



Received on : 13.10.2022
Registered on : 13.10.2022
Decided on : 27.09.2024
Duration : YY MM DD
01 11 17

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN),
GIR-SOMNATH AT VERAVAL.

M.A.C. PETITION NO. 48 / 2022

Exhibit : ____

Petitioner :-

Sarfaraj Alimahmad Bhadarka

Age : 31, Occ. : Driving

R/o. : Prabhas Patan, At : Ghanchivada.

VERSUS

Opponents :-

S.T. Bus No. GJ-18-Z-1804

1. Driver – Devabhai Hajabhai Kadchhaa
Age : 50, Occ. : Driving,
R/o : Kadachh, Tal./Dist. : Porbandar.

2. Owner – G.S.R.T.C.,
Summon through : S.T. Depo,
Veraval.

Tempo Travels No. GJ-11-TT-9476

3. Owner – Ibrahim Yusufbhai Malek,
Age : 40, Occ. : Transport,
R/o : Veraval, At : Miskin Society.

4. Insurance Co. – National Insurance Co. Ltd.
At : Veraval.

Appearance :-

Mr. M.G. Sikotra, Ld. Advocate for the claimant.

Opponent No.1 – Party-in-Person.

Mr. K.M. Abhani, Ld. Advocate for the opponent No.2.

Mr. A.A. Sutar, Ld. Advocate for the opponent No.3.

Mr. P.M. Kanabar, Ld. Advocate for the opponent No.4.

Claim For Compensation of Rs.30,00,000/-
U/s.166 Of The M.V. Act, 1988.

:: JUDGMENT ::

1. The applicant has preferred the present Claim Petition u/s.166 of Motor Vehicles Act for claiming compensation of Rs.30,00,000/- in respect of the injuries sustained by him in a motor vehicular accident, which occurred on 12.06.2022 along with costs and interest at the rate of 18% p.a. from the date of the claim petition till realization.

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

That on 12.06.2022, the applicant was going by driving Tempo Travels registration No. GJ-11-TT-9476 from Veraval towards Dwarka in slow motion in his proper side and reached on Mangrol-Chorvad road near the signboard of village Khodada at about 11:00 a.m, at that time opponent No.1 driver of S.T. Bus registration No. GJ-18-Z-1804 was coming from front by driving in full speed in rash and negligence manner, endangering to the human life in wrong side and dashed to the Temp Travels No. GJ-11-TT-9476, which was driven by the claimant and hence, the accident occurred and the claimant has sustained severe injuries. It is the case of the claimant that, the accident

took place on account of the rash and negligence driving on the part of the opponent No.2 S.T. Bus driver and on account of the injuries sustained by him, claimant has suffered future economic loss as well as actual loss of income and has also suffered pain, shock and suffering and has spent huge amount on medical treatment, special diet, transportation and attendant charges and therefore, under all eligible heads, the claimant has claimed in total Rs.30,00,000/- by way of compensation jointly and severally from the opponents.

3. The opponents were duly served with the notices. Opponent No.1 has appeared personally, while Ld. Advocate Mr. K.M. Abhani has appeared on behalf of the opponent No.2, Ld. Advocate Mr. A.A. Sutar has appeared on behalf of the opponent No.3 and Ld. Advocate Mr. P.M. Kanabar has appeared on behalf of the opponent No.4. The opponent No.2 has filed the written statement at Exh.19 denying all the contents of the claim petition including the negligence on the part of the driver and age, income, compensation claimed and injuries sustained by the applicant. The opponent No.2 has specifically contended that the applicant himself, who was driving the vehicle Tempo Travels is the sole author of the accident as he was driving in full speed in rash and negligence manner and dashed to the S.T. Bus and ultimately, opponent No.2 has prayed for dismissal of the claim petition against the said opponent.

3.1 The opponent No.3 has filed the written statement vide Exh.35 denying all the contents of the claim petition including the negligence on the part of the driver and age, income, occupation, compensation claimed and injuries sustained by the applicant. The opponent No.3 has specifically contended to reject the claim petition of

the applicant with cost and alternatively if the negligence of the vehicle Tempo Travels be determined then opponent No.3 has insured his vehicle with opponent No.4 insurance company and ultimately prayed to recover the claim amount from the insurance company and hence, opponent No.3 has prayed for dismissal of the claim petition against the said opponent.

3.2 The opponent No.4 has filed the written statement at Exh.21 denying all the contents of the claim petition including negligence on the part of the driver of Tempo Travels, age, income and injuries of the claimant and the amount claimed by the applicant under various heads. It is contended that in the alleged accident, another vehicle S.T. Bus No. GJ-18-Z-1804 is also involved and the driver of the said bus was driving at a very excessive speed in rash and negligent manner as a result of which accident is question was happened. Ultimately, the opponent No.4 has prayed for dismissal of the claim petition with costs.

4. On behalf of the parties, the following oral as well as documentary evidences are produced :-

Oral Evidence Produced by the Applicant :-

Exhibit	Particulars of Document
Exh.37	Affidavit of the applicant.

Documentary Evidence Produced by the Applicant :-

Exhibit	Particulars of Document
41	Copy of FIR.
55	Copy of Panchanama of the place of accident.
42	Copy of Medical certificate issued by civil hospital, Mangrol.
43	Copy of Medical certificate issued by Agasthya multi-specialty hospital, Junagadh.
44	Copy of R.C. Book of the Tempo Travels.

45	Copy of Insurance policy of the Tempo Travels.
46	Copy of Form No.-54.
47	Copy of Charge-sheet.
48	Copy of indoor card of the G.G. hospital, Jamnagar.
49	Copy of certificate issued by G.G. hospital, Jamnagar.
50	Copy of OPD record of the G.G. hospital, Jamnagar.
51	Disability certificate.
52	Consolidated medical bills.

5. In view of the pleadings of the parties, the following issues have been framed at Exh.28 for determination of this petition :-

ISSUES :-

1. Whether claimant proves that the injured sustained injuries on account of rash and/or negligent 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 opponent/opponents?
3. What order and award?

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

FINDINGS :-

1. In the affirmative – 100% negligence on the part of the driver of S.T. Bus No. GJ-18-Z-1804 i.e. opponent No.1 for causing the accident.
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. M.G. Sikotra for the applicant, while learned advocate Mr. K.M. Abhani for the opponent No.2, learned advocate Mr. A.A. Sutar for the opponent No.3 and learned advocate Mr. P.M. Kanabar for the opponent No.4. The opponent Nos.1 has appeared Party-in-Person and there was no submission on behalf of him at the time of hearing.

8. Learned advocate Mr. M.G. Sikotra for the applicant has submitted that, on the basis of the documentary evidence produced by the applicant, his deposition and the manner in which the accident occurred i.e. the S.T. Bus driver came on the wrong side by driving the said vehicle rashly and negligently and dashed the S.T. Bus with the Tempo Travels. The applicant has proved that, the accident took place on account of sheer rash and negligent driving on the part of the opponent No.1 driver of S.T. Bus and there was no negligence on the part of the driver of Tempo Travels i.e applicant. He has further submitted that, complaint of the so called offence is registered against the driver of S.T. Bus and at the end of investigation, I.O. has filed the charge-sheet against S.T. Bus driver. *Per contra*, learned advocate Mr. K.M. Abhani for the opponent No.2 has submitted that, driver of Tempo Travels i.e. claimant himself was driving rashly and negligently and there was a head on collision between both the vehicles involved in the accident and hence, in view of the same and decision of the Hon'ble Apex Court in the case of ***Bijoy Kumar Dugar Vs. Bidyadhar Dutta reported in AIR 2006 SC 1255***, the claimant, who is driver of Tempo Travels may be held liable 50% responsible for causing of the accident. Whereas, Ld.

Advocate Mr. A.A. Sutar for the opponent No.3 has argued to reject the claim petition of the applicant with cost and alternatively if the negligence of the vehicle Tempo Travels be determined then opponent No.3 has insured his vehicle with opponent No.4 insurance company and ultimately prayed to recover the claim amount from the insurance company. While, Ld. Advocate Mr. P.M. Kanabar for the opponent No.4 has submitted that, in the alleged accident, another vehicle S.T. Bus No. GJ-18-Z-1804 is also involved and the driver of the said S.T. Bus was driving at a very excessive speed in rash and negligent manner as a result of which accident in question was happened and also the offence of the said accident is registered against him and he was charge-sheeted accordingly.

9. In this matter, as per deposition of the applicant at Exh.37, on 12.06.2022, the applicant was going by driving Tempo Travels registration No. GJ-11-TT-9476 from Veraval towards Dwarka in slow motion in his proper side and reached on Mangrol-Chorvad road near the signboard of village Khodada, at about 11:00 a.m, at that time, opponent No.1 driver of S.T. Bus registration No. GJ-18-Z-1804 was driving in full speed in rash and negligence manner, endangering to the human life in wrong side and dashed to the Temp Travels No. GJ-11-TT-9476, which was driven by the claimant and hence, the accident occurred and the claimant has sustained severe injuries. That the accident took place on account of the rash and negligent driving on the part of the opponent No.1 S.T. Bus driver. In the cross-examination of the applicant by the learned advocate for the opponents, the applicant has stated that, at the time of accident, he was driving the Tempo Travels in his side and S.T. Bus came from front in full speed and dashed to the Tempo Travels i.e. head on collision.

10. In this matter, driver of the S.T. Corporation i.e. opponent No.1 Devabhai Hajabhai Kadachha has filed the deposition vide Exh.57, wherein, he has specifically denied the accident on account of his rash and negligence driving. He has submitted the averments in corroboration to his written statement. Ld. Advocate for the claimant has cross-examined him, wherein, he has admitted the facts that, the offence is registered against him and after conclusion of the investigation, investigating officer has filed the charge-sheet against him. He has admitted that, S.T. Corporation has initiated departmental proceedings against him and ordered to recover the damages caused to the S.T. Bus.

10.1 It is also pertinent to note that, though the notices were duly served upon the opponents, they have remained absent and have not stepped into the witness box to rebut the evidence led by the applicant except the driver of S.T. Corporation.

11. In support of his deposition, the applicant has produced the copies of the complaint at Exh.41, panchnama of the place of the accident at Exh.55, Form No.54 at Exh.46, charge-sheet at Exh.47 and medical documents at Exhs.42, 43, 48 to 52. On perusal of the complaint at Exh.41, it transpires that complaint has been filed against the opponent No.1 S.T. Bus driver by the claimant, who is driver of Tempo Travels, wherein, he has categorically mentioned that, at the place of the accident, one S.T. Bus came suddenly from the opposite side after overtaking one vehicle and dashed with the Tempo Travels of the complainant and sustained injuries to the complainant as well as passengers of the Tempo Travels. That since, the accident occurred due to rash and negligent driving on the part of S.T. Bus driver, necessary action be taken against the said driver. Moreover, perusing the panchnama of the place of

accident at Exh.55, it appears that, both the alleged vehicles were found on the accidental spot in damaged condition and fresh mark of tyre were found on the spot. Looking to the charge-sheet at Exh.47, it appears that, driver of S.T. Bus was driving in full speed in rash and negligent manner and dashed the bus to the Tempo Travels i.e head on collision as a result complainant and the passengers of the Tempo Travels sustained injuries. On perusal of the medical documents produced at Exhs.42, 43, 48 to 52, it appears that, claimant sustained fracture injuries including abrasion and sustained 80% disability on account of the injuries sustained by him in the vehicular accident.

12. So far the negligence is concerned, Ld. Advocate appearing on behalf of the opponent No.2 - S.T. Corporation has submitted that, it is head on collision and therefore, contributory negligence be considered for the present applicant as he was the driver of the Tempo Travels No. GJ-11-TT-9476 owned by opponent No.3.

13. So far the above submission is concerned, if we go through the panchnama of the place of accident, which has been admitted by the S.T. Corporation, it reveals that, though it is head on collision but offending S.T. Bus has come on wrong side of the road. It also reveals from the panchnama that, Tempo Travels was on his proper side not only this, if we go through the deposition of the driver of the offending S.T. Bus, he also admitted during his cross-examination that, S.T. Corporation has initiated departmental proceedings against him, not only this, S.T. Corporation has also held responsible his driver for the accident and have also recovered the damages from the driver of the S.T. Bus No. GJ-18-Z-1804. Conduct of the S.T. Corporation, itself make clear that, they have admitted the negligence of its driver. Considering all these things

and considering the other documents on record, after conclusion of the investigation, investigating officer has filed the charge-sheet against the driver of S.T. Bus. It cannot be said that, it is the case of composite negligence and therefore for the alleged accident, way on which accident took place and narration in panchnama about the offending vehicles, makes it clear that, only and only driver of the S.T. Bus was driving his bus and rash and negligent manner and therefore, the accident in question was occurred. Hence, in view of the above, it is proved that the accident occurred only on account of the rash and negligent driving on the part of the driver of S.T. Bus. No. GJ-18-Z-1804 i.e the opponent No.1 and there was no negligence on the part of the driver of the Tempo Travels No. GJ-11-TT-9476 i.e. claimant and in the said accident the applicant has sustained injuries as per the medical certificate and hence, I answer, issue No.1 in the affirmative.

ISSUE No.2.

14. I have heard learned advocate Mr. M.G. Sikotra for the applicant, while learned advocate Mr. K.M. Abhani for the opponent No.2, learned advocate Mr. A.A. Sutar for the opponent No.3 and learned advocate Mr. P.M. Kanabar for the opponent No.4. The opponent Nos.1 has appeared Party-in-Person and there was no submission on behalf of him at the time of hearing.

15. Learned advocate of the applicant Mr. K.M. Abhani has submitted that, at the time of the accident, the applicant was earning Rs.15,000/- per month by doing the work of driving and hence, considering the income of the applicant at least Rs.30,00,000/- per annum due to the injuries sustained by him and medical evidence on

record be awarded to the applicant under this petition. *Per contra*, learned advocate for the opponents have submitted that, the applicant has not produced any evidence to his alleged income and has also failed to prove that, there is loss of earning to the applicant, due to injury sustained by him, in the accident and hence, the applicant is not entitled to any compensation under the head of future economic loss. In a nutshell, learned advocate for the opponents have requested to award reasonable amount towards transportation, attendant charges, nutritious food etc.

LOSS OF FUTURE INCOME :

[a] AGE :-

16. In the claim petition and deposition at Exh.37, the applicant has stated that, at the time of the accident, he was 31 years old and in support of his say, considering the Adhar card and Pan card of the applicant vide Mark-5/4 & 5/5 respectively, wherein the date of birth of the applicant is mentioned 14.07.1991. In this matter the accident has taken place on 12.06.2022 and hence, at the time of the accident, the applicant was 31 years old and hence, the age of the applicant is considered 31 years at the time of the accident for computation of compensation under the head of future economic loss.

[b] INCOME :-

17. So far as the income of the injured at the time of the accident is concerned, in this matter, the applicant has deposed on oath at Exh.37 that, at the time of the accident, he was earning Rs.15,000/- per month by doing the work of driving.

17.1 In support of the claim, the applicant has not produced any evidence of income and he has also admitted in his cross-examination

that, he has not produced any evidence to show his income. Applicant voluntarily stated in his cross-examination that, he was doing the work of driving at the time of accident and in support of his say, he has produced the driving license. However, in absence of any evidence of income, looking to the nature and work of the applicant, if minimum wages for the skilled labour prevailing at the time of the accident for 30 days be considered as income of the applicant would be just and proper to award compensation to the applicant under the head of loss of future income. In this matter the accident occurred on 12.06.2022 and if we go through the minimum wages for skilled labour, which were prevailing at the time of the accident, it transpires that, during 01.04.2022 to 30.09.2022, the approved Minimum Wages by the Government for skilled labour was Rs.11,020/- for 30 days/month. Hence, in view of the aforesaid prevailing minimum wages, approved by the Government, for skilled labour, on the date of the accident, the income of the applicant can be considered at Rs.11,020/- per month, at the time of the accident, as loss of future income, for awarding compensation to the applicant and it would be just and proper to assess income of the applicant at Rs.11,020/- per month and since the applicant was 31 years old, at the time of the accident, as per the decision of the Hon'ble Apex Court reported in **2017 ACJ 2700** in the case of **National Insurance Co. Vs. Pranay Sethi**, future prospects @40% is required to be awarded to the applicant as he was self employed and below the age of 40 years and hence, the total prospective income of the applicant would come Rs.15,430/- per month for just compensation.

[c] MULTIPLIER :-

18. So far as the multiplier is concerned, as held herein above, the applicant was 31 years old at the time of the accident and falls within

the age group of 31-35 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 16.

[d] DISABILITY :-

19. The applicant has produced his disability certificate issued by Dr. Pravin M. Vainsh at Exh.51, wherein, the doctor has opined that the applicant has sustained permanent partial disability of 80%. However, claimant has passed the pursis vide Exh.40, declaring that, he has no objection, if 50% disability is to be counted by the Ld. Tribunal, while learned advocates for the opponent Nos.2 and 4 have endorsed on the said pursis that, they also have no objection, if 50% permanent partial disablement, body as a whole of the applicant, be counted and therefore 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 50% for just compensation.

**[e] CALCULATION OF COMPENSATION UNDER THE
HEAD OF FUTURE ECONOMIC LOSS:-**

20. As stated above, considering the income of the applicant at Rs.15,430/- per month and considering 50% disability and applying the multiplier of 16 as the applicant was 31 years old at the time of accident, the future loss of income would be Rs.14,81,280/- (Rs.15,430/- x 12 x 50% disability x 16 multiplier) and hence, Rs.14,81,280/- is awarded to the applicant under the head of future economic loss.

PAIN, SHOCK AND SUFFERING:-

21. In this matter, the applicant has deposed on oath at Exh.37

wherein, he has stated that, he has sustained serious injuries and permanent partial disablement. That on account of the injuries sustained by him, he was treated in civil hospital at Mangrol and thereafter he was admitted in Agastya multispecialty hospital, Junagadh from 12.06.2022 to 18.06.2022. Thereafter, applicant was admitted at G.G. Hospital, Jamnagar as an indoor patient from 17.08.2023 to 29.08.2023. That he had to take rest for a long time and has also spent a huge amount for special diet, transportation and attendant charges and on account of the injuries, sustained by him, he has suffered pain, shock and suffering.

22. In support of his deposition, the applicant has produced the copies of medical documents at Exhs.42, 43, 48 to 52 showing treatment taken by him in the said hospitals and has produced the disability certificate issued by Dr. Pravin Vainsh, (M.S. Ortho.) at Exh.51 for multiple fracture injuries sustained by him. Hence, in view of the injuries sustained by the applicant, treatment taken by him and medical evidence on record, the applicant is awarded Rs.15,000/- towards pain, shock, suffering and considering the transportation bills of Rs.21,000/- at Exh.52, this Tribunal is of the view to award Rs.35,000/- lumpsum towards the attendant charges, transportation charges and special diet.

ACTUAL LOSS OF INCOME :-

23. The applicant has claimed an amount under the head of actual loss of income and has produced the medical documents at Exhs.42, 43, 48 to 52 and from the said evidence, it appears that the claimant has sustained multiple fractures and has also taken treatment as an indoor patient in the aforesaid hospital. Considering the said facts, it becomes clear that, claimant must not have worked for about three months and, therefore, he is entitled for Rs.33,000/- towards the actual loss of income.

MEDICAL EXPENDITURE:-

24. The applicant has stated in the deposition that, he has spent a huge amount for his medical treatment and has produced the consolidated medical bills and receipts worth Rs.154,000/- at Exh.52 and the same is admitted by the other side, hence, considering the medical bills produced by the applicant, permanent partial disablement to the injured, injury sustained by the injured and treatment taken by him, it would be just and proper to award Rs.1,54,000/- to the injured under the head of medical expenses. In view of above the applicant is entitled for following amount as compensation:-

Future loss of income	Rs.14,81,280/-
Pain , Shock, Suffering,	Rs. 15,000/-
Special Diet, Attendant and Transportation charges	Rs. 35,000/-
Actual Loss of Income	Rs. 33,000/-
Medical expenses	Rs. 1,54,000/-
Total Compensation	Rs.17,18,280/- Rs.17,18,300/-

Liability Issue:-

25. As held in issue No.1 the incident in question took place on account of rash and negligent driving on the part of opponent No.1 i.e. driver of S.T. Bus No. GJ-18-Z-1804 and the opponent No.2 was the owner of the said S.T. Bus at the time of incident as per the record and hence, the opponent Nos.1 to 2 are jointly and severally liable to pay the amount of compensation to the applicant. In view of the above, the claim of the applicant against the opponent No.3 who was the owner and opponent No.4, who was the insurer of Tempo Travels No. GJ-11-TT-9476 at the time of the accident, requires to be dismissed and hence, the claim of the applicant is dismissed against the opponent Nos.3 and 4.

26. The applicant has asked for interest at the rate of 18% p.a, 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. Vs. 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. Hence, I answer, Issue No.2 accordingly.

Issue No.3 :-

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

:: O R D E R ::

The claim petition is hereby partly allowed against the opponent Nos.1 & 2.

The claim petition is hereby dismissed against the opponent Nos. 3 & 4.

The claimant is entitled to recover an amount of **Rs.17,18,300/- (Rupees Seventeen Lacs Eighteen Thousand Three Hundred Only)** with the proportionate costs and with interest at the rate of 9% per annum, from the date of the claim petitions, till realization, from the opponent Nos.1 & 2 jointly and severally.

The opponent Nos.1 & 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 the 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 :-

Bank & Branch Name :	State Bank of India, Satta Bazar, Veraval.
Account Holder Name :	Motor Accident Claim Tribunal Aux., Veraval.
Account No. :	40745290716
Branch Code :	60050
IFSC Code :	SBIN0060050
MICR No. :	362002052

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 opponent Nos.1 & 2 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 opponent Nos.1 & 2 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 costs and to pay the costs of the applicant.

Award be drawn accordingly.

Pronounced in the open Tribunal today on this 27th day of **September, 2024.**

Date : 27.09.2024.

Place: Veraval.

(Pratapdan S. Gadhavi)
Chairman, (GJ00440)
M.A.C. Tribunal - Main,
Gir-Somnath @ Veraval.