IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 530 of 2022

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

==========

Approved for Reporting	Yes	No
		√

==========

RELIANCE GENERAL INSURANCE CO LTD
Versus
KIRANBEN RAJESHBHAI ALIAS RAJUBHAI THUMMAR & ORS.

==========

Appearance:
MS KIRTI S PATHAK(9966) for the Appellant(s) No. 1
MR ZAFRULLA M PATHAN(2245) for the Defendant(s) No. 5
MR NISHIT A BHALODI(9597) for the Defendant(s) No. 1,2,3,4
RULE SERVED for the Defendant(s) No. 6

==========

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

Date : 11/02/2026
ORAL JUDGMENT

[1.0] By way of present First Appeal under Section 173 of the Motor Vehicles Act, 1988, the appellant – original opponent No.2 has assailed the impugned judgment and award dated 30.09.2021 passed by the learned Motor Accident Claims Tribunal (Auxi.), at Dhoraji, District Rajkot (for short "learned Tribunal") in Motor Accident Claim Petition No.33 of 2019, whereby the learned Tribunal has partly allowed the claim petition in favor of the original claimants and awarded Rs.39,80,000/- towards compensation to the original claimants with 9% interest per annum from the date of filing of claim petition till its realization.

[2.0] The brief facts leading to filing of present appeal are as follows:

[2.1] On 02.07.2019, Rajeshbhai Chhaganbhai Thummar (hereinafter

referred to as "deceased") was going on his Motorcycle bearing registration No.GJ-03-ES-9647 and at about 5.50 p.m., when the deceased reached at the place of accident, Truck bearing registration No.GJ-25-U-9928 came from behind with full speed in rash and negligent manner and hit the motorcycle of the deceased and dragged the deceased alongwith his motorcycle to some distance as a result of which the deceased having sustained fatal injuries died. Therefore, the original claimants – legal heirs and representatives of the deceased filed the claim petition seeking compensation of Rs.80 lakh.

[2.2] After considering the evidence produced on record by the respective parties, learned Tribunal has been pleased to hold the original opponent No.1 – truck driver to be solely negligent for the accident and awarded compensation of Rs.39,80,000/- to the original claimants alongwith 9% interest per annum. Hence, present First Appeal is filed by the appellant – insurance company on the ground that the learned Tribunal has not considered contributory negligence of the deceased motorcyclist as well as seeking reduction in compensation.

[3.0] Though served, respondent No.6 has chosen not to appear before the Court.

[4.0] Learned advocate Ms. Kirti Pathak appearing for the appellant – insurance company has submitted that the learned Tribunal has committed an error in not considering the contributory negligence on the part of deceased motorcyclist and even the compensation is awarded on higher side overlooking the evidence and written submission submitted before the learned Tribunal. She has further submitted that though the deceased was not wearing protective head gear while driving the motorcyclist in violation of *proviso* to Section

129 of the MV Act, learned Tribunal has not considered the deceased motorcyclist to be contributory negligent for the accident. She has submitted that if the deceased motorcyclist would have worn head gear, it could have been a case of injury and not a fatal case. She has argued that even in the post-mortem report, cause of death is stated "due to head injury". She has relied on the decision of the Hon'ble Supreme Court in the case of **Ajay Canu vs. Union of India & Ors.** reported in **AIR 1988 SC 2027** as well as the decision of Kerala High Court in the case of **Siby Paul vs. Praveen Kumar & Others** reported in **2009 ACJ 2322** and submitted to consider contributory negligence of the deceased motorcyclist. She has also relied on foreign journal namely Michigan Auto Law and argued that there is a foreign research that if motorcyclists wear helmet, it can save lives and considering the said research also, she has requested to pass some directions in line of the decision of Kerala High Court to make heltmet wearing mandatory in order to save lives from the road accidents occurring in our country.

[4.1] She has further argued that the learned Tribunal has awarded exorbitant compensation without there being any cogent or reliable evidence to prove the income. She has submitted that the claimants had submitted income tax returns for the years 2007-08 and 2008-09 but no income tax returns of previous three years of accident were produced on the record. She has submitted that prior to 11 years income tax returns were filed which are consisered and learned Tribunal has committed an error. Further, learned Tribunal has failed to consider the evidence and cross-examination of the claimant No.1 where she has admitted that she is not having any evidence to show agricultural income of the deceased though the learned Tribunal has considered agricultural income and in absence of any material, total monthly income of deceased is considered at Rs.25,000/-, which is on

higher side in absence of any evidence to show that the deceased was working with Raju Contractor and though income was prior to 10 years, learned Tribunal merely based on presumption accepted the said version and granted the exorbitant compensation. She has also relied on the decision of Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Pranay Sethi and Ors.** reported in **2017 ACJ 2700** more particularly para 17 of the said judgment and argued that though the discretion vests with the Tribunal but it is obligatory on the part of the Tribunal to be guided by the expression "just compensation". The determination of compensation has to be on foundation of evidence brought on record. Herein, in absence of any evidence, the learned Tribunal has awarded huge compensation with higher rate of interest. Hence, she has requested to allow the present appeal.

[5.0] Learned advocate Mr. Nishit Bhalodi appearing for respondent Nos.1 to 4 has opposed the First Appeal by submitting that the learned Tribunal has not committed any error in not holding the deceased motorcyclist to be contributory negligent for the accident as the deceased motorcyclist was dashed by the truck from behind and hence, question does not arise to consider contributory negligence on the part of deceased motorcyclist and merely because the deceased was not wearing head gear is not a ground to hold the deceased contributory negligent for the accident and such non-wearing of helmet or violation of MV Act caused the accident. Learned Tribunal has properly appreciated the evidence and not considered the contributory negligence on the part of the deceased. He has further submitted that there is no thumb rule that in all cases evidence of income is required to be proved. Herein, sufficient material in form of income tax returns is produced on record for the years 2007-08 and

2008-09. Further, the deceased was working in Surat and was earning and even prior to accident, he has entered into a rent agreement and was running business and he was paying rent for the said business. Hence, there is sufficient proof to show that he was engaged in business in the name and style as Krishna Enterprise. Learned Tribunal has considered documentary evidences produced at Exhs.20 to 46. He has further submitted that the deceased was paying tuition of more than Rs.50,000/- for two children and without any income, it is not possible to incur such huge expenses. Even, agricultural income is considered considering 7/12 abstract produced at Exh.47 and further income from selling groundnuts and bill is produced on record to show agricultural income and towards supervisory and agricultural income loss, learned Tribunal has considered Rs.5000/- and Rs.20,000/- from business income and thus, considered total monthly income of Rs.25,000/- which does not call for any interference. He has further submitted that in all cases, it is not necessary to consider minimum wages as minimum wages is a guiding factor to decide the income if there is no clue as regards his income. But, herein, positive evidence has been led by the claimants and hence, this is not a case wherein minimum wages are required to be considered. He has relied on the decision of the Hon'ble Supreme Court in the case of **Gurpreet Kaur & Ors. vs. United India Insurance Company Ltd. & Ors.** reported in **2022 LiveLaw (SC) 821** and has requested to dismiss the appeal.

[6.0] Having heard learned advocate for the appellant – insurance company and learned advocate appearing for the original claimants and perusing the record, it appears that the learned Tribunal has considered the evidence produced and adduced by both the parties including the affiadvit of the claimant No.1 (Exh.25), complaint (Exh.27), panchnama of scene of accident (Exh.29), charge-sheet

(Exh.35) and P.M. Note (Exh.30) as well as the decisions of the Hon'ble Supreme Court in the case of **Bimla Devi vs. H.R.S.T.C.** reported in **AIR 2009 SC 2819** and **Parmeshwari Devi vs. Amir Chand** reported in **(2011) 11 SCC 635,** wherein it is held that it is settled law that negligence is required to be proved in claim petition under section 166 of the MV Act only on the touchstone of the preponderance of probability and not beyond doubt. Further, in the instant case, the FIR and charge-sheet is filed against the driver of the offending Truck and hence, the learned Tribunal relying on the decision of coordinate Bench of this Court in the case of **United India Insurance Co. Ltd. vs. Rehanaben Salimbhai Mukindo and others** reported in **2019 ACJ 2498 (Guj. H.C.)** has held that adverse inference is to be drawn against the driver of the offending vehicle, if he does not appear before the Tribunal to explain the circumstances resulted in motor vehicle accident. Further, the learned Tribunal has held that if driver of the offending vehicle is facing trial for causing accident in a rash and negligent manner, it is *prima facie* proof of negligence of offending driver. The learned Tribunal has also relied on the decision of the Hon'ble Supreme Court in the case of **Dinesh Kumar J. vs. National Insurance company Ltd.** reported in **2018 ACJ 535**, wherein the Hon'ble Supreme Court had not admitted the plea of contributory negligence in absence of any evidence on the part of opponents and the contributory negligence imposed on the claimant was set aside as it was being based upon the conjectures. In this regard, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **Shrikrishna Kanta Singh Vs. The Oriental Insurance Company Ltd., and Ors.** reported in **2025 INSC 394**.

[6.1] Now, so far as the submission of learned advocate for the insurance company that the deceased motorcyclist was not wearing

head gear at the time of accident and therefore, his negligence ought to have been considered is concerned, even if the said contention is believed, merely the fact that the deceased was not wearing a helmet at the time of the riding the motorcycle does not make him guilty of contributory negligence without any other material. In this regard, the learned Tribunal has relied on the decision of the Hon'ble Supreme Court in the case of **Mohammed Siddique & Anr Vs. National Insurance Company Ltd & Ors.** rendered in **Civil Appeal No. 79 of 2020, decided on 8th January, 2020** wherein it has been observed that simply because there is a violation of Section 129 of the MV Act, by a victim in an accident, there is no presumption that there is contributory negligence on the part of the person who was not wearing a helmet. The Hon'ble Supreme Court in the said decision has observed thus:

> *"13) But the above reason, in our view, is flawed. The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two wheeled motor cycle, not to carry more than one person on themotor cycle. Section 194C inserted by the mendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more 6 person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not*

riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW3 to the effect that 2 persons on the pillion added to the imbalance.

14) Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside."

Therefore, the learned Tribunal, in view of the above discussion, the contention on behalf of the insurance company that as, at the time of accident, the deceased was not wearing a helmet, negligence should be counted on his part, is not acceptable.

[6.2] So far as the submission of learned advocate for the insurance company to issue directions making wearing of helmet to be mandatory in the State of Gujarat is concerned, it is needless to say that the Hon'ble Division Bench of this Court in the proceedings of **Writ Petition (PIL) Nos.43 and 50 of 2024**, has issued slew of directions to the State Authorities to strictly implement the traffic rules and regulations including wearing of helmet / headgears by the two wheeler riders and therefore, this Court is not required to issue any such directions as statutory provisions are already there and it is upon the State Authorities to see to it that strict compliance of such statutory provisions is achieved.

[7.0] In order to prove the income of the deceased, original claimant No.1 deposed at Exh.25 before the learned Tribunal wherein she has stated that the deceased was having agricultural land and by managing the same, at the time of accident, he was earning

Rs.3,00,000/- per annum and was also doing the business of construction in the name of Krishna Enterprise and was earning Rs.25,000/- per month. The said witness has produced the rent agreement (Exh.62) which has been admitted by the Insurance company. The said rent agreement of 11 months executed on 07.09.2018 shows that the deceased had taken office No.604 at Jimmy Tower, Opp. Swami Narayan Mandir, at Gondal Road, Rajkot on rent. The claimants have also produced the documents pertaining to registration of firm Krishna Enterprise at Exhs.43 and 44 and the rent receipts at Exh.65 and electricity bills at Exh.66. Further, the claimants have produced the documents i.e. work order etc. at Exhs. 52, 53, 54, 55, 56 and 57 which shows that earlier the deceased was working in the name of "Raju Contractor". All these documents had been admitted by the opponent no.2 . The claimants have also produced the fee receipts towards fees paid by the deceased for his two sons produced at Exhs.45 and 46. Further, the claimants have also produced the income tax return for the assessment years 2007-08 and 2008-09 of the deceased, which shows that annual gross total income of the deceased was Rs.3,43,097/- and Rs.3,40,229/- respectively. It is pertinent to mention here that the claimants have not produced any income tax return after the assessment year 2008-09, so it can be assumed that after 2008-09, the deceased had not filed any income tax return. Although it is correct that the claimants have been unable to produce any documentary evidence which clearly shows the exact income of the deceased at the time of the accident, but that doesn’t justify adoption of the lowest tier of minimum wage while computing his income. From the statement of witnesses, documentary evidence on record and circumstances of the accident, it is apparent that the deceased was maintaining a reasonable standard of living for his family as evidenced by the fact that he was spending about

Rs.1,00,000/- annualy, on the education of his two sons. Further, the insurance company has admitted the fact that the deceased was running the firm in the name of Krishna Enterprises at Rajkot and the only defence was that at the time of accident, the deceased was incurring losses. The income tax returns for the assessment years 2007-08 and 2008-09 as well as the work orders which are produced before the learned Tribunal at Exhs. 52, 53, 54, etc. shows that the deceased was earning quite well during that period. In the normal course of natural events, the income of every person has some increase with each passing year, but the claimants have not produced any income tax return of the deceased after the assesment year 2008-09 and therefore, it can be considered that the deceased had not filed any income returns after the assessment year 2008-09. Therefore, considering the standard of living of deceased and the nature of work he was doing, it is held that the deceased was earning Rs.20,000/ per month from his firm Krishna Enterprises. As far as the fact that the deceased was having agricultural land is concerned, that land has still remained with the family of the deceased, and they have not been deprived of the income which he used earn from that agricultural land. However, it was the deceased who was looking after the work of the farming/harvesting on that land, and now the family has to incur expenses in deploying a new worker/labourer who will look after the work of farming/harvesting and therefore, considering that, an additional amount of Rs. 5,000/ is rightly added in the monthly income of the deceased. Therefore, in total, the monthly income of the deceased is rightly assessed by the learned Tribunal at Rs.25,000/-, which comes to Rs.3,00,000/- per annum to award just compensation. Hence, keeping in mind the aforesaid facts and in view of the decisions of Hon'ble Supreme Court in the cases of **K Ramya vs. National Insurance Co. Ltd.,** reported in **2022 SCC OnLine SC 1338; S Vishnu**

Ganga v Oriental Insurance Company Limited, reported in **2025 SCC OnLine SC 182 and Shivaleela and Ors., Vs The Divisional Manager, United India Insurance Co. Ltd., & Ors.,** reported in **2025 INSC 357,** yearly income of the deceased in considered opinion of this Court is rightly assessed as Rs.3,00,000/- and does not call for any interference by this Court. It is worth to mention that non-production of documentary evidence as regards income of the deceased is not necessary always to consider the minimum wages as minimum wages can only be considered as a guiding factor in absence of clue or proof of monthly / annual income. But, in the case on hand, as discussed abvoe, sufficient evidence is produced on record and based on said evidence, there is no bar to consider the income based on guess work. In this regard, reference is required to be made to the decision of Hon'ble Supreme Court in the case of **Chandra @ Chanda @ Chandraram vs. Mukesh Kumar Yadav** reported in **(2022)1 SCC 198**

[7.1] Further, the claimants have produced and proved the Driving License of the deceased at Exh. 37, in which his date of the birth is shown as 07.09.1978, and hence the deceased was 40 years and 9 months at the time of accident and considering the principle of future prospective income as laid down by Hon'ble Supreme Court in the case of ***Pranay Sethi & Ors. (Supra)***, 25% towards future prospects is rightly added in the actual income of the deceased as deceased was aged more than 40 years. Hence, the annual income of the deceased is rightly assessed as Rs.3,75,000/- [Actual Income Rs.3,00,000 + Rs.75,000 (25% of Actual Income)]. Further, so far as deduction towards personal expenses of deceased is concerned, the learned Tribunal has rightly deducted 1/3 towards dependency and personal expenses of the deceased and has rightly awarded Rs.2,50,000/- towards annual loss of dependency [Rs.3,75,000 – Rs.1,25,000 (1/3rd

of Rs.3,75,000] and as the deceased was aged 41 years at the time of accident, in view of decision of Hon'ble Supreme Court in the case of **Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation & Anr.** reported in **(2009)6 SCC 121**, has rightly applied multiplier of 15 and rightly awarded **Rs.37,50,000/- (Rs.2,50,000 x 15)** towards future loss of dependency.

[7.2] So far as compensation under the conventional heads of loss of consortium, loss of estate and funeral expenses is concerned, as per the law 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**, learned Tribunal has rightly awarded Rs.40,000/- towards spousal consortium and Rs.80,000/- towards parental consortium for claimant Nos.2 and 3 and Rs.80,000/- towards loss of filial consortium and **Rs.15,000/- each towards loss of estate** and **funeral expenses** is also rightly awarded by the learned Tribunal, which does not call for any interference.

[8.0] Hence, the compensation awarded by the learned Tribunal being just and proper does not call for any interference by this Court and the learned Tribunal has rightly awarded the compensation as under:

Heads	Awarded by Tribunal
Future loss of dependency	Rs.37,50,000/-
Loss of Spousal Consortium	Rs.40,000/-
Loss of Parental Consortium to claimant Nos.2 & 3	Rs.80,000/-
Loss of Filia Consortium to parents (40,000 x 2)	Rs.80,000/-

Loss of Estate	Rs.15,000/-
Funeral Expenses	Rs.15,000/-
Total Compensation	**Rs.39,80,000/-**

[9.0] In wake of aforesaid conspectus, **First Appeal stands dismissed. The entire amount of** compensation of **Rs.39,80,000/-** deposited by the appellant – original opponent No.2 – insurance company with the learned Tribunal alongwith accrued interest thereon at the rate of 9% per annum be disbursed by the Tribunal to the claimants, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure and strictly in accordance with the apportionment made by the learned Tribunal.

[9.1] While making the payment, the Tribunal shall deduct the courts fees, if not paid.

[10.0] Record and proceedings, if any, be sent back to the concerned Tribunal, forthwith.

Pending civil application, if any, stands disposed of.

Sd/-
(HASMUKH D. SUTHAR, J.)

Ajay

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: AJAY CHANDRAN MENON(HC00939), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 12/02/2026 11:25:51