judgment of the Honourable Supreme Court in the case of Manuara Khatun & Others V/s. Rajesh Kr. Singh and Others in **Civil Appeal No.3047 of 2017 with Civil Appeal No.3065 of 2017,** wherein the Honourable Supreme Court has held as under :

> *18) The facts of the case at hand are somewhat identical to the facts of the case mentioned supra because here also we find that the deceased were found traveling as "gratuitous passengers" in the offending vehicle and it was for this reason, the insurance companies were exonerated. In Saju P.*

*Paul's case (supra) also having held that the victim was “gratuitous passenger”, this Court issued directions against the Insurer of the offending vehicle to first satisfy the awarded sum and then to recover the same from the Insured in the same proceedings.”*

*22) In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No.3) – they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings … “*

(23) Looking to the above referred judgment of the Honourable Supreme Court, in case of gratuitous passenger, as held in the case of Manager, National Insurance Company Limited V/s. Saju P. Paul in **Civil Appeal No.5 of 2013**, the liability of Insurance Company might not be there, but even than the Honourable Supreme Court has passed the order directing the Insurance Company to first pay the awarded sum to the applicant and then to recover the same from the owner (insured) of offending vehicle. As per the principle, laid down by the Honourable Supreme Court, this Tribunal is of the view that, the applicant can be said to be a gratuitous passenger, so as per the above referred Judgment of the Honourable Supreme Court, the Insurance Company can be

directed to first pay the awarded amount, as determined above and then to recover the same from the owner (insured) of offending vehicle herein.

(24) As we have discussed here-in-above, no valid and effective driving license of the opponent No.1 being driver of offending vehicle truck is produced on record. There is nothing to show that, the opponent No.1 was holding valid and effective driving license to drive offending vehicle on the day of accident. In this regard, the recent Judgment of the Honourable Supreme Court in the case of Lal Singh Marabi V/s. National Insurance Company Limited reported in **AIR 2017 ACJ 1362** is required to be referred, wherein the Honourable Supreme Court has held that,

> *"the driver of offending Mini Bus had not driving license on the day of accident, pay and recover order passed by the Tribunal and High Court is confirmed by the Honourable Supreme Court".*

(25) Taking into consideration the facts of the claim petitions on hand and keeping in mind the ratio, laid down by the Honourable Supreme Court in the above referred Judgments, this Tribunal is of the opinion to give direction to the Insurance Company to first pay the amount of compensation as decided here-in-above and then to recover the same from the insured of offending vehicle as per the guideline of the Honourable Supreme Court and the applicant is entitled to recover the amount of compensation accordingly. Therefore, I answer the Issue No.2 accordingly and the reply of Issue No.3 is concerned, following order is passed.

**-: <u>ORDER</u> :-**

1. The present claim petition is partly allowed.

2. The applicant does recover **Rs.7,500/- (Rupees Seven Thousand Five Hundred Only)** as compensation with **interest @ 9%** per annum from the date of filing the petition till realization of awarded amount along with proportionate costs from the opponents No.1, 2 and 3.

3. The opponent No.1, 2 and 3 are jointly and severally liable to pay the compensation as awarded above and they are directed to deposit the amount of compensation as directed above in the office of this Tribunal within 30 days.

4. The Opponent No.3 United India Insurance Company Limited is hereby directed to first pay the amount of compensation to the applicants and then to recover the same from the opponent No.2 owner of offending vehicle.

5. N.F.L. amount, if any paid, be deducted from the awarded amount.

6. On realization of the above said amount, deficit court fees, if any, shall be recovered.

7. The amount of compensation shall be paid to the applicant by crossed Account Payee Cheque in the name of applicant after due verification.

8. The opponents No.1, 2 and 3 are also directed to scrupulously follow the direction given by the Hon'ble High Court in the case of Smt. Hansaguri Prafulchandra Ladhani & Ors. vs. The Oriental Insurance Co. Ltd. reported in **2007(2) G.L.H. Page 291** with regard to computation of interest by spreading the amount over the relevant year from the date of claim petition till the date of deposit and deduction of Tax at Source on the amount of interest.

9. The opponents do bear their own costs and they shall pay proportionate costs to the applicant.

10. Award be drawn in terms of this judgment.

Pronounced in the open Court, today on this 1st Day of February, 2018.

Dt.01/02/2018
Place : Dahod

( Narendra B. Pithva )
Motor Accident Claims Tribunal (Main),
Dahod
(Code -GJ00332)