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BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (AUX)
AT VADODARA.

MOTOR ACCIDENT CLAIM PETITION NO.444/2007.

Exh. _____

APPLICANT :-

Nileshbhai Natvarlal Bhatt

Age: 39 Years, Occupation: Service
Residing at : 39/ Ushanagar Society,
Nr. Iscon Temple, Nr. Harinagar,
Gotri Road, Vadodara.

Versus

OPPONENTS:-

- 1) Siddharth Jaikishore Chaturvedi
Age: Adult, Occupation: Driver
Residing at : 24, Suvarnapuri Society, Nr. Chikuwadi,
Alkapuri, Race Course, Vadodara.
- 2) Ankur Jaykishor Chaturvedi
Age: Adult, Occupation: Owner
Residing at: Suvarnapuri Society,
Chikuwadi, Alkapuri, Vadodara.
- 3) Iffco Tokio General Insurance Company Ltd
Mezanine Floor, Meghdhanush,
Nr. Transpek, Gotri Road, Vadodara.

For the Claimant	Ld. Advocate Mrs. B.B. Trivedi.
Opponents No.1 & 2	Served – remained absent.
Opponent No.3	Ld.Advocate Mr. N.J. Bhavsar

Petition u/S. 166 of the M.V.Act.
Claim Valued at Rs.2,50,000/-

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

- (1) Present claim petition is preferred under Section-166 of the Motor Vehicle Act, 1988, for getting compensation of Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand Only).
- (2) The brief particulars of the accident is narrated in the claim petition, that on dated 26/03/2006 claimant was riding his Bajaj Scooter No: GJ-06-HH-199 at about 11.30 p.m., and when he was return to his home along with his wife and his minor son on the said Scooter from Karelibaug to his home, at that time, claimant was riding his Scooter with moderate speed and on correct side of the road. When the claimant reached near Wadi wadi Fire Brigade, at that time, Opponent No.1 driver of **Indica Car No: GJ-06-BL-4410** came with excessive speed in rash and negligent manner and dashed with the Scooter of the claimant on rear side, wherein, the claimant, his wife and son fell down from the Scooter and sustained injuries. The claimant become unconscious after the accident. All the injured persons have been shifted immediately at S.S.G Hospital, Vadodara and thereafter, they have been shifted to Bhailal Amin General Hospital, wherein, they have taken treatment as indoor patient. A complaint is registered with

Gorwa Police Station vide I CR No.78/2006. The claimant has provided brief particulars of the accident and he has assigned various reasons for the compensation of Rs.2,50,000/- from the Opponents.

- (3) Notice is served upon the Opponents. The Opponents No.1 & 2 - driver and owner of India Car remained absent through out the proceeding, inspite of service of notice. They have not contested the claim petition.
- (4) The Opponent No.3 – Iffco Tokio General Insurance Company Ltd., appeared through its Ld. Advocate Mr. N.J. Bhavsar and filed written statement vide Exh.10, wherein, they have denied the averments of the claim petition and submitted that driver of Indica Car was not holding valid and effective driving license at the time of accident. The driver and owner of the Indica Car have not extended wholehearted co-operation, hence, permission under section-170 of M.V. Act be granted. They have specifically denied the involvement of the vehicle and injuries mentioned in the claim petition and asked for strict proof of it. They have raised the issue that at the time of accident, involved Scooter was carrying three persons more than sitting capacity, so, due to this reason, Scooter rider has lost control over the Scooter. Therefore, he is sole negligent for causing the accident. Hence, Opponent No.3 is not liable to pay compensation to the claimant. Lastly, they have set up the case of denial.

(5) From the above referred pleadings this Tribunal had framed the following issues vide Exh.11:

- i. Whether it is proved that the claimant sustained injuries on account of rashness or negligence in driving on the part of the driver of the vehicle involved in the accident?
- ii. What amount, if any, the applicant is entitled to by way of compensation and from which of the opponents ?
- iii. What Order?

(6) My findings to the above issues are as under :

1. In the affirmative.
2. As per Final Order.
3. As per Final Order.

(7) The claimant has produced following documentary evidences :

Sr. No.	Description of Documents	Exh.
1	Affidavit in form of Examination in Chief of claimant- Nileshbhai Natvarlal Bhatt.	15
2	Copy of complaint.	19
3	Copy of Panchnama of scene of offence.	20
4	Copy of injury certificate issued by S.S.G Hospital.	21
5	Medical Certificate issued by Bhailal Amin Hospital.	25
6	Medical Certificate issued by Gandhi Clinic.	26
7	O.P.D Card of Claimant.	27
8	Receipt issued by Nishil Imaging Center.	28
9	Consultancy Receipt.	29
10	Case Summary of Bhailal Amin General Hospital.	30
11	Medical Bills.	31 to 39

- (8) I have heard Ld. Advocate Mrs. Bhumikaben Trivedi on behalf of the claimant. She has submitted that Opponent No.1 had dashed his Indica Car from the rear side to the Bajaj Scooter which was driven by the claimant. The said fact is clearly mentioned in the complaint itself. On perusal of panchnama, it clearly appears that Scooter was damaged from the rear side, hence, there is no negligence on the part of claimant, but the Opponents No.1 to 3 are jointly and severally liable to pay the compensation to the claimant. It is submitted that claimants have taken treatment in a private hospital. It is also stated that claimant is doing job as an Account Officer in GSRTC and due to vehicular accident, he was on leave from 27/03/2006 to 23/04/2006. To support his version, claimant has produced his leave certificate vide Exh.39. Hence, the claimant is entitled for actual loss of income for that period. She has further submitted that claimant is also entitled for Rs.15,000/- for Pain Shock and Suffering, actual medical expenses and Rs.15,000/- for Special diet and transportation charges.
- (9) Heard Ld. Advocate Mr. N.J. Bhavsar for the insurance company. He has contended that claimant has not produced any disability certificate, hence, he is not entitled for any other head except, actual medical expenses. The claimant himself is being negligent as there were three persons travelling on Scooter i.e. more than sitting capacity. Hence, accident caused due to sole negligence on the part of claimant himself. Further, Opponent No.1 driver of

Indica Car was not holding valid and effective driving license, therefore, insurance company is not liable to pay any compensation.

Issue No. 1 :

- (10) While deciding the point of negligence, it has to be born in mind that the negligence is required to be proved in claim petition under Section-166 of the Act only on the touchstone of the preponderance of probability and not beyond doubt. Above referred ratio is laid down by Hon'ble Apex Court in the cases of 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.***
- (11) The claimant has averred in the claim petition that accident took place due to sole negligence on the part of Opponent No.1 i.e driver of **Indica Car No: GJ-06-BL-4410**. The claimant has reiterated the same things in his examination in chief vide Exh.15. The claimant has clearly stated that he was riding the Scooter with utmost care, but the Opponent No.1 has dashed his Indica Car with the Scooter from the rear side, hence, the claimant was fell down from the Scooter and sustained injuries. In his cross examination, claimant has admitted that in attempt to turn his Scooter towards right side, at Genda Circle, he has slow down his Scooter, at that time, accident occurred. He has denied the fact that in attempt to suddenly turn the vehicle without giving any signal, the accident occurred. He has denied that due to his own negligence, accident was occurred.

- (12) The Opponent No.1 is not entered into the witness box to explain how the accident was took place. Hence, as per the judgment of Apex Court in case of **Vidhyadhar V/s Manek Rao** adverse inference is required to be drawn. Thus, I am of the view that Opponent No.1 Indica Car Driver was sole negligent for causing the accident. Accordingly, I hold that accident took place due to sole negligence on the part of Opponent No.1. Hence, I answer Issue No.1 in affirmative.

ISSUE NO. 2

- (13) The claimant has successfully proved the fact that he got injuries in a vehicular accident which was due to rash and negligent driving on the part of Opponent No.1 Hence claimant is entitled for just amount of compensation. Here, the claimant has not produced disability certificate, therefore, it is to be believed that claimant has not sustained permanent disablement due to vehicular accident. Therefore, he is not entitled for any amount under the head of Loss of Future Income.

Medical Expenditure :

- (14) The claimant has produced copy of injury certificate vide Exh.25, wherein, it is mentioned that claimant was under treatment as indoor patient from 27/03/2006 to 29/03/2006. He has been advised to take rest from 27/03/2006 to 24/04/2006. The claimant has produced another medical certificate from Dr. Binoti K. Gandhi vide Exh.36. Claimant has also produced case summary issued

from Bhailal Amin General Hospital vide Exh.30, wherein, it is mentioned that patient is unconscious. It is further mentioned that patient has multiple superficial abrasions, but he has no fracture injury. The claimant has produced medical bills of Rs.8,624/- from Bhailal Amin Hospital and xerox bill of purchase of medicines. Considering all these bills, I am of the view that claimant is entitled for Rs.10,000/- towards **Medical expenditure.**

Actual Loss of Income :

- (15) Claimant is also entitled for actual loss of income for one month as per certificate produced vide Exh.39. Therefore, he is entitled for Rs.14,000/- **as Actual Loss of income.**

Mental Pain Shock & Suffering :

- (16) Considering the trauma of accident and the fact that claimant become unconscious after the accident, he is entitled for **Rs.05,000/-** under the head of **mental pain, shock and suffering.**

Special Diet, Attendant Charges and Transportation :

- (17) The claimant has sustained injuries on different parts of his body in the alleged accident, therefore, he is entitled for **Rs.1,000/- towards Special Diet, Attendant Charges and Transportation.** Hence, I award the same.

In view of the above, the claimant is entitled to get following amounts by way of compensation:

Sr.No.	Description	Amount (Rs.)
1.	Medical Expenses.	10,000=00
3.	Actual Loss of income.	14,000=00
4.	Pain, shock and suffering.	05,000=00
5.	Attendant, Special diet, transportation etc.	01,000=00
	TOTAL RS.....	30,000=00

(18) Claimant has proved that accident occurred due to sole negligence on the part of driver of **Indica Car No: GJ-06-BL-4410**. The same fact is reiterated by the claimant in his examination in chief. Looking to the policy particulars of the offending vehicle produced vide Mark-5/4, the name of owner is mentioned as insured person and period of insurance is 11/08/2005 to 10/08/2006. The accident was occurred on 26/03/2006, hence at the time of accident, the policy of offending vehicle- Indica Car, was valid and effective. Opponent No.1 being the driver was primary liable, Opponent No.2 being the owner of offending vehicle at the time of accident is vicarious liable and Opponent No.3 being the insurance company of the offending vehicle – **Indica Car No: GJ-06-BL-4410** at the time of accident are held jointly and/or severally, liable to pay compensation to the claimant.

(19) In view of the decision of the Hon'ble High Court of Gujarat in the case of **DIVISIONAL CONTROLLER, GUJARAT STATE ROAD TRANSPORT CORPORATION v. SANDHYA SAHEGAL AND OTHERS, reported in 2013 ACJ 492,** the claimants is entitled to get amount of compensation at the rate of **9%** interest from the

date of the application till realization from the opponent.

- (20) Further, the claimant has successfully proved his case, and therefore, claimant is entitled to get proportionate amount of costs from the opponents.

ISSUE NO.3

- (21) In view of the above said discussions made in issues No.1 & 2, I pass following final order.

: ORDER :

1. The Claim Petition **No. 444 of 2007** is ***Partly Allowed***.
2. All the opponents are jointly and severally liable to pay compensation of **Rs.30,000/-/- (Rupees thirty thousand only)** together with interest at the rate of 9% per annum from the date of filing of Claim Petition till its realization to the claimant.
3. The opponents are ordered to deposit with this Tribunal the above amount with interest and costs within 30 days from the date of receipt of the Judgment and award, deducting the amount of no fault if any paid. The opponents shall follow the ratio of the judgment of the Hon'ble High Court of Gujarat in the case of **Hansaguri Prafulchandra Ladhani V/s The Oriental Insurance Co. Ltd 2007 ACJ Page 1897** with regards to the deduction of the Income Tax (TDS).

4. The opponents shall pay the proportionate costs of claim petition incurred by the claimant and shall bear their own.
5. From the amount of compensation, amount of requisite Court Fees, if any, be deducted first and credited to the State.
6. From the amount of compensation, amount if any, paid to the claimant as Interim Compensation on the head of "No Fault Liability" be deducted first.
7. The disbursement amount shall be passed after depositing the awarded amount by the Opponents.
8. Award be drawn accordingly.

Pronounced and signed in the open court today,
on 04th day of July, 2019.

Date : 04.07.2019.
Place : Vadodara.

[Hemangkumar Girishkumar Pandya]
Motor Accident Tribunal (Aux),
Vadodara. Code No: GJ-00705.

smp.