

Received on	:	12/04/13						
Registered on	:	12/04/13						
Decided on	:	30/10/18						
Duration	:	<table border="1"> <tr> <td></td><td></td><td></td></tr> <tr> <td>Year</td><td>Month</td><td>Days</td></tr> </table>				Year	Month	Days
Year	Month	Days						

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (AUXI.),
AT: VADODARA.

MACP No.400/2013

Exh : _____

Sr. No.	Applicant:	Age	Occupation
1.	Ravi Natubhai Patanwadiya All are residing at :- 99, Jashoda Nagar, Opp. Show Mill, Makarpura, Vadodara.	20	At present nothing
	V/s.		
	Opponents:		
1.	Dilipbhai Bhailalbhai Tadv Residing At :- Alkapuri Faliyu, Alamgir, Vadodara.	Adult	Driver of Jeep No.GJ-6-Z- 3474
2.	Arjunbhai Ganpatbhai Chavda Residing At :- Raghunath Colony, Jambuva, Vadodara.		Owner of Jeep No.GJ-6-Z-3474
3.	Reliance General Insurance Co. Ltd. Office At :- 3 rd Floor Star Track Building. Opp. ABS Tower, Old Padra Road, Vadodara. (Insurance Company)		

CLAIM PETITION U/S 166 OF THE MOTOR VEHICLE ACT FOR THE
COMPENSATION OF ₹.2,00,000/-

For the Applicant : Ld. Adv. Mr.R.R.Vyas

For the Opponent No. 1 & 2 : Non Appearance

For the Opponents No.3 : Ld. Adv. Mr.P.B.Desai

-:: JUDGMENT ::-

(1) The captioned petition has been preferred by the applicant for compensation under section 166 of Motor Vehicles Act for compensation of ₹.2,00,000/- along with interest.

(2) The brief facts of the application are as under:-

Occurrence of accident: It is the case of the applicant that, on 16/03/2013 the applicant and the relatives of the applicant proceeded in the jeep bearing registration No.GJ-6-Z-3474 owned by the Opponent no.1(relative) of the applicant from Malpur to Sankheda. It is the case of the applicant that when the Jeep reached near the site of accident i.e., near Village Malpur at that time opponent no.1 jeep driver was driving his jeep very rashly and negligently creating danger to the life of others by driving his jeep in a negligent manner and therefore accident occurs. As a result of which the applicant sustained serious injuries. It is further stated that the applicant received fracture injuries on the right leg and other injuries on the various parts of the body and was admitted in the hospital and was kept as an indoor patient. It is further stated that the applicant spent lot of money for special diet, transportation, and attendant and had to suffer actual loss of income.

Negligence :-It is the case of the applicant that, accident in question has occurred due to rash and negligent driving of opponent no.1 in respect to which the offence is registered with the Sankheda police station vide I CR No.7/2013.

Details of compensation claimed :- It is the case of the applicant that at the time of accident the applicant Ravi Natubhai Patanwadiya was 24 years old and he was healthy and strong. It is the case of the applicant that

at the time of accident the applicant was working in Pressovac Engineers (Pvt. Company) in Makarpura and getting ₹.6,000 income per month. It is further stated by the applicant that pain shock and suffering, special diet. Hence, constrained to file present claim petition.

- (3) The notices issued by the Tribunal upon the opponent said has been duly served. The opponent Nos.1 & 2 though served the summons of the tribunal, nos.1 & 2 have not filed any reply to the claim petition.
- (4) **Written Statements by Opponent no.3** - Reliance General Insurance Company: The opponent no.3 insurance company has filed the written statement at **Exh.14** and it is contended that the applicant's claim petition is false and deserves to be dismissed forthwith. It is contended that applicant has no right to file or has no any cause for filing the instant claim petition against the opponent no.3 and hence the petition needs to be dismissed. The details of age, occupation and income of the applicant, nature of injuries sustained by the applicant, the agony sustained by the applicant etc as narrated in the claim petition have been denied in toto by the opponent insurance company. The factum of accident as narrated in the claim petition has been denied in toto by the opponent insurance company. It is denied that the accident in question has occurred due to rash and negligent driving of opponent no.1. It is contended that at the time of accident the opponent no.1 did not have valid and effective driving license to drive the vehicle involved in the accident and hence the opponent insurance company is not liable to compensate the applicant. It is contended that the opponent no.1 insured has committed breach of the terms of the policy and hence also the opponent insurance company is not liable to compensate the applicant.

- (5) On the basis of the aforesaid pleadings of the parties, following issues

have been framed vide **Exh.19**

-:: ISSUES ::-

1. Whether it is proved that the applicant 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 applicants are entitled to by way of compensation and from which of the opponents ?
3. What order & award?

My findings on the above issues are as under for the reason assigned hereinafter.

- (1) In the affirmative.
- (2) In the affirmative. & as per final order
- (3) As per final order.

- (6) The applicant has produced following oral as well as documentary evidence.

Oral Evidence :-

Sr. No.	Particulars	Exh.
1	Deposition of Mr. Ravi Natubhai Patanwadiya	21

Documentary Evidence :-

Sr. No.	Particulars	Exh./Mark
1	Copy of Complaint	23
2	Copy of Panchnama	24
3	Copy of Discharge Certificate	25
4	Copy of follow up treatment taken in S.S.G Hospital	26
5	Copy of Bills	27

6	Copy of Bills of Khushalchand Charitable Medical Centre	28
7	Copy of Bills of Khushalchand Charitable Medical Centre	29
8	Copy of Bills of Khushalchand Charitable Medical Centre	30
9	Copy of Bill of Medicine	31
10	Copy of Bill of Medicine	32
11	Copy of Bill paid in S.S.G Hospital	33
12	Disability Certificate and reduction pursis	35 & 36
13	Closing Pursis	41

(7) The opponent No.3 have produced following oral as well as documentary evidence.

Documentary Evidence From Opponent No.3 :-

Sr. No.	Particulars	Exh.
1.	Copy of Insurance Policy of vehicle No.GJ.6.3474	34
2.	Closing Pursis of Opponent No.3	42

:- REASONS :-

(8) **ISSUE No. : 1.**

ISSUE OF NEGLIGENCE:- The present claim petition has been preferred by the claimants under section 166 of Motor Vehicles Act, 1988 and hence it is sine qua non on the part of the claimants to prove that the accident in question has occurred due to the rash and negligent driving of tort feasers (opponents).

NEGLIGENCE AS REGARDS APPLICANT

Ld. Advocate Shri R.R.Vyas appearing for the applicant has submitted that applicant Ravi Natubhai Patanwadia was travelling in Jeep bearing registration No.GJ-6Z-3474 which was driven by opponent no.2 in a negligent manner and therefore, accident occurs opponent no.2 is an owner of said jeep and said vehicle is insured with opponent no.3

company hence, all 3 opponents are jointly and severally liable to pay compensation to the applicant. Whereas other hand Ld. Advocate Mr. P.B. Desai for the opponent No.3 has argued out that the contention raised by applicant is not true and opponent no.3 insurance company is not liable to pay any compensation.

- (9) The Applicant has produced at **Exh.24** the FIR filed in respect to the accident. The FIR in respect to the accident is filed by one Head Constable Mr. Jaswantsinh Fatehsinh having buckle No.2128 and in the FIR reference of vehicle No.GJ-6Z-3474 is given hence, looking to the FIR it appears that present vehicle is involved in the accident. Further, it appears that on the basis of information given by Dr. CMO Mr. R.B.Chudasama FIR registered. Hence, looking to the said FIR it appears that first information given by Doctor regarding the accident and on the basis of said information FIR registered before Sankheda Police Station. The applicant have produced at **Exh.24** the copy of panchnama of place of accident and it transpires that the place of accident is a damar road near to Malpur bus stand. Further, it is appears that on the place of accident the jeep bearing registration No.GJ-6-Z-3474 is also standing there in damaged condition considering above fact, strata of the vehicle lying on the site of accident, the magnitude and capacity of the vehicle involved in the accident and the fact that there is rash and negligent driving of opponent no.1 due to negligent driving it appears that the involved vehicle dashed with one tree and it is also transpires from the panchnama that tree also got damaged. Hence, it appears that accident occurs due to rash and negligent driving of opponent no.1 hence issue no.1 is decided in affirmative.

(10) **ISSUE No. : 2.**

Entitlement of compensation:

Once it is established that, accident in question has occurred due to the rash and negligent driving of the opponent No.1 and it is also proved that, applicant had sustained injuries in the accident, hence, it is proved that applicant is entitled to claim compensation towards the loss of various income.

Quantum of the compensation:

The cardinal principal for awarding the compensation in the accident cases is that the compensation to be awarded must not be inadequate nor must be exorbitant, but the same must be just compensation. And Hon'ble Apex Court has in case of **Sarla Verma vs. Delhi Transport Corporation, reported in 2009 ACJ 1258** provided guidelines for awarding just compensation to the victims and accordingly in the present case JUST COMPENSATION is worked out as under.

Claim for future loss of income :

The claim for future loss of income can be computed by considering the income, and age of the applicant. And hence it is sine qua non to determine first the age, income and loss of future. The said aspects are discussed below:-

Age of injured -

The applicant has not produced any age proof but looking to the **Exh.25** discharge card of S.S.G Hospital and looking to the **Exh.36** disability certificate age of the present applicant is mention 30 years. He has further stated in cross examination that he has studied up to 4 standard and his date of birth is 31/10/1993 but he has not produced his birth date certificate or aadhar card in this circumstances in absence of

said document his date of birth what he has stated 31/10/1993 is not proved. Considering said **Exh.25** as it is issued by Govt. hospital hence, in absence of other document present **Exh.25 & 26** can be taken under consideration for the age proof and in said document age of the present applicant is mention 30 years said document are issued in the year of 2013. Considering said fact there is reason to believe that at the time of occurrence of accident applicant was of 30 years old. Hence, as ratio laid down in case of Sarla Verma multiplier of 17 for the age group 26-30 is applicable hence, present applicant is entitle for multiplier of 17 for the consideration of future loss of income.

Medical Expenses:-

As the applicant has produced S.S.G. hospital bill at **Exh.27-33**. Looking to the said **Exh.27-33** it appears that total ₹.1,670/- towards medical expenses occurs to the applicant. Hence, the applicant is entitled to get the said medical expenses towards compensation.

Income:

As applicant has not produced any documentary evidence in regards to his income but in his deposition at **Exh21** he has stated that he was working in private company at Makarpura and getting salary of ₹.6,000/- per month. In his cross examination he has admitted that he has not produced any documentary evidence to show that at the time of occurrence of accident he was earning ₹.6,000/- per month. Hence, in absence of any cogent evidence the statement of the applicant is not appears to be believable that he was earning ₹.6,000/- per month. At this juncture, a reliance is required to be placed on a decision of the **Hon'ble High Court of Gujarat in the case of New India Assurance Co. Ltd. Vs. Babubhai Dipubhai Chauhan and others reported in 2006 ACJ 2688**, wherein it is held that "Role of housewife in running a house, her

contribution to keep the family together, providing household services and performing matrimonial duties, whatever may be the status of the family, contribution of housewife towards household may be taken at minimum of Rs.3,000/-per month." **The Hon'ble Supreme Court in the case of Laxmi Devi and others Vs. Mohammad Tabbar and another, reported in 2008 ACJ 1488**; has held that "An unskilled labourer can easily earn ₹.100/per day considering said decision of Apex Court herein present case income of applicant is considered to be required taken as a notional income ₹.3,000 Rs. Per month.

Actual Loss & Multiplier :

As notional income of the applicant is consider ₹.3,000/- per month and per year it would be ₹.36,000/- further,applicant has produced pursis at **Exh.35** to reduce disability and looking to the said **Exh.35** advocate for the opponent has no objection to consider 10% disability in this circumstances looking to the age of applicant he is 30 years old and keeping the ratio laid down by **Hon'ble supreme Court in the case of Sarla Verma** multiplier of 17 is applicable in the present case. As applicant has produced pursis to reduce disability vide **Exh.35** and on that pursis advocate for the opponent No.3 put endorsement that he has no objection if disability 10% taken body as a whole. Hence, present applicant is entitle to get compensation for the injury occurs in the accident and due to said injury disability of 10% remain to work in future hence, the petitioner is entitle towards compensation as under:-

₹. 61,200/-	Future loss of income
₹. 7,000/-	Pain, Shock, Suffering
₹. 7,000/-	Special Diet, Transportation etc.
₹. 3,000/-	Actual Loss
₹. 1,670/-	Medical Expenses
₹. 79,870/-	Total Awardable Amount

- (11) As the applicant has prayed compensation ₹.2,00,000/- but as per judgment of Hon'ble Supreme Court compensation should be just and fair. Thus, the total awardable amount of compensation to the applicant is ₹.79,870/- in round figure ₹.80,000/- (Rupees Eighty Thousands Only) and same shall be recovered from the opponents. All the opponents are jointly and severally liable to pay the amount to the applicant with interest.
- (12) As per the latest decisions 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 claimant 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.

(13) **ISSUE No. : 3.**

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

-:: ORDER ::-

- The present claim petition is hereby partly allowed.
- All the opponents are jointly and severally liable to pay sum of ₹.80,000/- to the applicant.
- The applicant shall recover a sum of ₹.80,000/- (Rupees Eighty Thousands Only) from the opponents jointly and severally with interest @ 9% per annum from the date of filing of the main petition till payment of realization.
- The opponents are hereby ordered to deposit the above amount of award within 30 days from the date of present order.
- Amount if any, paid u/s/140 of the M.V. Act be deducted first from the awarded amount.

- Deficit Court-fees stamp, if any, be deducted first from the awarded amount.
- After deducting the Court-Fees-Stamp, if any, 30% of the amount of compensation along with proportionate costs and interest be paid to the applicant by Account payee Cheque and remaining 70% of the amount of compensation along with proportionate costs and interest be invested in any nationalized Bank in the Fixed Deposit Scheme/plan for the period of Five years in the name of applicant. The applicant shall not borrow any loan or create any encumbrance on the Fixed Deposit amount of compensation.
- However, the applicant shall get the periodical interest on the Fixed Deposit amount as and when it becomes due.
- The opponents 1, 2 & 3 shall pay costs of this claim petition to the applicant.
- Award to be drawn accordingly.

Signed & Pronounced in open Court today on this 30th day of the month of October, 2018.

Date : 30/10/2018

Place: Vadodara

VDPandey

(Ms. H.I. Bhatt)
4th Additional District & Sessions Judge,
Vadodara.
GJ00464