



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 542 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE MOOL CHAND TYAGI

Approved for Reporting		
Yes		No

YASIN YAKUB TEKA

Versus

SANJAYKUMAR BHUPATSINH RATHOD & ORS.

Appearance:

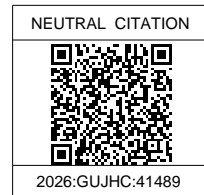
NISHIT A BHALODI(9597) for the Appellant(s) No. 1
 MR VC THOMAS(5476) for the Defendant(s) No. 2,4
 RULE NOT RECD BACK for the Defendant(s) No. 3
 RULE SERVED for the Defendant(s) No. 1

CORAM:HONOURABLE MR.JUSTICE MOOL CHAND TYAGI

Date : 02/07/2026

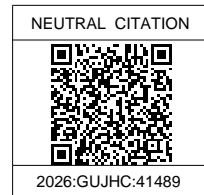
JUDGMENT

1. The captioned appeal has been preferred against the impugned judgment and award dated 07.10.2021 passed by the learned Motor Accident Claims Tribunal (Main), Panchmahals at Godhra in M.A.C.P. No. 231 of 2019, whereby the learned Tribunal had partly allowed the Claim Petition and awarded a sum of Rs.54,666/-, along with interest at the rate of 9% per annum, from the date of filing of the claim petition till its realization, as compensation. The learned Tribunal has deducted 70% of the total awarded amount on account of self-negligence of the claimant/appellant herein.



2. The succinct facts, which led to the filing of the captioned appeal, as narrated in the Claim Petition are summarized as under:-

- i. On 26.08.2012, original claimant/appellant herein - Mr. Yasin Yakub Teka was driving a luxury bus bearing registration No.GJ-20-T-9603 from Godhra to Morwa. When he reached near the place of the accident, original opponent No.3/respondent No.5 herein (deleted vide Exh.10) came by driving one trailer bearing registration No.RJ-14-GC-6546 in a rash and negligent manner and at an excessive speed and dashed with the luxury bus driven by the claimant/appellant herein, thereby causing the vehicular accident. The original claimant/appellant herein sustained grievous injuries in the said vehicular accident.
- ii. Therefore, the original claimant/appellant herein preferred the Claim Petition before the learned Tribunal, seeking compensation on account of the injuries sustained in the vehicular accident.
- iii. Having been served with the notices/summons of the Claim Petitions, the United India Insurance Company (Insurer of both vehicles involved in the accident is same) filed its Written Statement, thereby denying the averments made in the Claim Petition, and prayed for dismissal of the Claim Petition.



- iv. Having considered the submissions advanced by the learned counsels for the respective parties and having regard to the evidence available on record, the learned Tribunal had partly allowed the Claim Petition and awarded a sum of Rs.54,666/-, along with interest at the rate of 9% per annum, from the date of filing of the claim petition till its realization, as compensation. The learned Tribunal has deducted 70% of the total awarded amount on account of self-negligence of the claimant/appellant herein.
- v. Being aggrieved and dissatisfied with the impugned judgment and award, the original claimants/appellants herein have preferred the captioned appeal on ground of deduction of 70% of the awarded amount on account of the self negligence of the claimant/appellant herein, as well as quantum.

3. Heard learned counsels for the parties.

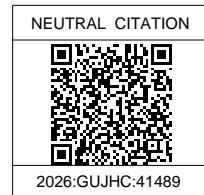
4. At the outset, Mr. Nishit A Bhalodi, learned counsel appearing on behalf of the original claimant/appellant herein vehemently argued that the learned Tribunal has erroneously deducted 70% of the awarded amount on account of self-negligence of the claimant/appellant herein. He contended that the risk of the claimant/appellant herein, who was the driver of the luxury bus was duly covered under the insurance policy, as an additional premium was charged by the Insurance Company. Therefore, he argued that 70% of the awarded amount ought not to have been deducted by the learned Tribunal. In support of



his contentions, learned counsel for the claimant/appellant herein has placed reliance upon the judgment rendered by the full bench of this High Court in the case of **Valiben Laxmanbhai Thakore (Koli) Wd/ O Late Laxmabhai Ramsingbhai Thakore (Koli) v. Kandla Dock Labour Board** reported in **2021 (0) AIJEL-HC 243219**. Having placed reliance upon the aforesaid judgment, learned counsel for the original claimant/appellant herein contended that the deduction of 70% of the awarded amount on account of self-negligence of the claimant/appellant herein is erroneous, as such, he prayed for modification of the impugned judgment and award.

5. Learned counsel for the original claimant/appellant herein further contended that at the time of the vehicular accident, the claimant/appellant herein was aged about 29 years, however, the learned Tribunal had not considered the future prospects of the claimant/appellant, therefore, he prayed that 40% of the monthly income is required to be added on account of his future prospects. In support of his contentions, learned counsel for the original claimant/appellant herein has placed reliance upon the judgment rendered by the Hon'ble Apex Court in the case of the **National Insurance Company Ltd. Vs. Pranay Sethi** reported in **2017 (16) SCC 680**. Having placed reliance upon the aforesaid judgment, he prayed for modification of the impugned judgment and award.

6. Per contra, Mr. V.C. Thomas, learned counsel appearing on behalf of the respondent Nos.2 & 4 herein – United India Insurance Co. Ltd, vehemently submitted that the learned Tribunal, after considering the evidence on record, has rightly deducted 70% of the awarded amount



on account of the self-negligence of the claimant/appellant himself. He further submitted that the learned Tribunal had award just compensation under all the heads, as such, he argued that there is no infirmity in the impugned judgment and award, and submitted that the captioned appeal being devoid of any merits, is liable to be dismissed.

7. Having considered the submissions of the learned counsels for the parties and having perused the material available on record, it is to be noted that the original claimant/appellant herein have preferred the captioned appeal on ground of deduction of 70% of the awarded amount on account of the self negligence of the claimant/appellant herein, as well as quantum.

8. So far as the quantum is concerned, the learned Tribunal has assessed the monthly income of the deceased as Rs.4,000/- per month. The said monthly income assessed by the learned Tribunal is not under challenge. It is also not in dispute that at the time of the vehicular accident, the claimant/appellant herein was aged about 29 years, therefore, in view of the ratio of the judgment rendered by the Hon'ble Apex Court in the case of **Pranay Sethi** (supra), the notional monthly income of the claimant/appellant is required to be enhanced by 40% on account of his future prospects. Therefore, after adding 40% of the notional income to the monthly income of the claimant/appellant, the monthly income of the claimant/appellant would come to Rs.5,600/- (i.e, Rs.4,000/- plus 40% of Rs.4,000/-).

9. The learned Tribunal has considered the functional disability of the claimant/appellant at 17%. The same is not under challenge. Thus,



considering the functional disability at 17% and applying the multiplier of "17" as per age of the claimant/appellant herein, the Future loss of income would come to Rs.1,94,208/- (i.e., Rs.5,600 X 17% X multiplier of "17" X 12 months).

10. The learned Tribunal had awarded a sum of Rs.20,000/- under the head of Pain, shock & sufferings, a sum of Rs.7,500/- under the head of Special, diet, attendant & transportation charges, a sum of Rs.4,000/- under the head of Medical expenses and a sum of Rs.12,000/- under the head of Actual Loss of income. I am of the considered view that the compensation awarded by the learned Tribunal under the aforesaid heads is just and proper, as such, they are not required to be interfered with and are accordingly maintained.

11. Therefore, in view of the above discussion, the original claimants/appellants herein shall be entitled for the following amount of compensation:-

Sr. No.	Head	Amount in rupees.
1	Future Loss of Income.	1,94,208/-
2	Pain, Shock & Sufferings.	(+) 20,000/-
3	Special Diet, Attendant & Transportation Charges.	(+) 7,500/-
4	Medical Expenses	(+) 4,000/-
5	Actual Loss of Income	(+) 12,000/-
6	Total Compensation	2,37,708/-
7	Less : Compensation already awarded by the learned Tribunal vide its impugned	(-) 54,666/



	judgment and award.	
8	Enhanced amount of Compensation	1,83,042/-

12. Therefore, in view of the above discussion, the original claimant shall be entitled for an additional compensation to the tune of Rs.1,83,042/-. The learned Tribunal has awarded interest at the rate of 9% per annum from the date of filing of the Claim Petition till realization. The said rate of interest is maintained; accordingly, the original claimants shall be entitled to 9% of interest per annum on the additional amount of compensation from the date of filing of the Claim Petition till its realization.

13. The learned Tribunal had deducted 70% of the awarded amount on account of the self-negligence of the claimant/appellant herein. It has been argued by the learned counsel for the claimant/appellant that the risk of the driver is duly covered under the insurance policy. Perusal of the insurance policy transpires that the Insurance Company has charged a premium of Rs.50/- under the head of "WC to employee 2". The policy further shows that it is subject to the terms and conditions and IMT Endorsement Nos.21, 38, and 40. This Court finds it appropriate to reproduce IMT 40 of Indian Motor Tarriff Act, which reads as under: -

"IMT 40 Legal Liability to paid driver and/or conductor and/cleaner employed in connection with the operation of Motor vehicle.

(For buses, taxis and motorized three/four wheelers under commercial vehicles tariff)

In consideration of the payment of an additional



premium it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the insurer shall indemnify insured against his legal liability under the Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this endorsement, the Fatal Accidents Act, 1855 or at Common Law in respect of personal injury to any paid driver and/or conductor and/or cleaner whilst engaged in the service of the insured in such occupation in connection with the vehicle insured and will in addition be responsible for all costs and expenses incurred with its written consent The premium to be calculated and paid while taking insurance of the vehicle concurred at the rate of Rs. 25/- per driver and/or conductor and/or cleaner. Provided always that:

(1) this Endorsement does not indemnify the insured in respect of any liability in cases where the insured holds or subsequently effects with any insurer or Group of Underwriters a Policy of Insurance in respect of liability as herein defined for his general employees.

(2) the insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations.

(3) the insured shall keep a record of the name of each driver cleaner conductor or person employed in loading and/or unloading and the amount of wages salary and other earnings paid to such employees and shall at all times allow the insurer to inspect such record.

(4) in the event of the Policy being cancelled at the request of the insured no refund of the premium paid in respect of this Endorsement will be allowed.

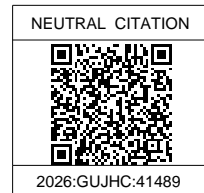
Subject otherwise to the terms exceptions conditions



and limitations of this Policy except so far as necessary to meet the requirements of the Motor Vehicles Act, 1988.”

14. Thus, in view of IMT 40, the risk of the claimant/appellant herein, who was the driver of the luxury bus, is covered under the insurance policy. In case of self negligence, if the Insurance Company has charged an additional premium to cover the risk of the driver, it shall be held liable. The same issue came for consideration in **Valiben Laxmanbhai Thakore (Koli)** (supra), wherein the full bench of this High Court at para Nos. 13 & 15 had observed as under :-

“13. Thus, when the owner of a vehicle pay additional premium and same is accepted by the Insurance Company, liability of the Insurance Company gets extended under the Motor Vehicles Act. Section 147 of the Act clearly prescribes for statutory liability to cover risk of paid Driver and Conductor under the Insurance Policy, which is a matter of contract. On payment of such additional premium by the owner, the liability of the owner shifts upon the Insurance Company. Thus, the risk of paid Driver and Conductor would be covered under the Insurance Policy. Only when the additional premium is not paid, liability would be as per the Employees Compensation Act, 1923 and in such cases, compensation would be computed as prescribed under the Act which is limited to the extent provided under provisions of the Act. However, when owner pays additional premium to cover the legal liability of his paid driver and conductor to the Insurance Company, as such, the Insurance Company is enlarging the scope for unlimited liability for payment of compensation, when additional premium is accepted. The liability of the Insurance Company gets extended and it has no right to raise issue of self



negligence or otherwise of the such class of the driver of the Insured vehicle. By accepting additional premium as per the IMT 28, the Insurance Company expressed its willingness to extend its liability under the Clause of Legal Liability to the Paid driver and conductor as envisaged under Section 147 of the Act. Thus, in our opinion, Insurance Company has no legal right to avoid its legal liability under the indemnity clause arising from the contract of insurance towards the insured – owner of such classes of vehicles.

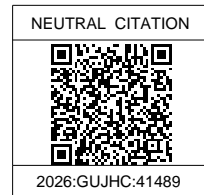
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15. In our opinion, by accepting additional premium, the Insurance Company indemnifies the owners for paid Driver and / or Conductor and risk of Driver / Conductor is covered under it. Upon death or injury caused to the paid Driver and / or Conductor, the Insurance Company would be liable to satisfy such claim irrespective of the self negligence. Thus, the observations made by the Division Bench in the case of Saberabibi Hisammiya Umarvmiya & Anr (supra) lays down the correct law. Reference is thus, answered accordingly.”

15. Thus, on considering the above provision of law under the Indian Motor Tarriff Act and the findings rendered in the aforesaid judgment; which are found aptly applicable in the present case, this court is of the view that the learned Tribunal has committed a grave illegality by deducting 70% of the awarded amount on account of self-negligence of the claimant/appellant herein.

16. Thus, in view of the above discussion, the impugned judgment and award stands modified to the aforesaid extent, and accordingly, the



captioned appeal preferred by the original claimant/appellant herein stands partly allowed.

17. The Insurance Company, viz., United India Insurance Company is directed to satisfy the award, including the additional amount of compensation along with interest, within six weeks from the date of receipt of copy of this order. Upon depositing the said amount, the learned Tribunal shall disburse the entire awarded amount to the original claimant (deducting deficit Court fee, if any), after due verification.

18. Statutory amount, if any, lying deposited with the Registry of this Court shall be transmitted to the learned Tribunal concerned forthwith. Records & Proceedings, if any be sent to the learned Tribunal concerned. No order as to costs.

19. Pending application, if any, stands disposed of, accordingly.

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(MOOL CHAND TYAGI, J)