

Ex.	58					
Filed on	10.02.2016					
Registered on	16.04.2016					
Decided on	26.04.2023					
Duration	Y	07	M	02	D	16

IN THE MOTOR ACCIDENT CLAIM TRIBUNAL (AUXILIARY) AT JAMNAGAR.

Motor Accident Claim Petition No.

111 of 2016

Petitioner:-

Diptiben Himanshubhai Trivedi,

Aged : 31 Years, Occupation : Embroidering and beauty Parlor,

R/o. 5 Jagdish Apartment, Plot No.21-A,

Anandvadi, beside Shyamal flat,

Bhavnagar.

V E R S U S**Respondents :-**

1- Khimabhai Hirabhai Vadher,

R/o. Gandhvi, Taluka Kalyanpur,

District Jamnagar.

[Owner of vehicle Truck bearing registration No.GJ-07-X-3919]

2- ICICI Lombard General Insurance Co.

At Jodiyak Square, Third Floor, Opposite Gurudwara,

above Vishal Mega Mart, S.G.Highway,

Thaltej, Ahmedabad.

[Insurer of vehicle Truck bearing registration No.GJ-07-X-3919]

3- Himashubhai Bharatbhai Trivedi,
R/o. 5 Jagdish Apartment, Plot No.21-A,
Anandvadi, beside Shyamal flat,
Bhavnagar.

[Owner of vehicle Car bearing registration No.GJ-01-KB-244]

4- The New India Assurance Co. Ltd.
At 303, Manek Center, P.N.Marg, Jamnagar.

[Insurer of vehicle Car bearing registration No.GJ-01-KB-244]

Subject: - Petition to claim compensation under section 166 of Motor Vehicle Act, 1988

Appearance:-

Mr. S.R.Vajani, learned counsel on behalf of petitioner

None appeared on behalf of respondent no.1 & 3.

Mr. M.M.Bhatt, learned counsel on behalf of respondent no.2

Mr. D.B.Barad, learned counsel on behalf of respondent no.4

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

1. Present claim petition has been filed by the petitioner under section 166 of Motor Vehicle Act, 1988 seeking compensation of Rs.3,00,000/- along with interest on account of injuries sustained by her in road side vehicular accident.

Pleading of Petitioner :-

2. In brief, facts of the case as pleaded by petitioner is that on faithful day i.e. 06.04.2014, petitioner was traveling in a Car bearing Registration No.GJ-01-KB-0244 being driven by respondent No.3 and at about 04:00 to 04:35 PM, when they reached near village Navada, Truck bearing Registration No.GJ-07-X-3919 came driven by its driver in rash and negligent manner and dashed

with the Car by driving his Truck in wrong side of the road, resulting accident was occurred and petitioner sustained severe injuries. It is further pleaded that accident was occurred on account of negligence driving on the part of driver of the Truck. It is further pleaded that in the said accident, petitioner sustained injuries at her forehead, back and other part of her body. It is further pleaded that petitioner was treated at Hospital at Porbandar, Rajkot and Bhavnagar. It is further pleaded that petitioner sustained fracture injuries and was remain admitted at different hospital for long time and incurred Rs.60,000/- on her treatment. It is further pleaded that at the time of accident, petitioner was doing the work of embodying and beauty parlor and was earning Rs.6,000/- per month. It is further pleaded that petitioner is entitled for the compensation to be paid by respondents jointly and severally.

Pleading of Respondents:-

3. After presenting the claim petition, summons were issued and duly served on all the respondents. Respondent No.1 and 3 did not appear before the Tribunal. Respondent No.2 and 4 appeared before the Tribunal through counsels and submitted written statement of defence.

Issues and finding thereof :-

4. In the background of such rival pleadings, this Tribunal was pleased to frame the following issues.

(1) Whether petitioner proves that she has sustained injuries of permanent disabling nature in road side vehicular accident occurred by reason of rash and negligent driving on the part of driver of vehicle involved in the accident ?

(2) Whether Petitioner proves that she is entitled for compensation? If yes, what amount and from whom?

(3) What award?

5. My findings of the above mentioned issues are as under:

(1) In affirmative. However, it is held that driver of Truck was negligent to the extent of 80% and driver of Car was negligent to the extent of 20%.

(2) In affirmative. As per final order

(3) As per final order.

Evidence of Petitioner

6. In support of the claim petition, following oral as well as documentary evidence were produced by the petitioner

Oral Evidence

Sr. No.	Name of witness	Exhibit No.
1	Diptiben Himanshubhai Trivedi	30

Documentary Evidence

Sr. No.	Particulars	Exhibit No.
1	Disability certificate	32
2	Copy of FIR	38
3	Copy of Panchnama	39
4	Copy of RC of vehicle No.GJ-07-X-3919	40
5	Copy of Insurance Policy of vehicle No.GJ-07-X-3919	41
6	Copy of RC of vehicle Car No.GJ-01-KB-0244	42
7	Copy of Insurance Policy of vehicle Car No.GJ-01-KB-0244	43
8	Copy of Charge-sheet	44
9	Copy of statement of petitioner	45

10	Copy of treatment paper	46
11	Copy of MRI report	47
12	Copy of X-ray report	48
13	Certificate issued by IDBI bank	49
14	Copy of treatment bill	50
15	Copy of PAN card of petitioner	51
16	Copy of Aadhar Car of petitioner	52
17	Copy of PAN card of petitioner	53
18	Copy of Aadhar Car of petitioner	54
19	Copy of Saving bank account of petitioner	55
20	Copy of Judgment passed in MACP No.309 and 310 of 2014	56

Evidence of Respondents

7. No evidence was adduced on behalf of respondents.

Arguments of Parties

8. Learned counsel for the petitioners argued that accident was occurred on account of rash and negligent driving on the part of driver of Truck No.GJ-07-X-3919. It is further argued that in MACP Case No.309 of 2014 and 310 of 2014 question of involvement of vehicle and negligence has been decided. It is further argued that due to accidental injuries, petitioner has become permanent disabled. It is further argued that at the time of accident, petitioner was earning Rs.6,000/- per month by doing embodying and beauty parlor work.

9. Learned Counsel for respondent no.2 and 4, it is argued that no evidence has been adduced by the petitioner regarding her work and earning. Question of negligence has already been decided in MACP No.309 and 310 of 2014. It is further argued that no functional disability has been caused to the petitioner.

10. Having, gone through the pleading of respective parties, appreciation and consideration of evidence on record and hearing the submissions of learned counsels of respective parties, following are the reasoning for deciding the issues involved in the matters.

::: R E A S O N S :::

Issue No. 1

11. Burden to prove this issue is on the petitioners. It is the case of petitioner that on the faithful day she was traveling in Car No.GJ-01-KB-0244 being driven by respondent No.3 and Truck No.GJ-07-X-3919 came driven by its driver in rash and negligent manner and dashed with the Car. In the present matter, two vehicles are involved, one is car in which petitioner was traveling and another vehicle is Truck. Question regarding involvement of these vehicles in the accident and negligence has already been decided in common judgment passed by MACT (Auxi) Jamnagar in MACP No.309 and 310 of 2014. In the said judgment, it was observed that both of above said vehicles were involved in the accident and accident was occurred on account of negligence driving of driver of Truck No.GJ-07-X-3919 to the extent of 80% and driver of Car No.GJ-01-KB-0244 to the extent of 20%. This Tribunal is bound by the finding of involvement and negligence given by then Tribunal in aforesaid judgment, therefore, without discussing the evidences available on the record, it is held that driver of the Truck No.GJ-07-X-3919 was negligent to the extent of 80% and driver of Car No.GJ-01-KB-0244 was negligent to the extent of 20% for occurrence of the accident. Moreover, treatment records produced by the

petitioner shows that she sustained fractured injuries in the accident. Hence, issue no.1 is decided in **Affirmative** as above discussed.

Issue No. 2 :-

12. As a natural consequence, and since having found issue No.1 in favour of petitioner and in the affirmative, it necessarily follows that the petitioner is entitled for the compensation. Now, we will proceed to determine the quantum of compensation and the liability to pay the awarded compensation.

(a) Income of injured: - Petitioner has pleaded that at the time of accident, she was earning Rs.6,000/- per month by doing the work of Embodying and beauty parlor. In support of the contention, no documentary evidence has been produced on the record to show the income of petitioner. In absence of any satisfactory evidence regarding the income of petitioner, Tribunal is required to assess the notional income. Considering the year of accident as 2014 and treating the petitioner as house worker, it will be reasonable to assess the notional income of petitioner at Rs.3,000/- per month, as such annual income comes to Rs.36,000/-

(b) Permanent Disability: - Petitioner has pleaded that due to the injuries sustained in the accident, she has become permanent disable. In order to prove the permanent disability, petitioner has produced original disability certificate at Exhibit-32. On the perusal of disability certificate, it transpires said disability certificate has been issued by Dr.Rajendra B. Trivedi who assessed the permanent disability of petitioner at 30%. Learned counsel for respondent no.2 and 4 gave their consent to consider the permanent disability of petitioner at 25% qua whole body by marking his endorsement on disability certificate. Thus, permanent disability of the petitioner is assessed at 25% qua whole body.

(c) Age of injured:- On the perusal of copy of PAN card of the petitioner at Exh.51, it appears that date of birth of the petitioner is 10.01.1984. Date of accident is 06.04.2014, as such on the date of accident, petitioner has completed the age of 30 years.

(d) Multiplier applicable: - As per above discussion it is clear that at the time of accident, age of the petitioner was 30 year, as such multiplier applicable to the case of petitioner is 17 as per the judgment of Hon'ble Supreme court in Smt. Sarla Verma and others Versus Delhi Transport Corporation 2009 AIR (SC) 3104.

(e) Loss of future income:- So, taking into consideration the annual income, permanent disability and applicable multiplier, amount of compensation payable under the head of loss of future income comes to Rs.1,53,000/-

(f) Loss of actual income: - Considering the nature of injuries and duration of treatment, it is reasonable to award Rs.10,000/- under this head.

(g) Medical Expenses:- Petitioner has produced on the record, photocopy of the treatment record and treatment bill at Exh.46, Exh.47 and Exh.48. On the perusal of certificate issued by IDBI Bank Ltd., it appears that medical bills worth Rs.51,092/- was submitted by the petitioner before the Bank and out of which Rs.28,392/- has been passed, therefore, petitioner is held entitled for Rs.22,700/- which was not passed by the Bank.

(h) Pain/ shock and suffering:- Considering the duration of treatment of petitioner as indoor patient, nature of injuries and permanent disability, petitioner is entitled for Rs.15,000/- under this head.

(i) Conveyance, attendant and special diet:- In view of the nature of injuries, duration of treatment, petitioner is entitled for Rs.8,000/- under this head.

Sr. No.	Head of Compensation	Amount
1	Loss of Future Income	Rs.1,53,000/-
2	Loss of Actual Income	Rs.10,000/-
3	Expenses incurred on treatment and medicine	Rs.22,700/-
4	Pain/ shock and suffering	Rs.15,000/-
5	Conveyance, attendant and special diet	Rs.8,000/-
Total		Rs.2,08,700/-

13. Thus, having considered the facts as and figure as discussed above, petitioner is held entitled for the compensation of Rs.2,08,700/- rounded of at Rs.2,09,000/- which appears to be just, fair and reasonable in the present case.

Liability to pay the compensation

14. As per the discussion under issue no. 1, it is clear that accident has been occurred on account of negligence driving on the part of driver of vehicle Truck bearing registration no.GJ-07-X-3919 to the extent of 80% and driver of Car bearing Registration No.GJ-01-KB-0244 to the extent of 20%. As such, respondent No.1 and 2 being owner and insurer of Truck No.GJ-07-X-3919 and respondent No.3 and 4 being owner and insurer of Car No.GJ-01-KB-0244 are jointly and severally liable for the payment of compensation.

15. In view of aforesaid discussion, this Tribunal is of considered opinion that petitioner is held entitled for the compensation of **Rs.2,09,000/- (Rupees: Two Lakh Nine Thousand Only)** along with proportionate costs and simple interest at the rate of 9% per annum from the date of petition till its realization

to be paid by respondent Nos.1 to 4 jointly and severally. Hence, issue no.2 is decided in **Affirmative** in the manner as above discussed.

Issue no. 3 :-

Having, decided issue no.1 and 2 in affirmative and in favour of petitioner, following final order is hereby passed.

FINAL ORDER

1- Present MACP is hereby **partly** allowed.

2- Petitioner is held entitled for the compensation of **Rs.2,09,000/- (Rupees:- Two Lakh Nine Thousand Only)** along-with proportionate costs and simple interest at the rate of 9% per annum from the date of petition till its realization to be paid by respondent nos.1 to 4 jointly and severally.

3- It is further directed that compensation amount shall be deposited directly into the bank account maintained by this Tribunal (detail given below) by RTGS or NEFT mode within one month. On such deposits being made, depositor shall submit a letter to the registry of this Tribunal enclosing copy of bank advice in prescribing form, as per which the deposit was made to the bank account of this Tribunal. Depositor shall also send a copy of payment advice to this Tribunal and shall serve a copy of the same on the claimant/s or their counsel as the case may be.

Name of Bank	Bank of Baroda, Lal Bungalow Branch, Jamnagar.
Account Number	58090100006648
Account Name	M/S. MOTOR ACCIDENT CLAIM TRIBUNAL
IFSC Code	BARB0LALJAM (Fifth Character from the beginning is zero)
MICR Code	361012008

4- It is further directed that after depositing the compensation amount, depositor shall communicate the factum of the deposit forthwith/expeditiously to this Tribunal with a copy to the beneficiaries.

5- It is further directed that depositor shall comply the directions given by Hon'ble Supreme Court in Bajaj Alliance General Insurance Co. Vs. Union of India, Writ Petition (s) (Civil) No. 534 of 2020 as well as directions given by Hon'ble High Court of Madras in Civil Misc. Appeal No.428 of 2016 decided on 11th March, 2016 titled as Divisional Manager, The Oriental Insurance Co. Ltd. Vs. Rajesh & Ors.

6- If compensation has been awarded and paid under section 140 of Motor Vehicle Act, than such amount of compensation shall be reduced from the amount of compensation awarded by this order.

7- On depositing the aforesaid amount of compensation, deficit Court fees, if any, be deducted there from and thereafter, from the remaining amount, **40%** shall be paid to the petitioner by direct transfer to the credit of the bank account of the petitioner (detail given below) by NEFT or RTGS after proper verification and thereafter, remaining **60%** of the compensation amount shall be deposited in the name of petitioner in a Nationalized Bank or in any Government Security of the choice of petitioner for a period of Five years keeping nomination clause with a condition that no loan or advance would be admissible, but the applicant would be entitled to get periodical interest that may accrue on the said F.D.R as per rules.

8- Aadhar Number, Pan Number and Bank account detail of petitioner as disclosed vide Ex.37 are as under.

Petitioner namely Diptee Himanshu Trivedi	
Aadhar Number	8009 1737 4203
Pan Number	AIQPT7459J
Name of Bank	IDBI Bank
Account Number	0699104000021191

9- The respondents shall pay costs of the petitioner and all the respondents shall bear their own costs.

10- Respondents shall follow the guidelines of Hon'ble Gujarat High Court in the case of Smt. Hansagauri Prafulchandra Ladhvani & Ors. V/s. The Oriental Insurance Company cited at 2007(2) GLH Page No.297, with regard to the Income Tax liability if any. If Income Tax at source has been deducted then Form 16-A of IT Act shall be provided to the petitioner/s on whose behalf the deduction has been made.

11- Award is directed to be drawn up accordingly

12- Authenticated copy of award is directed to be sent to the Insurance Company (if any) through e-mail.

13- Original R & P be send to record room after due compliance.

Pronounced and signed all the pages of this judgment today in the open Tribunal on this 26th April, 2023.

Manish R Chaudhary

Motor Accident Claim Tribunal (Aux.)

Date:- 26.04.2023

Jamnagar

Place:-Jamnagar

UIC No.GJ01592

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