

Received on : 13.04.2005
Registered on : 13.04.2005
Decided on : 06.06.2018
Duration : 13-Y. 1-M. 24-Days

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (AUXI)
AT VADODARA**

M. A. C. Petition No.452 of 2005

Exh.

Ganeshchandra Radhelal Agrawal
Age 45 years, Occu : Service
Res. At : Saptagiri Duplex
Near Taj Residency
Akota Road, Vadodara.

... Petitioner

Versus

1. Rathod Sikandarkhan Dilavarkhan
Adult, Occu : Driver
Res. At : Vajeriya, Tal. Tilkawada
Dist. Vadodara – 391 350.

... Opponents

2. Shri Abbasbhai Allaudin Metha
Adult
Res. At and Post Basu, Vadgam
Dist. Banaskhantha.

3. The Oriental Insurance Co. Ltd.
Air India Office Building
Near Narhari Hospital Char Rasta
Fatehgunj, Vadodara.

4. Shah Hirenbhai Mukundbhai
Adult, Driver
Res. At : 93, Snow Pirals
Vasna Road,
Vadodara.

Or

203, Punja Upavan

Besides Dhanajay Society
Near Akota Stadium
Vadodara.

5. The Oriental Insurance Co. Ltd.
Air India Office Building
Near Narhari Hospital Char Rasta
Fatehgunj, Vadodara.

Learned Advocate Mr.G.M.Patel for the petitioner.

Learned Advocate Mr.C.T.Pandya for the opponent No.2.

Learned Advocate Mr.P.B.Desai for the Oriental Insurance Co.Ltd.

Claim Petition under Section 166 of The Motor Vehicles Act, 1988
for a claim of Rs.5,00,000/-.

JUDGMENT

1. The claimant has filed this claim petition seeking compensation of Rs.5,00,000/- under Section 166 of the M. V. Act, 1988.

2. The factual matrix leading to the present proceedings are as under :

On 11.09.2004, the petitioner was going to Naswadi Village in a Maruti Van bearing registration No.GJ6 BA440 (for short "Maruti Van") and when the Maruti Van reached on the outskirts of Chitra Khadi village, on the Tilakwada – Devaliya Highway Road, the opponent No.1 came from opposite side driving a jeep bearing registration No.GJ17 C61 and both the vehicles collided each other. The accident was caused due to the negligence of both drivers and both vehicles had sustained damages. The present petitioner was sitting on the back side of the Maruti Van. In the accident, the petitioner sustained serious fracture injuries on leg. A complaint was lodged against the driver of the jeep

with Tilakwada Police Station vide C.R.No.I-52 of 2004.

3. The petitioner had sustained fracture on right leg and multiple fracture and injuries on other parts of the body. So, he was immediately shifted to the hospital of Ashirwad Hospital, at Vadodara; whereat he was admitted as indoor patient. He had incurred expenses for medical treatment, special diet, transportation and attendant charges. The petitioner was working with Jilla Panchayat as Assistant Engineer (Civil Department) in the Irrigation Department and was drawing monthly salary of Rs.20,000/- at the time of accident and there were every possibility of increasing his salary by getting promotion. However, the accidental injuries and subsequent disability prevented his promotion, which caused financial loss to the petitioner. The petitioner could not attend his duty during the period of treatment; so, he has suffered actual loss of income. Hence, he has preferred this claim petition to recover a sum of Rs.5.00 lacs with interest @ 18% per annum and costs.

4. Notices were issued to the opponents, which were duly served upon them.

5. The opponent No.2 appeared before the Tribunal through his learned advocate Mr.C.T.Pandya and filed reply at Exh.14 and denied the contents of the claim petition. It is further contended that the jeep involved in the accident had been sold to opponent No.1 and at the time of accident, the opponent No.1 was the owner of the said jeep; and so, the opponent No.2 has no liability to pay the compensation to the petitioner. The opponent No.2 has also stated that the said jeep had been insured with the opponent No.3. Ultimately, the opponent No.2 has prayed to dismiss the claim petition against him with costs.

6. The opponent Nos.3 and 5 – Oriental Insurance Co. Ltd. has filed its common written statement at Exh.11, which is total denial of the contents of the claim petition. Finally, this opponent has also prayed to dismiss the claim petition against it with costs.

7. The petitioner had filed interim compensation application at Exh.6 under Section 140 of The M. V. Act. The record of the claim petition reveals that the said application was not allowed by the Tribunal.

8. The Tribunal has framed the following issues at Exh.18 for consideration and determination :

- 1) Whether the claimant proves that the accident is occurred arising out of the use of Motor Vehicle?
- 2) Whether the accident is occurred due to rash and negligent driving of the opponent No.1, driver of the Vehicle?
- 3) Whether the claimant proves that the alleged permanent disablement is resulted due to bodily injuries sustained from the aforesaid accident?
- 4) What amount of compensation the claimant is entitled?
- 5) Whether the opponents are liable to pay amount of compensation?
- 6) What order?

9. My findings on the above issues are as under :

- 1) In the affirmative.
- 2) The accident took place because of the equal negligence of the opponent No.1 and opponent No.4.
- 3) In the affirmative.
- 4) As per final order.
- 5) In the affirmative.
- 6) As per final order.

10. The petitioner has laid the following oral evidence as well as documentary evidence to prove his case :

Sr.No.	Particulars	Exh.No.
1	Oral evidence of the petitioner	22
2	FIR	Mark 5/1
3	Panchnama	Mark 5/2
4	Discharge Summary	Mark 5/3
5	Discharge Card	Mark 5/4
6	Treatment Certificate	-
7	Disability certificate	29

11. Negligency : It is a settled position of law that, while deciding the point of negligency, Tribunal has to bear in mind that negligency issue in claim petition under Section 166 of the Motor Vehicles Act is to be decided only on the touch stone of preponderance of probability and not beyond the reasonable doubts. The above position of law is laid down by the Hon'ble Apex Court in the following cases:

(i) *Bimladevi vs. H.R.T.C., AIR 2009 SCC 2819.*

(ii) *Parmeshwari Devi vs. Amirchand, 2011 (11) SCC 635.*

12. The petitioner has brought on record his oral evidence in the form affidavit at Exh.22 in order to substantiate his claim. The opponents have not examined anybody nor produced any documentary evidence except cross-examination of the petitioner by the learned advocate Mr.Desai for the insurance company. The petitioner has also produced documentary evidence vide list Exh.20.

13. I have also heard learned advocate Mr.G.M.Patel for the petitioner and learned advocate Mr.P.B.Desai for the insurance company.

REASONS

14. While going through the claim petition and the documentary evidence, it appears there are two vehicles involved in the accident.

15. The petitioner says that the accident was taken place due to the equal negligence of the opponent Nos.1 and 4. The Charge Sheet was filed against the opponent No.1.

16. Before appreciating the evidence produced in this case, let us see what is negligence. "Negligence means, failure to exercise the required degree of care and caution expected of a prudent driver. Negligence is the omission to do something, which a reasonable man, guided upon the considerations, which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. Negligence is not always a question of direct evidence; it is an inference to be drawn from proved facts. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. What may be negligence in one case may not be so in another. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions, which would be reasonably foreseen to be likely to cause physical injury to persons. The degree of care required, of course, depends upon the facts in each case."

17. Photostat copy of the FIR is produced at Mark 5/1 and scanning the same, it appears that the PSO of Karelibaug Police Station Keshubhai Mathurbhai has lodged the FIR and the Panchnama Mark 5/2 shows that the front side of both the vehicles have been severely damaged. The petitioner is an eye witness to the accident and he says that the accident was occurred due to the equal negligence of both the drivers. No other eye witnesses have been examined by the opponents to controvert the said statement of the petitioner, which is supported by documentary evidence like FIR and Panchnama. While appreciating the oral as well as the documentary evidence, it appears that both the drivers had failed to exercise the required degree of care and caution expected of a prudent driver at the relevant time. It further appears that the accident is a head on collision between two motor vehicles. Hence, this Tribunal comes to

the final conclusion that the accident was taken place due to the equal negligence of both the drivers – opponent Nos.1 and 4 at 50% : 50% ratio. Issue No.1 is answered accordingly. However, as far as the present petitioner is concerned, it is a case of composite negligence and so he is entitled to recover compensation from any one of the opponents/tort-feasors or from all the opponents jointly and severally.

18. Issue No.2 : Age : The petitioner has brought on record a copy of the certificate issued by the Board of Secondary Education, Madhya Pradesh, Bhopal and as per this certificate his date of birth is 22.10.1958 and the accident was taken place on 11.09.2004; accordingly, it can be said that the petitioner was 45 years 10 months 20 days old at the time of accident.

19. Multiplier : The learned advocate for the petitioner has requested this Tribunal to award multiplier of 5 in this case as held by the Division Bench of the Hon'ble High Court of Gujarat in the aforesaid case and the learned advocate for the insurance company has no objection in considering 5 multiplier. In view of the consensus arrived at by the parties and considering the fact that the claimant was a Government employee, there was no loss of earning capacity and considering the decision of the Hon'ble High Court of Gujarat in the case of *Rameshbhai Ramnikbhai Vyas Vs. Ismail Ibrahim and Suleman Ibrahim*, 2012(2) GCD 1388. *Rameshbhai Ramnikbhai*, it would be just and proper to adopt multiplier of 5 in the present case for the purpose of calculation of future loss of income.

20. Income : The petitioner has produced a certificate issued by the Deputy Executive Engineer, Tribal Area Sub Plan, Panchayat Irrigation

Sub Division, Naswadi, which shows that the gross salary of the petitioner for the month of September, 2004, i.e, at the time of accident was Rs.19,500/-. However, due to the disabilities sustained in the accidental injuries he did not get promotion and so he has sustained future loss of income. At the same time, the petitioner has admitted in his cross-examination by learned advocate Mr.Desai that his salary has been increased from time to time after the accident as per the Government Rules, which means the petitioner has not suffered any future loss of income.

21. At this juncture, a reliance is required to be placed on the decision of the Hon'ble High Court of Gujarat in the case of *Rameshbhai Ramnikbhai Vyas (supra)*. In the said case, the claimant was having a Government Job and was working as Teacher and in that case, the Tribunal had awarded multiplier of 5 considering the fact that there was no loss of earning. The said award was challenged before the Hon'ble High Court of Gujarat and the Division Bench of the Hon'ble High Court had upheld the said decision of the Tribunal and awarded 5 multipliers considering the fact that there was no loss of earning as the claimant was a Government employee working as teacher and had found that multiplier of 5 would be just and proper for the purpose of calculation of future loss of income in the case of a person having no loss due to the injuries/permanent disabilities sustained by him in the accident.

22. Disability : The Physical impairment certificate is produced by the petitioner at Exh.29, which shows disability of 24% of right leg; while assessing the disability body as a whole, it would be 12% and the learned advocate for the petitioner has passed a pursis at Exh.26 to consider disability at 12% for body as a whole and and the learned advocate for

the insurance company made his endorsement of No Objection on it. Accordingly, disability is considered at 12% for body as a whole.

23. Future Loss of Income : As stated above, the gross salary of the petitioner at the time of accident was Rs.19,500/- per month. Therefore, the monthly future loss of income of the petitioner would be Rs.2,340/- (Rs.19,500/- X 12 divided by 100) and yearly it would be Rs.28,080/- (Rs.2,340/- x 12 months). As the parties have mutually agreed to apply 5 multiplier, the total future loss of income would be Rs.1,40,400/- (Rs.28,080/- X 5).

24. Actual Loss of Income : The Discharge Card Mark 5/3 produced by petitioner shows that he was hospitalized from 11.09.2004 to 13.09.2004. Looking to this certificate, it can be said that the petitioner might not have attend his duty for one month. So, the petitioner is entitled for one month salary towards actual loss of income, which comes to Rs.19,500/-.

25. Pain, Shock and Suffering : The petitioner has produced a bunch of medical papers and the receipts of medicines purchased. According to the petitioner, immediately after the accident, he was shifted to Ashirwad Hospital, Vadodara and photo stat copy of the medical papers have been produced on record, which explains the injuries sustained by the petitioner in the accident, which are as under :

- 1) *Comm-uinted fracture u/3 tibia (Rt)extending into lance*
- 2) *CLW (Lt)bare feet toe.*

26. Looking to the aforementioned injuries sustained by the petitioner, it can be said that he had undergone great mental and physical pain; so, I award a sum of Rs.10,000/- under the head of pain, shock and

suffering.

27. Compensation under other conventional heads : Looking to the nature of injuries sustained by the petitioner and the continuous treatment taken by him, it can also be said that he had incurred expenses for special diet, transportation and attendance charges; so, under all these heads, I award a sum of Rs.7,500/- to him.

28. Medical Expenditures : The petitioner has stated that he had incurred a sum of Rs.1,25,439/- towards medical expenditures. However, he had purchased Medi Claim Policy from National Insurance Co. Ltd. and the insurance company has reimbursed a sum of Rs.1,09,059/- and so he now claims the remaining amount of Rs.16,318/-. Looking to the fair submission of the petitioner, the petitioner is entitled for a sum of Rs.16,318/- under the head of medical expenditures.

29. Accordingly, the petitioner is entitled for compensation as shown under :

Future Loss of Income	: Rs.1,40,400.00
Actual Loss of income	: Rs.0,19,500.00
Medical Expenses	: Rs.0,16,318.00
Pain, shock and suffering	: Rs.0,10,000.00
Transportation, attendant charges and special diet	: Rs.0,07,500.00

Total	: Rs.1,93,718.00
	=====

Thus, the petitioner is entitled for a total compensation of Rs.1,93,718/- with interest and proportionate costs.

30. Interest : Thus, having regards to the facts and circumstances of the case, in the light of the judgment of Hon'ble Apex Court in the case of *Association of Victim of Uphaar Tragedy, 2012 ACJ 48 (SC)*, it would be just and proper to award the simple interest at the rate of 9% per annum; accordingly, the petitioners shall be entitled to get simple interest at the rate of 9% per annum on the awarded amount of claim from the date of filing of claim petition till payment of awarded amount.

31. Liability : As held above, the accident was taken place due to the equal negligence of both the drivers of the vehicles involved in the accident; and so, both of them are liable to pay the compensation as tortfeasors. The opponent Nos.2 and 4 are the owners of the respective vehicles involved in the accident; and therefore, they are vicariously liable to pay the compensation. While going through the policies of the vehicles involved in the accident produced at Mark 5/4 and 5/5, it appears that both the vehicles had been insured with the Oriental Insurance Company Limited and at the relevant time, the policy was in force; and therefore, the insurance company is liable to indemnify the owners of the vehicles, that is, opponent Nos.2 and 5. Accordingly, all the opponents are jointly and severally liable to pay the compensation.

32. Further, it is required to be added that as far as the present petitioner is concerned, this is a case of composite negligence as he was a mere passenger in the said vehicle and he has not contributed to the cause of accident; so, he is entitled to recover compensation from any one of the opponents or from all of them jointly and severally.

33. In view of the above findings, the following order is passed :

ORDER

(1). The present M. A. C. Petition is hereby partly allowed with proportionate costs and interest in respect of petitioner and against opponents jointly and severally.

(2). The petitioner shall recover a sum of Rs.1,93,718/- (Rupees Seven Lacs Ninety Three Thousand Seven Hundred Eighteen only) with interest @ 9% per annum from the date of petition till realization along with proportionate costs jointly and severally from the opponents.

(3). Accordingly, the opponents shall jointly and severally deposit the amount of compensation of Rs.1,93,718/- (Rupees One Lac Ninety Three Thousand Seven Hundred Eighteen only) together with interest @ 9% per annum from the date of filing of the petition till realization along with proportionate costs in the office of this Tribunal within One month from the date of this Judgment.

(4). The principal amount of interim compensation paid to the petitioner be deducted from this awarded amount of total compensation.

(5). The deficit Court Fees, if any, be deducted from the awarded amount.

(6). Necessary orders for disbursement or otherwise shall be passed later on.

(5). The opponents are directed to scrupulously follow the guidelines issued by the Hon'ble Gujarat High Court in the case of **Hansaguri Prafulchandra Ladhani and others Vs. Oriental Insurance Co. Ltd. And others reported in 2007(1) GLR 291** and the decision dated 08.08.2016 of the Hon'ble Division Bench of the Hon'ble High Court of Gujarat in the case of **The New India Assurance Co. Ltd. Vs. Bhoyabhai Haribhai Bharwad and others, 2017 ACJ 1727**, in respect of T.D.S.

(6). Award be drawn accordingly.

Signed and Pronounced in the open Court on this 06th day of June, 2018.

Vadodara,
06.06.2018.

ramesh

Sd/-
(Kamal Mohanlal Sojitra)
M. A. C. Tribunal (Auxi.)
Vadodara.
UID Code Code No.GJ01494.