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Exh.

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IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN)

PANCHMAHALS AT GODHRA

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Motor Accident Claim Petition No.454/2016

Applicant :-

Kalubhai Somabhai Baria
 Age: Adult, Occupation : Masonry & agri. Work,
 Res: At Chanchopa, Matiya faliyu,
 Ta.Godhra, District Panchmahals.

Versus

Opponents :-

- 1 Mumabhai Najabhai Goyal(Gohil)
 Adult, Occupation : Owner,
 Res: B/h Milk Dairy, Mafatiyapura,
 At Ta.Vadhvaan, Dist. Surendranagar.
[Owner of Dumper Truck No.GJ-4-X-5494]
- 2 United India Insurance Co. Ltd.
 Insurer, Office at Jain Society,
 Godhra.
[Insurer of Dumper Truck No.GJ-4-X-5494]

* * *

Appearance:-

Mr. M.A.Mistry, Learned Advocate for the Applicant.

Mr. M.Z.Jadav, Learned Advocate for the Opponent No.1.

Mr. C.A.Pariekh, Learned Advocate for the Opponent No.2.

* * *

Re: Claim Petition under section 166 of the Motor Vehicle Act to get the amount of Rs.5,00,000/- towards compensation.

JUDGMENT

01. The claimant has filed present claim petition under the provision of Section 166 of M. V. Act and has claimed total compensation of Rs.5,00,000/-, on account of accidental injury sustained by him caused in a vehicular accident, which was occurred on 23.09.2014 at about 11:00 Hrs. at Village Bakrana.

1.1 According to the claimant, on 23.09.2014, at about 11:00 Hours, the claimant Kalubhai Somabhai Baria was standing on the side of road situated at Village Bakrana. At that time, the opponent No.1 driving Dumper Truck No.GJ-4-X-5494 and to reverse his vehicle in a rash and negligent manner with an excessive speed. Due to excessive speed, the opponent No.1 lost control over his vehicle and then dashed with the applicant. Resultantly, the

claimant sustained injuries. Complaint to this effect has been registered against the driver of Dumper Truck No.GJ-4-X-5494 i.e. the Opponent No.1 herein with Sanand Police Station bearing I-CR No. 187/2004. According to the applicant, at the time of accident, he was 38 years old. Further, the applicant/deceased was doing masonry & agriculture work and thereby earning Rs.6,000/- per month. Ultimately, the applicant has prayed to grant compensation of Rs.5,00,000/- with interest thereon @15% with interest and cost against the opponents.

02. In this petition, the Opponents were duly served with the notices. The opponent No.1 appeared but he has failed to contest the petition. The opponent No.2- Insurance Company of offending vehicle, has filed its written statement vide Exh.23, wherein the company has denied all the averments made in the claim petition and denied the income and the injuries sustained by the applicant and involvement of offending vehicle. It is contended that the applicant has falsely involved the offending vehicle in the accident. The written statement appears to be general denial in nature and

ultimately, it is prayed to dismiss the petition with costs.

03. Opponent No.2 has filed application under Section 170 vide Exh.21 and the Opponent No.2 - Insurance Company has been permitted to defend the petition on all grounds U/s.170 of the Motor Vehicle Act, 1988 by passing reasoned order by this Tribunal below Exh.21.
04. I have heard LAs appearing on behalf of the parties and also considered the record of the present claim petition.
05. On this petition, the following issues have been framed for my determination vide Exh.15 :-
1. Whether it is proved that the applicant sustained injuries on account of rashness or negligence in driving on the part of the driver/s of the vehicle/s 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?
06. My findings to the above issues are as under :-

1. In the affirmative.
2. In the partly affirmative, as per final order.
3. As per Final Order.

:: REASONS ::

Issue No. 1 :-

07. In order to prove negligence, the parties have produced the following oral as well as documentary evidences:-

Sr. No.	Description of Documents	Exhibit /Mark
1	Examination-in-Chief of claimant	20
2	Application filed U/s.170 by the opponent No.2	21
3	Copy of complaint.	25
4	Copy of Spot Panchnama	26
5	Copy of chargesheet.	27
6	Injury Certificate of applicant.	28
7	Medical bills	29 & 30
8	Certificate issued by Dr.Jayesh Patel	31
9	Disability Certificate.	32
10	Copy of driving license of driver of offending vehicle.	33
11	Copy of R.C.Book of driver of offending vehicle.	34
12	Copy of Insurance Policy of offending vehicle.	35

08. In this petition, the applicant has filed his affidavit at Exh.20 and thereby supported the version as averred in the petition and submitted that the documents produced in the petition may be exhibited. Further, it is also prayed to pass order as

prayed for.

09. Mr.C.A.Pariekh, Learned Advocate for the Opponent No.2 Insurance Company has cross-examined the applicant herein, wherein the applicant has admitted that *" it is true that after the accident, he was admitted in Navjeevan Doctor House at Sanand. It is true that in the certificate produced by him, it is mentioned that Doctor had relieved him on 29.09.2014. It is true that he get masonry work for six months in the year. It is true that, he earns Rs.50 to 100 per day when he goes to work. It is true that he has no documentary evidence to show that he owned agriculture land or he has been worked in any other farm...."* In this petition, copy of complaint is produced at Exh.25, which was filed by the claimant. So far the involvement of the vehicle is concerned, Dumper Truck No.GJ-4-X-5494 clearly mentioned in the complaint and hence, the involvement of the vehicle has been clearly established by it.

Negligent Aspect :-

10. So far as the negligence is concerned, in the present case, the claimant deposed vide Exh.20 and stated that at the time of

accident, the opponent No.1 came by driving Dumper Truck No.GJ-4-X-5494 and to reverse his vehicle in rash & negligent manner and dashed with him at the place of accident. Negligence means failure to exercise the required degree of care and caution expected of a prudent driver. It is a settled principle of law that burden of proving negligence is on the claimant who asserts it. The claimant has to produce reasonable evidence that the accident took place due to negligence on the part of the driver of the vehicle involved in the accident.

Now, if we peruse the complaint produced at Exh.25 which was filed against his driver of the Dumper Truck No.GJ-4-X-5494. Panchas had identified the place of accident, copy of which produced vide Exh.-26. Looking to the oral as well documentary evidence available on record, it reveals that the driver of offending vehicle was driving his vehicle in rash and negligent manner with an excessive speed and and then dashed with the applicant. The driver of offending vehicle herein, who has not stepped into the witness box to refute the say of the applicant herein and to describe in which manner the accident

occurred. The Id. Advocate of Insurance Company has argued that the FIR filed late and vehicle was falsely involved in the offence. However, it pertinent to note here that after investigation chargesheet filed against the driver of offending vehicle in question, Copy of which is produced vide Exh.-27. Thus, argument raised by the Id. Advocate of Insurance Company is not tenable. In view of above discussion, it is established that the accident occurred on account of sole rash and negligent driving on the part of driver of Dumper Truck No.GJ-4-X-5494, his act is tortuous and accordingly, my reply to the issue No.1 is in the affirmative.

11 **Issue No. 2 & 3:-**

- 11.1 It is well proved that the claimant sustained injury because of rash and negligent driving of the vehicle involved in the accident and therefore, applicant is entitled to get compensation from the driver, owner and Insurance Company of offending vehicle. Now, for the calculation of the compensation, the age of claimant, his income, his liability, actual expenses like expenses behind treatment, Pain shock

sufferings, transportation are also required to be given.

11.2 **Income :-**

According to the applicant, he was doing masonry & agriculture work and was earning Rs.6,000/- per month at the time of accident. Claimant has not produced any document to point out that he was earning Rs.6,000/- per month at the time of occurrence of accident. It reveals from cross-examination of applicant vide Exh.-20 that he was earning Rs.50 to 100 per day. He has specifically admitted during his cross-examination that *s"It is true that he get masonry work for six months in the year. It is true that , he earing Rs.50 to 100 per day when he go to work."* Further, the applicant has admitted that *It is true that he has no documentary evidence to show that he owned agriculture land or he has been worked in any other farm. Thus, looking to the above oral evidence of applicant, it can be said that he was earning Rs.2500 to 3000 p.m.* Thus, considering deposition of the applicant, looking to the fact & circumstances of the petition, it is just and proper to assess the income of applicant at **Rs.3,000/- p.m.** Further, the applicant has admitted that he get masonry work for six months in the year. Thus, I assessed the

annual income of applicant at Rs.25,000/-.

11.3 **Age & Multiplier :-**

For the age of claimant, Ld. Advocate for the claimant has argued that claimant was 38 years old at the time of accident. To prove his date of birth, the claimant could have produced either birth certificate or school leaving certificate. But he failed to produce the same. However, it can be presumed from the record, that the applicant was 38-40 years old at the time of accident. Thus considering age of injured between 36 to 40 years at the time of accident, claimant is entitled to get multiplier of '15', as held by the Hon'ble Apex Court in "**Sarla Verma & Ors. V/s. Delhi Transport Corporation & Anr.**" reported in "**2009 A.C.J. 1298**".

11.4 **Future Loss :-**

Claimant has produced injury certificates at Exh.28 & 31. In the said certificate Doctor has opined that applicant has sustained grievous fracture injuries and he had been operated in the form of amputation of left great toe. The claimant has produced Disability Certificate vide Exh.32 wherein it is stated that "Patient has 50% permanent partial disability of right

limb." On the basis of the Disability Certificate, Ld. Advocates for the respective parties have agreed to assess permanent partial impairment of the injured @ 22% as a whole body. Said consent pursis is recorded at Exh.24. In view of above referred discussion, claimant is entitled following amount under the head of loss of future income : (Rs.25,000/- p.a x 15 multiplier x 22% disability) = **Rs.82,500/-**.

11.5 **Pain, Shock & Sufferings & Special Diet, Attendance & Transportation :-**

Claimant's deposition is recored at Exh.18 From his deposition it clearly appears that the claimant i.e. injured has sustained grievous injury. There is no much dispute with regard to the amount which is to be awarded under the heads like pain, shock & suffering and special diet, attendance & transportation. Therefore, I award Rs.25,000/- & Rs.7,500/-, respectively under the above referred heads.

11.6 **Actual Loss :-**

The claimant has claimed huge amount under the head of actual loss of income. Claimant has produced Injury certificate at Exh.28, it transpires that the applicant was treated as an indoor patient from 23.09.2014 to 29.09.2014. Further, it

transpires from medical certificate Exh.-31 that the applicant was treated as an indoor patient from dt.28.11.2014 to 01.12.2014 and had advised to take rest for 2 months. Looking to the peculiar facts and circumstances of the present case I am of the opinion that claimant is entitled to get Rs.9,000/- under the head of actual loss of income.

11.7 **Medical Expenses :-**

The applicant has stated that he had spent huge amount for his medical treatment. In support of this fact, the claimant has produced medical bills/vouchers total of Rs.36,923/- vide Exh.-29 & 30. Therefore, claimant is entitled for Rs.36,923/- under the head of medical expenditure. In view of above the claimant is entitled for following amount as compensation :-

Rs.	82,500/-	Future economic loss
Rs.	25,000/-	Pain, shock and sufferings.
Rs.	7,500/-	Special diet, attendant & transportation.
Rs.	36,923/-	Medical
Rs.	9,000/-	Actual loss
Rs.	1,60,923/-	Total Compensation

12. **Liability:**

So far the liability is concerned, as per discussion in Issue No.1, the driver of the Dumper Truck No.GJ-4-X-5494 was found

to be negligent for the accident. It is established on record that the Opponent No.1 is the owner, the opponent No.2 is the insurer of the vehicle involved in the accident i.e. Dumper Truck No.GJ-4-X-5494. Copy of Insurance policy is produced on record at **Exh.35**, which issued for the period from **16.04.2014 to 15.04.2015** and the accident was occurred on **23.09.2014**, therefore, the said policy is covered risk & date of accident and therefore, the Insurance Company would be liable to indemnify the owner and in turn satisfy the award of this Tribunal. Therefore, the Opponent Nos. 1 & 2 are jointly and severally liable to pay amount of the total compensation to the applicant.

13. **Interest:**~ In the case of ***New India Assurance Company v. Rajkumar Dharamsing, First Appeal No.73/2014 dated 18.02.2014***, the Hon'ble High Court has granted 9% interest, and considering fact and circumstances of this case, I award simple interest at the rate of 9% per annum from the date of the application till realization, **hence following is the order in the interest of justice.**

~: O R D E R :~

The application is partly allowed with proportionate costs and interest against **the Opponent No. 1 & 2.**

The applicant do recover **Rs.1,60,923/- (Rupees One Lac sixty thousand nine hundred twenty three only)** from the **Opponent No. 1 & 2**, jointly and/or severally, together with running interest at the rate of 9% p.a. from the date of the petition till payment alongwith proportionate costs of the petition.

The **Opponent No. 1 & 2** are hereby directed to deposit in the office of this Tribunal the above amount of award, after deducing the amount of interim compensation, if any, paid U/s.140 of M. V. Act, within one month from the date of this order.

Out of the total amount deposited the required deficit court fees, if any, be deducted first from that amount.

Out of the amount falling to the share of applicant, 70% amount be deposited in his/her name in any nationalized Bank of the choice of concerned applicant, for a period of **FIVE YEARS** with a direction to the Bank not to flow any loan or not to create encumbrance etc. on the amount invested in the Fixed Deposit without prior permission of this Tribunal. However, respective applicant shall be entitled to withdraw the interest periodical accruing on such Fixed Deposit and remaining amount of 30% of the awarded amount (as the awarded amount may be) be paid to the applicant by an Account Payee Cheque, after due verification. The concerned Bank is also directed to release the said amount to applicant, invested in the Fixed Deposit on the date of its maturity, without requiring

any further orders from this Tribunal.

The award be drawn accordingly.

Investments, as above, shall be encumbered with following terms and conditions:-

1. The said amount shall be invested with any of the nationalized Bank as stated above in Fixed Deposit Receipt Account.
2. The interest on the above Fixed Deposit Receipt Account as and when it becomes payable monthly, quarterly, half-yearly or annually, as agreed to, shall be paid to the applicant.
3. No facility by way of loan, over-draft or cash credit shall be available on the above investment and the Bank shall not allow any such transaction, encumbering the investment or on the basis of the security of the same.
4. The Bank shall not permit the applicant to withdraw the said amount prior to its maturity or without prior permission of this Tribunal.
5. The Bank shall intimate to this Tribunal the particulars of the investment viz., number of Fixed Deposit Receipt, Name of the holder and the date of maturity immediately after issuance of Fixed Deposit Receipt in this case.
6. At the end of the period aforesaid, the Bank shall pay the principal amount to the payee, the concerned applicant.

Pronounced in the Open Court today
i.e. on this 30th day of November, 2021.

Date: 30.11.2021
Place: Godhra.

M.A.Malek

(Jitendra Rameshchandra Shah)
Motor Accident Claims Tribunal (Main)
Panchmahals at Godhra
Judge Code : GJ01044