Regi. No. : MACP/45/2019
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Decided On : 25/08/2023
Duration: Years Months Days
4 2 14

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL – MAIN, AT ::::::: SURENDRANAGAR.

M A C Petition No.45/2019

Exh. ...47

Applicant:	
	Ramjibhai Amarabhai Solanki, Age about –52 years, Occu.; Labour work, Res.At-near Budhdh Vidhyalay, behind Kanku Park Society, near Ganpati Fatsar, Wadhwan.

VERSUS

Opponents : **Motorcycle No.GJ-13-AF-2449 ;**	
1.	Driver / Owner ; Harshadbhai Kishorbhai Solanki, Age ; adult , Occu. Driving, Res.At ; behind Limbdi Government Dispensary, Kharovas, Limbdi.
2.	Insurance Co.; Bajaj Allianz General Insurance Co. Ltd. Mega Mall, near Milan Talkies, Surendranagar.

Appearance:
Mr.C.H.Bhatt L.A. for the applicant.
Opponent No.1 served but absent.
Mr.M.C.Jani,L.A. for opponent No.2.

Claim For Compensation of Rs.2,00,000/- U/s.166 of The Motor Vehicle Act,1988.

:: JUDGMENT ::

1. The applicant has preferred the present Claim Petition u/s.166 of the Motor Vehicle Act claiming compensation of Rs.2,00,000/- in respect of the injuries sustained by him in a motor vehicular accident which occurred on 06/11/2018 along with costs and interest at the rate of 18% p.a. from the date of claim petition till realization.

2. The brief facts giving rise to the present claim petition are as under ;

That on 06/11/2018, the applicant was driving motorcycle No.GJ-1-PY-8850 carefully on the side of the road with moderate speed and at about 4.00 p.m. when he reached near three cross-roads, Tagore Baug, Surendranagar, the opponent No.1 came driving Motorcycle No.GJ-13-AF-2449 in a rash and negligent manner and with excessive speed and dashed his motorcycle with the motorcycle of the applicant, as a result of which the accident occurred and applicant sustained serious injuries. That the accident occurred on account of sheer rash and negligent driving of the opponent No.1 motorcycle driver. It is further the case of the applicant that at the time of the accident, the applicant was 52 years old and was earning Rs.4,500/- per month doing labour work. That on account of the injuries sustained by him, he has suffered future economic loss as well as actual loss of income and has also suffered pain, shock and sufferings and has spent a huge amount on medical treatment, special diet, transportation and attendant charges. Hence, under all eligible heads, the applicant has claimed Rs.2,00,000/- by way of compensation from the opponents.

3. The notices of the Tribunal were duly served upon all

the opponents, but the opponent No.1 has remained absent. The opponent No.2 has appeared through learned advocate Mr.M.C.Jani and has filed the written statement at Exh.17 inter-alia denying all the contents of the claim petition, including the rash and negligent driving on the part of the opponent No.1, age, income and injury sustained by the applicant and the amount claimed by the applicant under various heads. The opponent No.3 has also disputed the involvement of the offending motorcycle in the accident and has also contended that the opponent no.1 driver was not holding a valid and effective driving licence to drive the vehicle in question at the time of the accident and hence, the opponent No.3 is not liable to pay any compensation to the applicant and ultimately it has prayed for dismissal of the claim petition against the said opponent.

4. On behalf of the parties, the following oral as well as documentary evidences have been produced on record ;

Oral Evidence Produced by the Applicant :

Exh.	Particulars of Document
Exh.24	Affidavit of the applicant

Documentary Evidence Produced by the Applicant :

Exh.	Particulars of Document
Exh.25	Copy of FIR
Exh.26	Copy of panchnama of the place of accident
Exh.27	Copy of Charge-sheet
Exh.28	Copy of injury certificate
Exh.29	Copy of Insurance Policy of the offending vehicle
Exh.30	Copy of R.C.Book of the offending vehicle
Exh.31	Copy of Election Card of the applicant
Exh.32	Copy of Aadhar Card of the applicant
Exh.33	Disability Certificate
Exh.34	List of medical expenditure with bills / receipts

Oral Evidence Produced by the Opponent No.2 :

Exh.	Particulars of Document
Exh.43	Deposition of witness Rahulkumar Dineshkumar Maheta, employee of the opponent No.2 Insurance Co.

5. In view of the pleadings of the parties, the following issues have been framed for the determination of this petition at Exh.14 ;

ISSUES :-

1. Whether it is proved that the claimant sustained injuries on account of the rashness or negligence in driving on the part of the 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 ?

6. My findings on the above issues are as under :-

FINDINGS :-

1. In the affirmative.
2. In the affirmative and as per final order.
3. As per final order.

:: REASONS ::

Issue No. 1 :

7. I have heard learned advocate Mr.C.H.Bhatt for the applicant and learned advocate Mr.M.C.Jani for the opponent No.2. I have perused the written argument submitted by the learned advocate for the applicant and learned advocate for the opponent No.2 at Exhs.45 and 46 respectively. The opponent No.1 has remained absent and there was no submission on behalf

of the opponent No.1 at the time of hearing.

8. It is mainly submitted by learned advocate Mr.C.H.Bhatt for the applicant that at the time of the accident, the applicant was driving his motorcycle carefully on the correct side of the road and the opponent No.1 came driving his Motorcycle rashly and negligently and dashed his motorcycle with the motorcycle of the applicant. Learned advocate Mr.C.H.Bhatt has further submitted that the complaint and charge sheet have been filed against the Motorcycle driver and the opponents have not adduced any evidence to rebut the evidence led by the applicant and hence, in view of the aforesaid facts, the involvement of the motorcycle and sheer negligence on the part of the opponent No.1 motorcycle driver in the accident are proved. Per contra, learned advocate Mr.M.C.Jani for the opponent No.2 has submitted that the alleged accident took place on 06/11/2018 while the FIR was lodged on 20/12/2048 i.e. late by appx. 42 days without giving proper reason for filing the complaint late. That at the time of drawing spot panchanama , the offending vehicle was not found and hence, the aforesaid facts create doubt about the insertion of the offending vehicle fraudulently. Moreover, without prejudice to the above contentions and without admitting any kind of liability, learned advocate Mr.M.C.Jani has submitted that in fact, the applicant himself was the author of the accident as he was driving his motorcycle rashly and negligently and hence, he may be held liable solely or in the alternative in view of the head on collision between both the motorcycles, 50% contributory on the part of the applicant may be consider by this Hon'ble Tribunal.

9. In this matter, as per the claim petition and deposition of the applicant at Exh.24, on 06/11/2018, he was driving

motorcycle No.GJ-1-PY-8850 carefully on the side of the road with moderate speed and at about 4.00 p.m. when he reached near three cross-roads, Tagore Baug, Surendranagar, the opponent No.1 came driving Motorcycle No.GJ-13-AF-2449 in a rash and negligent manner and with excessive speed and dashed his motorcycle with the motorcycle of the applicant, as a result of which the accident occurred and applicant sustained serious injuries. That the accident occurred on account of sheer rash and negligent driving of the opponent No.1 motorcycle driver.

10. In the cross-examination by the learned advocate for the opponent No.2, the applicant has admitted that he was not having any documentary evidence disclosing the involvement of motorcycle No.GJ-13-AF-2449 in the accident between the date of accident 06/11/2018 and 42 days after happening of the accident and at the time of incident, he had not known number of the vehicle dashed with him, but the applicant has stated that the number of the vehicle was informed to the applicant by his relative. The applicant has denied that there was no involvement of motorcycle NO.GJ-13-AF-2449 in the accident and after 42 days from the incident he has falsely implicated the motorcycle in the accident and has made false allegation with regard to negligence on the part of the offending vehicle driver.

11. In support of the claim petition and deposition, the applicant has produced the copies FIR at Exh.25, panchnama of the place of accident at Exh.26, Charge-sheet at Exh.27 and injury certificate at Exh.28. Looking to the compliant at Exh.25, it transpires that the same has been lodged by the applicant against the opponent No.1 motorcycle driver on 20/12/2018 for the accident in question, which occurred on 06/11/2018 and

contents of the complaint corroborate the facts of the claim petition and deposition given by the applicant. Moreover, It also transpires that the charge sheet produced at Exh.27 has been filed against the opponent No.1 Motorcycle driver due to his rash and negligent driving after completion of the investigation by the investigating officer. The learned advocate for the opponent No.3 has disputed the involvement of the offending motorcycle in the accident on the basis of filing the complaint of the incident late by 42 days and has also submitted that there was no rash and negligent driving on the part of the opponent No.1 Motorcycle driver and the accident occurred due to rash and negligent driving on the part of the applicant motorcyclist, but on perusal of the record, it transpires that after completion of the investigation, the charge-sheet at Exh.27 has been filed against the opponent No.1 for his rash and negligent driving of motorcycle No.GJ-13-AF-2449 and though the notice of the claim petition was duly served upon the opponent No.1, he has remained absent and has not stepped into the witness box to rebut the evidence led by the applicant and has not disputed the involved of his vehicle in the accident and negligence on his part. The opponent No.1 who was driving the Motorcycle at the time of the accident, is the best witness to depose about how the accident took place and whether his vehicle was involved in the accident or not and whether there was any negligence on the part of the applicant but he has not stepped into the witness box to rebut the evidence led by the applicant and the opponent No.2 Insurance Co. has not led any evidence in support of its contents and to rebut the evidence led by the applicant. This Tribunal has perused the decisions relied in the case of **National Insurance Co. Ltd. v. Anitadevi Parasmai Devra @ Sharma** reported in **2021 JX (Guj) 687,** the Hon'ble High Court of Gujarat has held as under ;

"6. Having heard learned counsels for the parties and on perusal of the records, we are of the considered view that following points would raise for our consideration:
(i) Whether Tribunal committed an error in arriving at a conclusion that accident had occurred on account of negligence of the driver of the jeep and there was no negligence on the part of the deceased?
(ii) .....

RE: POINT No.(i)
The judgment and award of the Tribunal would clearly indicate that father of the deceased had entered the witness box and had filed his affidavit in lieu of examination-in-chief Exh.58 revealing that he was not present at the time of the accident. However, the undisputed records viz. FIR disclosed that driver of the jeep was on the wrong side and had dashed with the motorcycle driven by the deceased. The insurer neither examined the driver of the jeep nor produced any contrary evidence to establish or prove that there was some negligence on the part of the deceased. In absence of such evidence available and FIR disclosing that on account of rash and negligent driving by the driver of the jeep that had caused the accident, Tribunal could not have proceeded is record of finding contrary to the same on the basis of if's and but's viz. that deceased might have contributed his negligence to the accident in question. That apart, we notice that insurer had never questioned the correctness of the contents of the FIR or had challenged the charge-sheet filed against the driver of the jeep. Hence, for these reasons, we are of the considered view that findings recorded by the Tribunal would not call for interference insofar as holding that driver of the jeep has been negligent to the extent of 100% for causing the accident in question. Accordingly, point No.(i) is answered against the appellant and in favour of the respondents"

12. Hence, in this matter on hand, in view of the aforesaid decision of the Hon'ble High Court of Gujarat and considering the entire evidence on record including the police papers viz. the complaint filed by the applicant and charge-sheet filed by the investigating officer against the opponent No.1 Motorcycle driver and the manner in which the accident occurred and since the

opponents have not adduced any evidence to rebut the evidence led by the applicant, it is proved that Motorcycle No.GJ-13-AF-2449 was involved in the accident and the accident in question took place on account of sheer rash and negligent driving on the part of the driver of Motorcycle No.GJ-13-AF-2449 i.e. the opponent No.1 and there was no contributory negligence on the part of the applicant – motorcyclist for the accident and in the said accident the applicant has sustained injuries as per the medical certificates and hence, the opponent No.1 - driver of Motorcycle No.GJ-13-AF-2449 is held 100% liable for the accident and in the said accident, the applicant has sustained grievous injuries. Hence I answer issue No.1 in the affirmative.

ISSUE No.2 ;

13. I have heard learned advocate Mr.C.H.Bhatt for the applicant and learned advocate Mr.M.C.Jani for the opponent No.2. I have perused the written argument submitted by the learned advocate for the applicant and learned advocate for the opponent No.2 at Exhs.45 and 46 respectively. The opponent No.1 has remained absent and there was no submission on behalf of the opponent No.1 at the time of hearing.

14. It is mainly submitted by learned advocate Mr.C.H.Bhatt for the applicant that at the time of the accident, the applicant was 52 years old and was earning Rs.5000/- per month agricultural work and hence, considering the said income of the applicant, 13% disability and applying the multiplier of 13, Rs.85,800/- may be awarded under the head of loss of future income and Rs.1,81,300/- may be awarded to the applicant under all heads as stated in his written argument at Exh.45. Per contra, without admitting any kind of liability, learned advocate

Mr.M.C.Jani for the opponent No.3 has submitted that the applicant has not produced any evidence to prove his alleged income at the time of the accident and hence, considering the same and injuries sustained by the applicant, much compensation may not be awarded to the applicant under all heads.

LOSS OF FUTURE INCOME :

[a] AGE :

15. In the claim petition and deposition at Exh.24, the applicant has stated that at the time of the accident he was 52 years and in support his say, the applicant has produced the copy of his Aadhar Card at Exh.32, wherein the date of birth of the applicant is mentioned 02/06/1966. In this matter the accident has taken place on 06/11/2018 , and hence, it can be believed that the applicant was 53 years old at the time of the accident and hence, the age of the applicant is considered 53 years at the time of the accident.

[b] INCOME ;

16. In this matter, the applicant has deposed on oath at Exh.24 at the time of the accident he was earning Rs.4,500/- per month doing labour work. In this matter, the accident occurred on 06/11/2018 and it is pertinent to note that though the applicant has not produced any evidence in support of his alleged income, if we go through the minimum wages for unskilled labour,which were prevailing at the time of the accident, it transpires that during 01/10/2018 to 31/03/2019, the approved Minimum Wages by the Government for unskilled labour was Rs.7,910/- for 26 days/month and hence,the income stated by the applicant Rs.4,500/- per month at the time of the

accident, is not on higher side than the prevailing minimum wages on the date of the accident and hence, we can safely consider the income of the deceased as stated by the applicant i.e. Rs.4,500/- per month for computation of compensation.

[c] MULTIPLIER ;

17. So far as the multiplier is concerned, as held herein above, the applicant was 53 years old at the time of the accident and falls within the age group of 51 to 55 and therefore, as per the decision rendered by Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation reported in 2009 ACJ 1298**, the applicant is entitled for the multiplier of 11.

[d] DISABILITY ;

18. The applicant has produced his disability certificate of Dr.Y.D.Solanki, M.S.Ortho. at Exh.33,wherein, the doctor has opined that the applicant has sustained permanent partial disability 29.5% due to proximal tibia fibula of right leg without DNVD sustained by the applicant, but the learned advocate for the opponent No.2 has agreed to consider 13% permanent partial disablement body as a whole of the applicant and the applicant has not examined the doctor, who has issued the disability certificate. Hence, in view of the above facts and injuries sustained by the applicant, functional disability of the applicant is considered as 13% for just compensation.

[e] CALCULAITON OF COMPENSATION UNDER THE HEAD OF FUTURE ECONOMIC LOSS ;

19. As stated above, the monthly income of the applicant is considered at Rs.4,500/- and considering the functional disability of 13%, the monthly loss of income of the applicant would be Rs.585/- and the yearly loss of income would be Rs.585/-x 12 = Rs.7,020/-. In this matter, the multiplier is adopted at 11 years. Therefore, the future loss of income would be Rs.7,020/- x 11 multiplier = Rs.77,220/- .

[e] PAIN, SHOCK, SUFFERING AND ATTENDANT CHARGES, TRANSPORTATION , SPECIAL DIET;

20. In this matter, the applicant has deposed on oath at Exh.24 that he has sustained serious injuries and permanent partial disablement. That on account of the injuries sustained by him, he was treated in C.U.Shah Medical College and Hospital, Surendranagar as an indoor patient from 06/11/2018 to 30/11/2018. That he has also spent Rs.50,000/- for medicines and treatment and has spent a huge amount for transportation, special diet and has suffered pain, shock and suffering.

21. In support of his deposition, the applicant has produced the copies of MLC issued by C.U.Shah Medical College and Hospital, Surendranagar at Exh.28 for the injuries sustained and treatment taken by him in the said hospital from 07/11/2018 to 30/11/2018. The applicant has also produced the disability certificate in respect of fracture injury sustained by him at Exh.33 and hence, considering the injuries sustained by the applicant and the period of treatment of the applicant as an indoor patient in the aforesaid hospital, the applicant is awarded Rs.11,000/- towards pain, shock & suffering and Rs.9,000/- towards attendant charges, transportation, and special diet.

[f] ACTUAL LOSS OF INCOME :

22. The applicant has claimed an amount under the head of actual loss of income and has produced the disability certificate at Exh.33 and from the said evidence it appears that the claimant has sustained fracture of proximal tibia fibula of right leg without DNVD and he has also taken treatment in the aforesaid hospital. Hence, in view of the injuries sustained by the applicant and treatment taken by him, the applicant is entitled for Rs.9,000/- towards actual loss of two months.

[g] MEDICAL EXPENDITURE :

23. The applicant has stated in the deposition that he has spent Rs.50,000/- for his medical treatment and has produced the medical bills and receipts worth Rs.35,403/- at Exh.34 and hence, considering the medical bills produced by the applicant, permanent partial disablement to the applicant, injury sustained by the applicant and treatment taken by him, it would be just and proper to award Rs.35,500/- to the applicant under the head of medical expenses. In view of above the applicant is entitled for following amount as compensation :

Future loss of income	Rs. 77,220/-
Pain , Shock and Suffering	Rs. 11,000/-
Special Diet , Attendance and Transportation	Rs. 9,000/-
Actual Loss of Income	Rs. 9,000/ -
Medical Expenditure	Rs. 35,500/-
Total Compensation	**Rs.1,41,720/-** **i.e. Rs.1,41,800/-**

LIABILITY ISSUE:

24. Learned advocate Mr.M.C.Jani appearing on behalf of the opponent No.2 Insurance Co. has vehemently submitted that though the Insurance Co. has submitted an application to issue notice to the opponent No.1 driver-cum-owner of the offending motorcycle and such notice was duly served upon the opponent No.1, the opponent No.1 has not produced the copy of his driving licence and therefore, it is to be presumed that at the time of the accident, the owner cum driver of the offending vehicle was not holding a valid and effective driving licence to drive the vehicle in question at the time of the accident. Hence, learned advocate Mr.M.C.Jani has submitted that in view of the above and decision of the Hon'ble Apex Court in the case of **United India Insurance Co. Ltd. Through Its Divisional Manager v. Sujata Arora** reported **2013 ACJ 2129** and decision of the Hon'ble High Court of Gujarat in **R/Civil Application No.801/2021** in **R/First Appeal Nos.3173/2021, 3849/2017**, the opponent No.2 is not responsible to indemnify the owner of the offending vehicle and hence, the opponent No.2 Insurance Co. be exonerated from its liability to compensate the applicant. Per contra, learned advocate Mr.C.H.Bhatt for the applicant has submitted that the opponent has failed to prove by leading any cogent and convincing evidence that at the time of the accident, the applicant was not holding a valid and effective driving licence to drive the vehicle in question and hence, in view of the same and package policy of the offending motorcycle issued by the opponent No.2, the opponent No.2 is also liable for payment of compensation to the applicant. In support of the aforesaid arguments, learned advocate Mr.C.H.Bhatt has relied upon the decision of the Hon'ble Apex Court in the case of **Pappu and Ors. v. Vinod Kumar Lamba and**

Anr. rendered in **Civil Appeal No.20962/2017** (Arising out of **SLP(C) No.29032/2015**) and decisions of the Hon'ble High Court of Gujarat in the case of **United India Insurance Co. Ltd. v. Madhubhai Ramabhai Bhusara & 3** rendered in **First Appeal No.5/2015** to **First Appeal No.6/2015** and in the case of **New India Assurance Co. Ltd. v. Pragjibhai Devshibhai Gajera & 2** other(s) in **R/First Appeal No.1136/2007**.

25. Here in this case, so far as aforesaid arguments advanced by the learned advocate for the opponent No.2 disputing the liability for payment of compensation to the applicant, are concerned, if we go through the evidence on record, it appears that the applicant has produced the copies of the complaint, panchanama of the place of the accident and charge-sheet at Exhs.25 to 27 respectively and on going through the charge-sheet produced at Exh.27, it appears that after completion of the investigation, the investigating officer has charge-sheeted the opponent No.1 for the offence punishable u/s. 279,337,338 of The Indian Penal Code,1860 and Sections 177,184,134(b) of The Motor Vehicles Act, 1988.

26 Here in this case, before discussing further and in order to deal with the question, I would like to reproduce Rule 3 of The Central Motor Vehicles Rules,1989 and Sections 3 and 181 of The Motor Vehicles Act,1988 as under ;

Central Motor Vehicles Rules, Rule 3 ;

3. General.*—The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as—*

(a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;

(b) such person is accompanied by an instructor holding an effective driving License to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and

(c) there is painted, in the front and the rear or the vehicle or on a plate or card affixed to the front and the rear, the letter "L" in red on a white background as under :—

L

Note.—The painting on the vehicle or on the plate or card shall not be less than 18 centimeters square and the letter "L" shall not be less than 10 centimeters high, 2 centimeters thick and 9 centimeters wide at the bottom:

Provided that a person, while receiving instructions or gaining experience in driving a motor cycle (with or without a side-car attached), shall not carry any other person on the motor cycle except for the purpose and in the manner referred to in clause (b).

Motor Vehicles Act, Section 3 ;

***3. Necessity for driving licence**. - (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle ; and no person shall so drive a transport vehicle [other than 7[a motorcab or motor cycle] hired for his own use or rented under any scheme made under sub - section (2) of section 75] unless his driving licence specifically entitles him so to do.*

(2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

Motor Vehicles Act, Section 181 ;

***Driving vehicles in contravention of section 3 or section 4. -** Whoever drives a motor vehicle in contravention of section 3 or section 4 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.*

27 Here in this case, if we go through the charge sheet produced at Exh.27, it appears that the opponent No.1 has not been charge-sheeted for the offence punishable u/s. 181 of the M.V.Act and on perusal of the record, it transpires that the opponent No.2 Insurance Co. has not challenged the legality and correctness of the said conclusion arrived at by the investigating officer after completion of the investigation and hence, on plain reading of Rule 3 of The Motor Vehicles Rules and Section 3 of the M.V.Act and that after completion of the investigation, the investigating officer has not charge-sheeted the opponent No.1 for the offence punishable u/s.181 of the M.V.Act, this Tribunal can presume that the investigating officer, who has acted in his official capacity and after completion of the investigation has come to the conclusion that the accused (present opponent No.1) has not violated Rule 3 of The Central Motor Vehicles Rules as well as Section 3 of the M.V.Act and therefore only the opponent No.1 has not been charge-sheeted for the offence punishable u/s.181 of the M.V.Act. In view of the above, Section 114(e) (g) of The Evidence Act1,872 is reproduced as under ;

114 Court may presume existence of certain facts. —

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume—

(a) XXX

(b) XXX

(c) XXX

(d) XXX

(e) That judicial and official acts have been regularly performed;

(f) XXX

(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

28. Considering the above factual aspect and legal position, here in this case, there is ample material on record to draw presumption that at the end of the investigation, it was rightly found by the investigating officer that the opponent No.1 has not violated Section 3 of the M.V. Act.

29. Now, during the trial, it has remained say of the opponent No.2 Insurance Co. that the opponent No.1 was not holding a valid driving licence then burden lies upon the opponent No.2 Insurance Co. to lead satisfactory evidence in this regard.

30. Here in this case, the learned advocate for the opponent No.2 Insurance Co. has submitted that during the trial, as provided in Order 11 of The Code of Civil Procedure though the opponent No.1 was asked by the Insurance Co. to produce a copy of his driving licence and though such notice has been served to the opponent No.1, he has not produced a copy of his driving licence and hence, it is to be presumed that at the time of the accident, the opponent No.1 was not holding a valid driving licence. So far as the aforesaid contentions raised by the learned advocate for the opponent No.2 are concerned, as provided in Section 114(g) of The Indian Evidence Act, 1872 the above presumption is discretionary not mandatory when in Section 114 of The Indian Evidence Act the legislator has used word “may” and

hence while considering this aspect, Court have to consider another material on record.

31. In the present case on hand, as discussed hereinabove, on perusal of the material on record, it appears that at the time of the investigation, the investigating officer has not charge-sheeted the opponent No.1 for the offence u/s. 181 of the Act and hence, on the basis of mere non production of driving licence by the opponent No.1 on demand of the opponent No.2 Insurance Co., it cannot be presumed that at the time of the accident the opponent No.1 was not holding a valid driving licence.

32. At this juncture, I would like to note that though the opponent No.2 Insurance Co. has raised the plea that at the time of the accident the opponent No.1 was not holding a valid driving licence, to discharge its burden, the opponent No.2 has not produced any evidence and has not examined any witness from the RTO office to prove that at the time of the incident as per the record of the RTO office the opponent No.1 was not holding any valid driving licence.

33. On premise of the above factual aspect, the authorities relied upon by the learned advocate for the opponent No.2 would not be helpful to the said opponent because in the above referred cases before the Hon'ble Apex Court and Hon'ble Gujarat High Court, it was on record that on the date of the accident, opponent driver was not holding a valid driving licence, whereas , in this case, except giving an application to produce a copy of the driving licence, there is nothing on record which leads to infer this Tribunal to come to the conclusion that the opponent No.1 was not holding a valid driving licence at the time of the accident and

against that the copy of the charge-sheet produced at Exh.27 clearly indicates that the opponent No.1 was not charge-sheeted for the offence u/s.181 of the M.V.Act and hence, this Tribunal deems fit to hold that at the time of the accident, the opponent No.1 was holding a valid driving licence to drive the class of the vehicle involved in the accident.

34. As held in issue No.1 the accident in question took place on account of sheer rash and negligent driving on the part of the opponent No.1 i.e. driver of Motorcycle No.GJ-13-AF-2449 and there was no contributory negligence on part of the applicant and looking to the registration and insurance particulars of the aforesaid vehicle, it transpires that the opponent No.1 was also the owner and the opponent No.2 was the insurer of the aforesaid vehicle at the time of accident. Therefore, the opponent no.1 to 2 are jointly and severally liable to pay the amount of compensation to the applicant.

35. The applicant has asked for interest at the rate of 18% p.a. whereas the learned advocate for the opponent No.2 has requested to award interest @ 6 % per annum, but in view of the decision of the Hon'ble High Court of Gujarat in **R/First Appeal No.2460/2021** with **R/First Appeal No.2461/2021** in the case of **New India Assurance Co. Ltd. v. Rajivkumar Omprakash Sultaniya** the applicant in this case would be entitled to get the interest at the rate of 9% p.a. from the date of claim petition till realization and hence, I answer Issue no.2 accordingly.

<u>ISSUE No.3.</u>

36. In view of above discussions, I answer the issues accordingly and pass the following order:-

-:: ORDER ::-

The claim petition is hereby partly allowed.

The claimant is entitled to recover an amount of Rs.1,41,800/- (Rupees one lakh forty one thousand eight hundred only) with the proportionate cost and with interest at the rate of 9% per annum, from the date of the claim petitions till realization from the opponent Nos.1 to 2 jointly and severally.

The opponent Nos.1 to 2 are hereby directed to comply with the provisions of Section 194A of The Income Tax Act and deposit the aforesaid amount of award after deducting the amount of interim compensation, if any paid u/s.140 of M.V. Act, directly by RTGS or NEFT to the following Bank Account of this Tribunal within 30 days from the date of this order ;

Account Name	Motor Accidents Claims Tribunal, Surendranagar.
Account No.	40714211695
Name of Bank	State Bank of India
Name of Branch	Vadipara, Surendranagar.
IFSC Code	SBIN0060101
MICR Code	363002002

The opponents shall instruct their Banks to remit the payment with the following information ;

MACP No.	
Claims Tribunal Name, Place	
Date of Award	
Compensation Amount	
Income Tax Deducted at Source	
Bank Transaction Reference No./ Unique Transaction Reference (UTR) No.	
Name of Bank	
Name of Insurance Co.	

On such deposits being made, the opponents shall submit a letter to the Office of the Claims Tribunal enclosing a copy of the bank advice in the prescribed format as above.

The opponents making such deposit, shall also send a copy of the aforesaid payment advice to the Claims Tribunal concerned and serve a copy of the same on the applicant or his advocate as the case may be.

Insofar as tax deduction at source is concerned, Form 16-A of the IT Act should be provided to the applicant on whose behalf the deduction has been made so as to enable him to seek refund of the tax deducted.

Deficit Court Fees stamp, if any, be recovered from the awarded amount.

After above deductions, out of the remaining amount, 70% amount be kept in Fixed Deposit Receipt in the name of the applicant in any nationalized bank of his choice, for a period of five years and remaining 30% amount be paid by NEFT or RTGS directly in the bank account of the applicant after due verification.

The concerned Bank is directed not to grant any loan, advances or withdrawal against the said FDR without obtaining prior permission of this Tribunal. However, the applicant will be at liberty to withdraw the periodical interest accrued on the said FDR.

Opponents to bear their own cost and to pay the cost to the applicant.

Award be drawn accordingly.

Pronounced in open Tribunal today on this **25th day of August, 2023.**

Date : 25/08/2023.
Place: Surendranagar.

(Pratapdan S. Gadhavi)
Chairman, (GJ00440)
M.A.C. Tribunal - Main,
Surendranagar..

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