**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/FIRST APPEAL NO. 582 of 2013**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

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| Approved for Reporting | Yes | No |
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SASHIKANT MANUBHAI BHATTI (DECEASED) & ORS.

Versus

MINABEN PRAKASHBHAI BHATTI & ANR.

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Appearance:
DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESTENTATIVES for the Appellant(s) No. 1
MR.HIREN M MODI(3732) for the Appellant(s) No. 1.1,1.2,1.3
MR VIBHUTI NANAVATI(513) for the Defendant(s) No. 2
RULE SERVED for the Defendant(s) No. 1

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CORAM:**HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

**Date : 12/01/2026**

**ORAL JUDGMENT**

1. The captioned appeal is preferred against the impugned judgment and award dated 12.06.2012 passed by the learned Motor Accident Claims Tribunal (Main), Ahmedabad (Rural) in M.A.C.P. No. 1019 of 2007, whereby the learned Tribunal has dismissed the petition on the ground that the claimant himself was negligent in causing the accident.

2. The succinct facts, which lead to the filing of the captioned appeal are summarized as under :-

i. The appellant – original claimant – Shashikant Manubhai Bhatti filed claim petition under Section 163-A of the Motor Vehicle Act, 1988 for seeking the compensation to the tune of Rs.6,00,000/- on account of injury sustained by him in the vehicular accident, which has occurred on 10.07.2007 at about 11.00 a.m.

ii. On 10.07.2007, at about 11.00 a.m., the original claimant was going on scooter of his relative bearing registration No. GJ-04-AD-9956 towards Sport Complex Road from Bhavnagar Jawajarnagar, in the meantime, suddenly donkey came on the road and dashed with the scooter due to which, the said scooter got slipped down as a result of which the original claimant sustained serious injuries.

iii. The notices/summons of the Claim Petition were duly served upon the opponents. The opponent no.1 has chosen not to appear before the learned Tribunal, however, the opponent no.2-Insurance Company filed Written Statement vide Exh.14, denying the contents of the claim petition and prayed for dismissal of the claim petition.

iv. In order to prove his claim, the original claimant has filed his affidavit at Exh.27. He has also examined Dr.Balkishan N Desai at Exh.28, Dr.Nalin M.Shat at Exh.29, Dr.Vijay Raje at Exh.30, Dr.Dinesh K.Shah at Exh.31. He also also proved on record the copy of FIR vide Exh.54, copy of panchnama of place of accident vide Exh.55, Discharge Summary vide Exh.34, Medical Bill vide Exh.35, CT Scan Report vide Exh.36, Report of X-ray of Chest vide Exh.37, Injury Certificate vide Exh.38, Medical Case Paper vide Exh.39, Medical Case Papers vide Exh.40,. C.T.Scan Report vide Exh.41, Prescription vide Exh.42, C.T.Scan Report vide Exh.43 and Medial Bills vide Exh.44 and insurance policy of Vehicle No. GJ-04-AD-9956.

v. Having considered the pleadings, evidence and submissions of the parties, the learned Tribunal dismissed the claim petition on the ground that the claimant himself negligent for causing the accident.

vi. Being aggrieved and dissatisfied by the impugned judgment and award, the original claimant had preferred the captioned appeal, thereby, challenging the impugned judgment

and award. During the pendency of the appeal, the original claimant had expired. Therefore, his legal representatives were brought on record.

3. Heard learned advocates for the parties.

4. Mr. Hiren Modi, learned advocate for the claimants/appellants vehemently submitted that at the time of accident, the original claimant was riding the scooter and suddenly, a donkey came on the road, and therefore, the scooter got slipped. He further submitted that the claim petition was filed under the provisions of Section 163-A of the Act, therefore, the negligence is not required to be looked into. However, the learned Tribunal, considering the fact that the original claimant himself negligent, dismissed the claim petition. He further submitted that the under Section 163-A of the Act, negligence is not required to be seen. In support of his contention, learned advocate for the claimants/appellants herein placed the reliance upon the judgment of Hon'ble Apex Court rendered in the case of **United India Insurance Co. Ltd. V. Sunil Kumar & Anr. Reported in 2017 (0) AIJEL-SC 61480.**

5. Learned advocate for the claimants/appellants submitted that it is pleaded and proved on record that at the time of accident, the original claimant was working as a qualified Doctor and he was earning more than Rs.40,000/- per month, however, he restricted his income to the extent of Rs.40,000/-. He further submitted that at the time of accident, the original

claimant was aged about 53 years and he sustained neuro as well as ortho disability. He further submitted that he also examined Dr.Balkishan N Desai at Exh.28 to prove the neuro disability and he also examined Dr.Nalin M.Shah at Exh.29 to prove the physical disability on record. He further submitted that Dr.Balkishan N Desai has proved on record that the original claimant has sustained permanent functional disability of mind is 37% body as a whole while Dr. Nalin M. Shah has proved the functional disability of bone at 10% body as a whole. He further submitted that the Doctors have proved on record that the original claimant has sustained total disability 47% as body as a whole, but the functional disability was 100% as the original claimant was Doctor by profession and he lost the memory, therefore, the disability sustained by the original claimant had affected his income to the extent of 100%. He further submitted that the original claimants have also examined Dr.Dinesh Shah at Exh.31 and Dr.Vijay Raje at Exh.30 to prove the medial expenses. He further submitted that the Dr.Vijay Raje has proved that the original claimant has paid a sum of Rs.98,937 + 10% surcharge which comes to Rs.1,07,670/- as a medical expenses while the Doctor Dinesh Shah has proved that the original claimant has paid a sum of Rs.21,000/- on account of medical expenses. He further submitted that the vehicle was duly insured at the relevant point of time and the policy of the offending vehicle was proved at Exh.50. Therefore, the Insurance Company is liable to satisfy the award.

6. On the other hand, Mr.Vibhuti Nanavati, learned advocate appearing for the respondent no.2-Insurance Company vehemently submitted that there is no infirmity in the impugned judgment and award, as the original claimant himself negligent for causing the accident, and therefore, the learned Tribunal has rightly dismissed the claim petition. He further submitted that the captioned appeal is liable to be dismissed.

7. Having considered the submissions of the learned counsels for the parties and having gone through the record, it is to be noted that there is no dispute regarding the occurrence of accident, manner of occurrence of accident, age and occupation of the original claimant. The learned Tribunal has dismissed the claim petition on the ground of self-negligence of the original claimant, as at the time of accident, the original claimant was riding a scooter and he dashed with the donkey. The claim petition was filed under Section 163-A of the Act. Now, the issue is no more res-integra and the same has been settled by the Hon’ble Apex Court in the case of Sunil Kumar (supra), wherein the Hon’ble Apex Court has held that that in the claim petition filed under Section 163-A of the Act, the negligence is not required to be seen by the learned Tribunal while deciding the claim petition. Therefore, the learned Tribunal has committed illegality in dismissing the claim petition on the ground that the original claimant himself negligent for causing the accident, hence he is not entitled for compensation from his own insurance company of vehicle.

8. So far as quantum is concerned, it is proved on record that at the time of accident, the original claimant was working as a Doctor. He pleaded his income as Rs.40,000/- per annum. considering the year of accident and the occupation of the original claimant, I am of the considered view that the income of the original claimant is assessed at Rs.40,000/- per annum. Dr.Balkishan Desai, in his deposition at Exh.28 deposed that the claimant has sustaiened the neuro functional disability of 37%. Dr.Nalin Shah, in his deposition at Exh.29, deposed that the claimant has sustained the permanent impairment of 10%. Considering the nature of profession of the original claimant, I am of the considered view that the functional disability of the original claimant is determined at 50%. Thus, considering the functional disability at 50% and applying the multiplier of 11 as per second schedule of the Act, the future loss of income would come to Rs.2,20,000/- i.e. (Rs.40,000/- (50% of Rs.40,000/-) x 11). The original claimant has sustained grievous injuries. Therefore, a sum of Rs.5000/- is awarded under the head of pain, shock and suffering. The claimants have proved the medical bills on record. He has also examined the treating doctors. Dr.Vijay Raje has proved that he has paid the bill of Rs.1,07,670/- while Dr.Dijesh Shah proved that he has paid the bill of Rs.21,000/-. Thus, the original claimants have proved that he has incurred total expense of Rs.1,28,670/- on medical. Hence, a sum of Rs.1,28,670/- is awarded under the head of medical expenses.

9. Thus, in view of the above discussion, the claimants/appellants shall be entitled for the following

compensation under the following heads:-

| Sr. No. | Heads | Amount Awarded in rupees. |
|---|---|---|
| 1 | Future Loss of Income | 2,20,000/- |
| 2 | Pain, Shock and Suffering | (+) 5,000/- |
| 3 | Medical Expenses | (+) 1,28,670/- |
| | **Total Compensation** | (=) **Rs. 3,53,670/-** |

10. Considering the fact that the accident occurred in the Year-2007 and having regard to the ration laid down by the Hon'ble Apex Court in the case of **Abati Bezbaruah V. Dy. Director General, Geological Survey Of India reported in 2003 3 SCC 148,** the claimants-appellants shall be entitled for the simple interest at the rate of 9% per annum from the date of the claim petition till realization.

11. In view of the above discussion, the captioned appeal stands allowed partly. The impugned judgment and award is set-aside. The claimants/appellants herein shall be entitled for total compensation of Rs.3,53,670/- along with interest at the rate of 9% per annum from the date of filing the petition till realization. The Insurance Company is directed to deposit the awarded amount along with interest, with the concerned learned Tribunal within a period of six weeks from today. Upon depositing the said amount of compensation, learned Tribunal shall disburse the entire awarded amount of compensation along with interest to the claimants/appellants

here in after deducting the deficit of Court fee, if any and after due verification.

12. If any amount is lying deposited in the captioned appeal with the Registry of this court, be transmitted to the concerned learned Tribunal. Records & Proceedings, if any, be sent back to the concerned learned Tribunal. No order as to costs.

13. Pending application, if any stands disposed of.

**(MOOL CHAND TYAGI, J)**

GIRISH

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: PARMAR GIRISH KANTILAL(HC00954), Principal Pvt Secretary, at High Court of Gujarat on 15/01/2026 13:14:02