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Decided on : 22-03-2018

Y M Ds.

Duration :

**BEFORE THE MOTOR ACCIDENT CLAIM TRIBUNAL (AUX.)
& ADDITIONAL DISTRICT JUDGE, AT ANAND.
(Shri R.T.Panchal)**

MAC PETITION NO.454/2009

Exh. __.

APPLICANT :-

Geetaben Mukeshbhai Parekh

Age: 37 Years, Occu.:Housewife/Anganwadi,

Resi.at: Napa Talpad, Tal.Borsad,

Dist.Anand.

Versus

OPPONENTS :-

Driver of Piyago Rickshaw No.GJ-23 U-9094:-

1. Tofiqmohmmad Iqbalbahi Vahora

Resi.at: Abu Bakkar Park,

Nr. Jakat Naka, Bhalej Road,

Anand, Tal. & Dist.Surat.

Owner Piyago Rickshaw No.GJ-23 U-9094:-

2. Rana Mohmmadkhan Rasidahmed

Resi.at: Napa Vanta, Tal.Borsad,

Dist. Anand.

Ins.Co. of Piyago Rickshaw No.GJ-23 U-9094:-

3. Reliance General Insurance Co.Ltd.,

At. Vidhyanagr-Anand Road,

At & P.O. Tal. Dist. Anand.

APPEARANCE:-

Ld.Adv. Shri K.K.Mahida for the applicant.

Ex-parte for the Opponent No.1.

L.A. Shri N.M.Bharvad for the Opponent No.2.

L.A. Shri H.R.Gandhi for the Opponent No.3.

SUB: CLAIM PETITION OF RS. 50,000/-.**: J U D G M E N T :**

1. This petition has been filed by the applicant under Section 166 of the Motor Vehicles Act, 1988 for compensation for the injuries sustained by her in vehicular accident by the offending vehicle as alleged in the petition.
2. The facts of the petition in brief are as under:-
It is the case of the applicant that, on 30-05-2009, the claimant was going towards Dakor from her Village-Napa alongwith others by travelling in Piyago Rickshaw bearing Regn.No.GJ-23 U-9094 and when he reached nearby the place of incident, present Opponent No.1 had driven his rickshaw in a rash and negligent manner and due to which, he lost control over the steering and turned turtle on the road and thus, a vehicular accident taken place. As a result of this accident, the applicant has sustained serious injuries on her person. The applicant has alleged that the present accident occurred due to sole negligence on the part of driver of involved vehicle (Opponent No.1) in the accident.
3. It is further stated by the applicant that she was hale and healthy at the time of accident, she used to earn Rs.2,000/- p.m. by serving in Child Development Scheme, at Borsad(Unit-01). According to her, she sustained serious injuries and permanent disability too. According to the applicant due to the injuries and disablement, she is unable to do her work which

he was doing prior to the accident and has suffered a great economic loss. The applicant has also stated in the claim petition that she has also undergone tremendous pain, shock & suffering and was required to spend a huge amount for her treatment. Besides this, the applicant was also required to spend a huge amount for special diet, transportation charges, attendance charges, etc. Thus, on all these grounds, the applicant has claimed Rs.9,999/- compensation which has been substantially increased to Rs.50,000/- as compensation from the Opponents.

In support of his submission, Ld.Advocate for the applicant has filed written arguments(Exh.68) and relied upon the following case-laws :-

(i) 2018 SAR (Civil) 78, a case of Sant Lal Vs. Rajesh and Ors. etc.

(ii) 2017 SAR (Civil) 1008, a case of Mukund Dewangan Vs. Oriental Insurance Co.Ltd.

4. The Opponent No.1 though served with the notice of claim petition, but he has not contested the claim petition, hence claim petition has been proceeded ex-parte against him.
5. The Opponent No.2 appeared before the Tribunal by engaging his Ld.Advocate Mr. N.M.Bharvad by filing his written reply at Exh.19 stating therein that contents of claim petition is not true and correct and hence, it is not admitted to him.

As a matter of fact, it has been submitted by him that earlier he was owner of vehicle i.e. Piyago rickshaw No.GJ-23 U-9094, but on 06-03-2008, he was

sold out said vehicle to one Sajidbhai Gulam Dastgir Vahora, Resident of: Overbridge, Swamikrupa Soc., Tal. & Dist.Anand, bu executing sale-deed thereof and as per said sale-deed, it has been clearly stated that, "now-a-days, whatever liability shall arise, the same shall be upon the purchaser." As such, it is his submission that basing upon the said sale-deed, the there is no liability casted upon the Opponent No.2 and he prayed to delete his name as of Opponent No.2 from claim petition.

6. The Opponent No.3 – Reliance General Ins.Co.Ltd., has filed its written statement at Exh.17 and inter alia denied all the averments made by the applicant in his claim petition. It has further denied the happening of the accident in question and the resultant injuries suffered by the claimant. It has further denied the age, occupation and income of the claimant.

As a matter of fact, it has been submitted by it that the driver of Rickshaw(Opponent No.1) was not possessing any legal and valid driving license at time of vehicular accident and thus, there is clear cut breach of terms & conditions of Insurance Policy and hence also, this Opponent No.3 – Ins.Co. is not liable and responsible to pay any amount of compensation to the applicant. It is further submitted that the said Rickshaw was not having fitness and permit required by the law and more passengers were travelling in the said Rickshaw than its capacity, hence this Opponent No.3 – Ins.Co. is

not liable to pay any amount of compensation to the applicant. The claim is highly excessive and exorbitant one. On all the above grounds, the Opponent No.3 – Ins. Co. prayed to dismiss the claim petition against them.

In support of his submission, Ld.Advocate for the Opponent No.3 – Ins.Co. has filed written arguments at Exh.67 by taking defence that driver of rickshaw has no any transport vehicle at the time of vehicular accident, therefore, they are not liable and responsible to pay any amount of compensation to the applicant.

7. The Tribunal has heard the Ld.Advocates for the respective parties. The Tribunal has also gone through the documentary evidence produced with the claim petition.
8. In this petition, following issues have been framed vide Exh.30/A :-
 - (1) Whether applicant proves that she suffered injuries due to the rash and negligent driving of driver of the offending vehicle involved in this accident ?
 - (2) Whether applicant is entitled to get any amount as compensation? If yes, from whom ?
 - (3) What order and Award ?
8. My findings on the above issues are as under :-
 - (1) In the affirmative.
 - (2) In the affirmative.
 - (3) As per final order.

:: R E A S O N S ::**ISSUE NO.1 - NEGLIGENCE :-**

9. The applicant has filed her affidavit under Order-18, Rule-4 of CPC at Exh.35 in this petition. The applicant has deposed on oath that on 30-05-2009, when she was going towards Dakor from her Village-Napa alongwith others by travelling in Piyago Rickshaw bearing Regn.No.GJ-23 U-9094 and when he reached nearby the place of incident, present Opponent No.1 had driven his rickshaw in a rash and negligent manner and due to which, he lost control over the steering and turned turtle on the road and thus, a vehicular accident taken place, wherein she has sustained serious injuries on her person. The applicant has further deposed that said accident occurred due to sole negligence on the part of driver of involved vehicle(Opponent No.1) in the accident.
10. The applicant has produced copy of the complaint and panchnama of the scene of offence at Exh.46 and Exh.47 respectively. The complaint is lodged by Mukeshbhai Gordhanbhai Parekh, wherein he has narrated how the accident had occurred. Moreover, on perusal of the panchnama of the place of accident, it transpires the fact that at the place of incident, when Opponent No.1 had driven his Rrickshaw No.GJ-23 U-9094 in a rash and negligent manner and at an excessive speed and due to which, he has lost control over the steering and it turned turtle on the road. The Police Authority has filed the charge-sheet

against the driver of Rickshaw(Opponent No.1) after making investigation into the offence lodged before them which is produced at Exh.52. Therefore, it can be said that the driver of Rickshaw(Opponent No.1) must have been negligent at the time of vehicular accident and it was the duty of the driver of Piyago Rickshaw to drive his vehicle by taking utmost care at the time of vehicular accident.

Herein this case, L.A. for the Opponent No.3 – Ins.Co. has filed an application at Exh.45 U/s.170 of M.V.Act,1988, for the defence available to driver of offending vehicle i.e.Opponent No.1, but though the same was duly granted by this Tribunal, the L.A. for the Opponent No.3 – Ins.Co. has not examined the driver of Piyago Rickshaw who can throw the exact light how to the vehicular accident has occurred. Thus, from the documentary evidence produced in this case, it appears that the impugned accident occurred due to sole negligence on the part of driver of Piyago Ricksha(Opponent No.1). Therefore, Issue No.1 is decided in the affirmative.

ISSUE NO.2 – QUANTUM OF COMPENSATION :-

11. The applicant has filed her affidavit under Order-18, Rule-4 of CPC at Exh.35 in this petition. The applicant has stated in her cross-examination that in the said vehicular accident, she has sustained injuries which is in a simple in nature. She has also deposed and admits the fact in her cross-examination that she has not sustained any permanent partial

disability on account of accidental injuries.

Moreover, the applicant has only produced the primary injury certificate at Exh.51, wherein it reveals the fact that she has sustained injury of abrasion and CLW which is a simple injuries in a nature. Further, present applicant has not produced any disability certificate in claim petition. Therefore, Tribunal is of the view to award an amount of Rs.3,000/- on the head of pain, shock and suffering and Rs.8,060/- on the head of medical expenses. Therefore, to meet with the end of justice, the applicant is awarded in all, Rs.11,060/- under all the heads.

12. Ld.Advocate for the Opponent No.3-Ins.Co., has argued by taking defence that driver of rickshaw(Opponent No.1) was not possessing any driving licence to transport the vehicle at the time of vehicular accident, therefore, they are not liable and responsible to pay any amount of compensation to the applicant.

In support of their defence, the Ld.Advocate for the Opponent No.3 - Ins.Co. has examined their witness namely, Shri Laxmansinh Gopalsinh Zala, A.R.T.O., R.T.O. Office, Anand, vide Exh.60 and said witness has deposed that on the date i.e. 30-05-2009, the driver of Rickshaw No.GJ-23 U-9094 was not possessing legal and valid transport license to drive such vehicle. During his cross-examination made by Ld.Advocate for the applicant, he deposed and admits that a person who has been given license can drive the vehicle.

Moreover, Ld. Advocate for the Opponent No.3 – Ins.Co. has examined their another witness namely, Shri Devang Bhikhabhai Parekh, Legal Officer of Opponent No.3-Ins.Co.; vide Exh.65 and said witness has deposed that vehicle Piyago Rickshaw is registered as Transport Vehicle. During

During his cross-examination made by Ld. Advocate for the applicant, he deposed and admits that it is true that mechanism of three wheel tempo and three wheel rickshaw are equal and insurance of said vehicle is covered in package policy wherein risk of third party premium is covered by their Insurance Company.

Thus, the defence raised with regard to non-possessing of transport vehicle by driver of Piyago rickshaw by Ld. Advocate for the Opponent No.3-Ins.Co. is not believable and tenable in the eye of law.

13. The applicant has produced the copy of Insurance Policy of offending vehicle i.e. Piyago Rickshaw No.GJ-23 U-9094 vide Exh.50 wherein period of policy is shown from 21-11-2008 to 20-11-2009 and as the impugned accident taken place on 30-05-2009, the involved vehicle is within the currency period of policy. Hence, in view of overall discussion held hereinabove, the Tribunal is of opinion that opponent nos.1, 2 and 3 are jointly and severally liable to pay awarded amount of compensation to applicant.

14. In view of above findings, following order is passed.

:: O R D E R ::

The claim petition is hereby partly allowed against the Opponents Nos.1, 2 and 3.

The applicant do recover **Rs.11,060/- (Rs. Eleven Thousand Sixty Only)** from the **Opponent Nos.1, 2 and 3**, jointly and/or severally, together with running interest at the rate of **9% p.a.** from the date of petition till realization of the amount along with proportionate costs of the petition.

The **opponent nos.1, 2 and 3** are hereby directed to deposit in the office of this Tribunal the above amount of award, after deducting the amount of interim compensation, if any, paid u/s.140 of M.V. Act, within one month from the date of this order.

On depositing the above amount of award by the opponents in this Tribunal, the amount of Court Fee Stamp, if recoverable on the awarded amount, be recovered from the awarded amount and the same be taxed as the costs of the petition and remaining full amount be paid to the applicant by Account Payee Cheque, after due verification.

Award be drawn accordingly.

Pronounced in Open Court today on this 22nd day of March, 2018.

Date :22/03/2018
Place:Anand.

[Ramesh Thakorbhai Panchal]
M.A.C.Tribunal (Aux.-) &
Addl.District Judge,
Anand.

(Code: GJ-00413)