IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1439 of 2022
With
R/FIRST APPEAL NO. 1450 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

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Approved for Reporting	Yes	No

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RAJESHBHAI ALIAS IGNASBHAI FRANCISBHAI MECWAN
Versus
VINUBHAI ISHWARBHAI PARMAR & ORS.

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Appearance:
MR VAIBHAV N SHETH(5337) for the Appellant(s) No. 1
RULE SERVED for the Defendant(s) No. 1,2,3

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Date : 11/02/2026

COMMON ORAL JUDGMENT

Since both these appeals are arising out of the same accident, they are being heard together and are being decided by this common judgment. The First Appeal No.1439 of 2022 arises out of MAC Petition No.230 of 2018 and the First Appeal No.1450 of 2022 arises out of MAC Petition No.606 of 2015.

1) Feeling aggrieved and dissatisfied with the judgment and award dated 16.12.2021, passed by learned Motor Accident Claims Tribunal (Aux.), Petlad, (hereinafter referred to as "the Tribunal" for short), in Motor Accident Claim Petition Nos.230/2018, the appellant – injured has filed First Appeal No.1439/2022 for enhancement of

compensation, whereas, the appellants – original claimants have filed First Appeal No.1450/2022 against the judgment and award dated 13.10.2021 passed by learned Motor Accident Claims Tribunal (Aux.), Anand, in Motor Accident Claim Petition Nos.606/2015 for enhancement of compensation under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" for short).

2) Heard Mr. Vaibhav N. Sheth, learned Advocate for the appellants – original Claimants in both the appeals. Though served, none appears for the respondents.

3) It is the case of the appellants that on 28.08.2015, at about 19:45 hours, the appellant and his brother Josefbhai were travelling on TVS scooter bearing No.GJ-06-FA-6333 and his brother was driving the scooter, at that time, one Dumper bearing No.GJ-23-W-2163 came with excessive speed and in rash and negligent manner and dashed with the scooter of the appellant. As a result, the appellant Rajeshbhai @ Ignasbhai Macwan and his brother Josefbhai Macwan got serious fracture injuries. In the said accident, due to fatal injuries sustained by Josefbhai, he died on the spot. Therefore, the appellants have filed MAC Petitions seeking compensation. After appreciating the evidence produced on record the learned Tribunal was pleased to partly allowed both the claim petitions.

FIRST APPEAL NO.1439 OF 2022

4) In First Appeal No.1439/2022, it is submitted that the Tribunal has erred in assessing monthly income of the appellant as Rs.20,000/-, whereas, he was earning Rs.20,812/- at the time of accident. Further, the Tribunal has also committed an error in assessing 5 % negligence on the part of deceased as the accident occurred due to sole

negligence on the part of driver of offending vehicle Dumper came on wrong side and dashed with the motorcycle of the appellants. Further, the Tribunal has committed error in not awarding any amount under the head of loss of future income and not adequately awarded compensation under the head of pain, shock and suffering. In such circumstances, he has prayed to enhance the compensation in First Appeal No.1439/2022.

5) After considering the submissions made by the learned counsel for the parties, it appears that the appeal is filed on two grounds: (i) quantum and (ii) disability. The Insurance Company has not filed any cross-objection. Therefore, the appeals required to be decided on the aspects of quantum and negligence. The occurrence of the alleged incident is not in dispute, and the involvement of the vehicle is also uncontested. Based on the documentary evidence, the Tribunal has concluded that the accident occurred on the right side of the white line on the road, which reveals that the accident took place in the middle of the road. After considering both oral and documentary evidence, the Tribunal found the driver of the dumper to be 95% negligent and the driver of the TVS scooter to be 5% negligent for causing the accident. The dumper was traveling from Bhavanipura to Rangaipura, while the TVS scooter was going in the opposite direction, from Rangaipura to Bhavanipura.

6) Regarding the income aspect is concerned, the appellant has filed an affidavit at Exh:26 that, as a result of the alleged accident, he sustained a serious fracture and was hospitalized at Karamsad Hospital, where he stayed for 7 days. At the time of the accident, he was 44 years old and employed as a Clerk at Don Bosco School, Vadodara, drawing a monthly salary of Rs. 22,000/-. To substantiate

his income, the appellant presented the deposition of Sanjaybhai K. Macwan, Clerk at Don Bosco High School, Vadodara at Exh:39. Mr.Macwan confirmed that he had been working as a Clerk at Don Bosco School since last 27 years and produced a certificate showing the salary paid to the appellant for the months of July, August, and September 2015, issued by the Principal of Don Bosco High School, Vadodara. The certificate marked as Exh:40 signed by the Principal. In cross-examination, Mr. Macwan admitted that the salary of employees was disbursed after receiving a grant from the DO Office and that the salary details were based on school records, over which he had no personal knowledge. He also acknowledged that he was unaware of how many days, the appellant was absent due to the injuries. The appellant resumed his duties with a fitness certificate, and his current gross salary is Rs. 36,966/-. Upon reviewing the certificate at Exh:40) issued by the Principal of Don Bosco High School, it is established that the appellant was paid a net salary of Rs. 20,812/- for the months of July, August, and September 2015. Considering the fact that the alleged accident took place in August 2015, the Tribunal rightly assessed the appellant's monthly income at Rs. 20,000/- and hence, does not require any interference in the aspect of quantum.

7) So far as disability is concerned, the appellant has produced a disability certificate at Exh:34, issued by Dr. Yogesh Parikh of Tulsi Hospital, Nadiad, which certifies 22% disability in the right upper limb. However, learned advocate for the appellant before the Tribunal filed a Pursis, declaring that the appellant is a government employee and has no objection if 5% disability for the entire body is considered, which was agreed upon by both parties, which does not require any interference of this Court.

8) So far future loss of income is concerned, the Tribunal considering the disability and other evidence, held that the appellant continued his employment, drawing a higher salary than his previous salary, and that there was no impact on his disability as a result of the accident. The appellant claimed that due to the disability, he could not be promoted and suffered a loss of future earnings. However, there is no evidence to support this claim of future earnings loss, nor any evidence to link the lack of promotion to the disability caused by the accident. The appellant did not show any impact on his earning capacity due to the disability. The disability certificate referred to a 22% disability in the right upper limb, not for the entire body. The percentage of disability may result in varying degrees of loss of earning capacity, depending on the nature of the job, profession, age, and other factors. In the case of a driver or a particular laborer, the functional loss of earning capacity might be higher than the percentage of permanent disability. In this case, the appellant's permanent disability of the limb could not be considered as a functional disability of the entire body, nor it could be assumed to result in a corresponding loss of earning capacity, as the disability did not prevent the appellant from continuing his work as a clerk in the school. Moreover, there was no evidence to establish that the appellant's failure to receive a promotion was due to the disability caused by the accident. In fact, the appellant did not suffer any economic loss as a result of the disability caused by the injury. Therefore, no compensation was awarded for future loss of income. Consequently, this Court finds no reason to interfere with the Tribunal's decision on this aspect.

9) Further, the Tribunal has properly awarded Rs.47,327/- towards medical bills on the basis of the medical bills produced at Exh:48, which is also just and proper.

10) For the foregoing reasoning, observations and evidence produced on record, this Court is of view that, the Tribunal has not committed any error in awarding compensation to the appellant – injured. Hence, impugned judgment and award dated 16.12.2021, passed by learned Motor Accident Claims Tribunal (Aux.), Petlad, in Motor Accident Claim Petition Nos.230/2018 does not call for any interference. First Appeal No.1439 of 2022 fails and is hereby **dismissed**.

FIRST APPEAL NO. 1450 OF 2022

11) In First Appeal No.1450/2022, it is submitted that, the Tribunal has committed an error in considering monthly income of the deceased as Rs.4,000/- on notional basis and ought to have considered the fact that the deceased was doing office work of computer operator and being semi skilled person, used to earn Rs.8,000/- p.m and even as per the minimum wage prevailing at the time of accident, minimum wage at the time of accident i.e. 2015, was Rs.7,400/- is required to be considered.

12) In order to prove the claim, the claimant No.2 has filed an Affidavit at Exh:18, FIR at Exh:26, Panchnama of scene of incident at Exh:27, Inquest Panchanama at Exh:22 and PM report at Exh:29. After appreciating the evidence produced on record, the Tribunal held the offending vehicle 87 % negligent and 3 % negligent on the part of the deceased relying on the decisions of the **Bimla Devi Vs. HRTC reported in AIR 2009 SC 2819 and Parmeshwari Devi Vs. Amir Chand, reported in 2011 (11) SCC 635.** Further, the age of the

deceased is 54 years as per the PM report which is at Exh:29.

13) Further, the claimants have produced simple certificate at Exh:17/5 showing that the deceased was serving as computer operator in the office of Shree Sai Copier. But the claimants have not examined any witness / owner of the said firm to prove the employment of the deceased and his income. Therefore, said certificate has no evidentiary value for income aspect and the income of the deceased was not proved.

14) As per the law laid down by the Hon'ble Supreme Court in the case of **Govind Yadav Vs. National Insurance Co. Ltd., reported in 2012(1) TAC 1 (SC)**, that if no proof of income is produced on the record, then Tribunal has to consider prevalent minimum wages in absence of evidence of monthly income of the deceased. In the present case, the accident occurred in the year 2015 and during that time, the deceased was doing job and used to earn Rs.20,000/- which is not proved, and even considering the deceased as semi skilled person, the minimum income is required to be considered as Rs.7,400/-. Hence, and the income of the deceased is reassessed as Rs.7,400/- per month. Further, the Tribunal has considered future prospective income of the deceased as 10%, which is just and proper. As the deceased was 54 years married person and having dependents, 1/3rd deduction as personal expenditure and living of the deceased and multiplier of 11 were considered by the learned Tribunal as per the judgment of the Apex Court in the case of **Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation & Anr. [2009 (6) SCC 121]** which are just and proper.

15) Therefore, calculating the income of the deceased as Rs.7,400/- and future prospect of 10 % = Rs.740/- which comes to Rs.8,140/- and

1/3rd amount is required to be deducted as personal expenditure and living of the deceased which comes to Rs.2,713/- and the net amount comes to Rs.5,427/-. In view of above, the amount under the head of **loss of future dependency** is required to be reassessed as Rs.5,427/- x 12 months x 11 multiplier = **Rs.7,16,364/-**. Therefore, the appellants are entitled to get additional amount of **Rs.3,29,208/-** under the head of future loss of dependency.

16) Further, the Tribunal by relying on the judgment of **National Insurance Company Ltd. Vs. Pranay Sethi, reported in 2017 (16) SCC 680** has awarded total Rs.30,000/- under the two conventional heads, however, this Court is of the view that amount is required to be reassessed as Rs.18,150/- towards loss of estate and Rs.18,150/- towards funeral expenses. Therefore, the appellants – original claimants are entitled for additional amount of **Rs.6,300/**- (i.e. Rs.18,150/- - Rs.15,000/- = Rs.3150/- towards loss of estate and Rs.18,150/- - Rs.15,000/- = Rs3150/- towards funeral expenses).

17) Further, in view of ratio laid down by the Hon'ble Supreme Court in the case of **Magma General Insurance Co. Ltd., Vs. Nanu Ram, reported in (2018) 18 SCC 130 and Janabai Wd/o Dinkarrao Ghorpade & Ors., Vs M/s ICICI Lambord Insurance Company Ltd., reported in 2022 LiveLaw (SC) 666**, the appellants are entitled for loss of consortium for two claimants. Therefore, the amount towards loss of consortium is reassessed as Rs.96,800/- for two claimants).

18) As discussed above, the appellants – original claimants are entitled to get compensation computed as under:-

Heads	Awarded by the Tribunal	Reassessed by this Court
Future loss of dependency	Rs.3,87,156/-	**Rs.7,16,364/-**
Loss of Estate	Rs,15,000/-	**Rs.18,150/-**
Funeral expenses	Rs.15,000/-	**Rs.18,150/-**
Loss of consortium	Rs.40,000/-	**Rs.96,800/-**
Total compensation	Rs.4,57,156/-	**Rs.8,49,464/-**
3 % deduction towards negligence	Rs.13,715/-	**Rs.25,483/-**
Net compensation	**Rs.4,43,441/-**	**Rs.8,23,981/-**

(19) As Rs.4,43,441/- is already awarded by learned Tribunal, the appellants – original claimants of First Appeal No. 1450 of 2022 are entitled to get **additional amount of Rs.3,80,540/-** (Rs.8,23,981/- - Rs.4,43,441/-) with proportionate costs and interest as awarded by the learned Tribunal.

(20) Hence, First Appeal No.1450 of 2022 is **partly allowed**. The judgment and award dated 13.10.2021 passed by learned Motor Accident Claims Tribunal (Aux.), Anand, in Motor Accident Claim Petition Nos.606/2015 stands modified to the aforesaid extent. Rest of the judgment and award remains unaltered. It is provided that respondent No.2 shall deposit such **additional amount of Rs.3,80,540/-** along with interest as awarded by the Tribunal, before the Tribunal within a period of **four weeks** from the date of receipt of this order. Record and proceedings be remitted back to the concerned Tribunal forthwith.

(21) The Tribunal is directed to recover or deduct the deficit court fees on enhanced amount and thereafter disburse the amount accordingly. Award to be drawn accordingly.

(HASMUKH D. SUTHAR,J)

SUCHIT

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: PATEL SUCHIT JAYESHBHAI(HC01083), Private Secretary, at High Court of Gujarat on 12/02/2026 17:09:02