

**(2010) 06 GUJ CK 0015**  
**In the Gujarat High Court**  
**Case No : First Appeal No. 1317 of 1986**

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|-----------------------------------|----|------------|
| Hemantkumar Manvanray Desai       | Vs | APPELLANT  |
| Abdul Ilmuddin Chauhan and Others |    | RESPONDENT |

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**Date of Decision :** 29-06-2010

**Acts Referred:**

**Citation :** (2010) 06 GUJ CK 0015

**Hon'ble Judges :** R.R. Tripathi, J

**Bench :** Single Bench

**Advocate :** MTM Hakim, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

Ravi R. Tripathi, J.—The appellant - original applicant is before this Court being aggrieved by judgment and award dated 27.12.1985 passed by the learned Member, Motor Accident Claims Tribunal (Main), Bharuch. The operative part of the judgment and order of the Tribunal reads as under:

- (1) The petitioner to recover Rs. 46,205/- (Rupees forty six thousand two hundred and five only) from opponents Nos. 1, 2 and 3 jointly and severally with an interest thereon at 6 per cent per annum from the date of the petition till the date of realization with proportionate costs but the liability of opponent No. 3 United India Insurance Company shall be to the extent of Rs. 15000/- and proportionate costs and interest thereon.
- (2) The rest of the claim of the petitioner stands dismissed with no order as to costs.
- (3) The petition stands dismissed against opponents Nos. 4, 5 and 6 with no order as to costs.
- (4) The opponents to bear their own costs.
- (5) The opponents Nos. 1, 2 and 3 are given three months time to deposit the

amount with this Tribunal.

(6) The petitioner shall invest the amount in excess of Rs. 8,000/- in any Nationalized Bank near to the place of his residence but the duration of investment shall be decided at the time of disbursement. However, the amount to be invested shall not include costs and interest. The petitioner shall not be entitled to withdraw the invested amount before investment period is over but shall be entitled to the interest over it as and when it falls due. The concerned Bank be informed to make a note of the same on the Fixed Deposit Receipt or Receipts and the Bank Books....

(7) The deficit court-fees, if any, be recovered from the amount deposited with this Tribunal.

2. The facts given rise to the present appeal as set out in the judgment and award are as under:

2.1 This petition has been filed by the injured who received injuries in a vehicular accident which took place on 11-3-1983 on the old National High Way No. 8 near village Andada. The vehicles involved in the accident are two autorickshaws. The petitioner was going in autorickshaw No. GRV 343, driven by the opponent No. 1, owned by the opponent No. 2 and insured by the opponent No. 3 and it dashed against another rickshaw. No. GRV 728, driven by the opponent No. 4, owned by the opponent No. 5 and insured by the opponent No. 6. The said rickshaw No. GRV 343 dashed with rickshaw No. GRV 728 from behind and that caused the accident.

3. Learned Advocate Mr. Hakim for the appellant vehemently submitted that the Tribunal has erred in holding only first rickshaw, in which the appellant-applicant was traveling and not holding second rickshaw which which it collided, negligent or responsible for payment of compensation. In this regard, he invited attention of the Court to the discussion in the judgment and award.

4. The Tribunal, after taking into consideration the evidence led before it, had framed the following issues:

1. Whether the applicant proves that the opponents Nos. 1 & 4 drove their autorickshaws bearing Nos. GRV 343 and GRV 728 respectively rashly and/or negligently and thereby caused injuries to the applicant?

2. What amount of compensation is available to the applicant and from whom?

3. What order and award?

4.1 The Tribunal recorded following findings to the aforesaid issues:

1. Yes regarding autorickshaw No. GRV 343. No regarding autorickshaw No. GRV 728....

2. Rs. 46,205/- from opponents Nos. 1, 2 and 3 jointly and severally but the liability of the opponent No. 3 shall be to the extent of Rs. 15,000/-

3. As per final order...

5. Learned Advocate for the appellant invited attention of the Court to paras-8, 9 and the conclusions drawn by the Tribunal in para-10. Learned Advocate read the aforesaid paras extenso. He submitted that the Tribunal has erred in holding that, "from all these previous statements, it can be seen that the theory of the second autorickshaw stopping for allowing some person to get down in the middle of the road is a subsequently got up one".

5.1 Learned Advocate for the appellant submitted that the Tribunal ought to have held that there was no material to record a finding to the effect that the story was got up one and it should have been appreciated that when there are two vehicles involved in an accident, may be that the vehicle which dashing from behind may be attributed larger share of negligence, but at the same time vehicle going ahead cannot be absolved from the liability arising from the negligence on account of sudden stoppage of the vehicle.

6. Taking into consideration the material which has come on record and the appreciation thereof by the Tribunal, wherein the Tribunal has observed that, "Moreover, from the claim petition itself, it is clear that a jeep car was coming from the otherside and that is why the second autorickshaw allowed down and at that time, the first autorickshaw was overtaking the second autorickshaw. It is difficult to understand the anxiety of the driver of the first autorickshaw to overtake the second autorickshaw on a road which is a Highway when a jeep car was coming from the otherside. A driver of a vehicle going ahead may have to slow it for many reasons and the vehicle going behind has to drive it cautiously, keeping some distance between the two vehicles and there should not be any overtaking without any signal from the vehicle going ahead or without taking proper precautions for the same", this Court finds that the findings recorded by the Tribunal does not warrant to be disturbed. In view of that, the impugned judgment and award if confirmed. The appeal fails and the same is dismissed.