IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 3890 of 2023

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

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Approved for Reporting	Yes	No
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ZALA RANJANBEN NILAYBHAI & ORS.
Versus
JAYESHKUMAR HARMANBHAI PATHIYAR & ORS.

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Appearance:
MR NISHIT A BHALODI(9597) for the appellants(s) No. 1,2,3
MS KIRTI S PATHAK(9966) for the Defendant(s) No. 3
RULE SERVED for the Defendant(s) No. 2
UNSERVED EXPIRED (R) for the Defendant(s) No. 1

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

Date : 12/02/2026
ORAL JUDGMENT

[1.0] Present First Appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "MV Act") is filed by the appellants – original claimants challenging the impugned judgment and award dated 21.12.2021 by the learned Motor Accident Claims Tribunal (Auxi.), Nadiad (for short "learned Tribunal") in Motor Accident Claim Petition No.304 of 2019, whereby the learned Tribunal was pleased to hold deceased scooterist to be contributory negligent to the extent of 20% and driver of Maruti Eeco Car to be 80% negligent for the accident and awarded Rs.12,40,532/- after deducting 20% (towards contributory negligence of scooterist) from Rs.15,50,664/-.

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

[2.1] On 10.02.2019, deceased Nilaykumar Gagubhai Zala (hereinafter referred to as "deceased") was plying Activa bearing registration No.GJ-7-CL-0564 with moderate speed on correct side of the road and when he reached at the place of accident, driver of Maruti Eeco Car bearing registration No.GJ-23-BL-7990 came driving his car with full speed in rash and negligent manner from opposite direction in wrong side and dashed with the Activa of the deceased as a result of which the deceased having sustained severe injuries died. Therefore, the original claimants – legal heirs and representatives of the deceased filed MACP No.304/2019 seeking compensation of Rs.40 lakh.

[2.2] After considering the evidence produced and adduced, the learned Tribunal held the driver of Eeco Car to be 80% negligent and deceased scooterist to be 20% contributory negligent for the accident and was pleased to award Rs.12,40,532/- after deducting 20% (towards contributory negligence of deceased scooterist) from Rs.15,50,664/-. Being aggrieved with the contributory negligence held by the learned Tribunal on the part of deceased scooterist as well as on the ground of inappropriate compensation awarded by the learned Tribunal, the appellants – original claimants have filed the present First Appeal.

[3.0] Though served, respondent No.2 has not appeared before the Court. Heard learned advocate Mr. Nishit Bhalodi for the appellants and learned advocate Ms. Kirti Pathak for the insurance company.

[4.0] Learned advocate Mr. Nishit Bhalodi appearing for the appellants – original claimants has submitted that the learned Tribunal has committed an error in holding the deceased scooterist to be 20% contributory negligent for the accident in absence of any evidence and merely based on panchnama (Exh.23) as both the vehicles were

damaged on their front portions, the learned Tribunal has drawn adverse inference and held the deceased scooterist to be 20% contributory negligent, which is not permissible. He has further submitted that merely because there was head on collision between two vehicles, in absence of evidence of any eye-witness, such type of apportionment of liability or presumption *qua* contributory negligence on the part of deceased scooterist is not permissible. He has relied on the decision of the Division Bench of this Court in the case of **United India Insurance Co. Ltd. vs. Rehanaben Salimbhai Mukindo and Ors.** reported in **2019 ACJ 2498**.

[4.1] So far as quantum is concerned, learned advocate appearing for the appellants has submitted that the learned Tribunal has not properly assessed the income of the deceased and even the compensation under the head of loss of consortium has not been granted by the learned Tribunal as per the decision of the Hon'ble Supreme Court in the case of **Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & Ors.** reported in **(2018)18 SCC 130**. Hence, he has requested to allow the present appeal.

[5.0] Learned advocate Ms. Kirti Pathak appearing for the respondent – insurance company has opposed the present appeal on the ground that the learned Tribunal has not committed any error and on the contrary learned Tribunal considering the involvement of vehicles and as there was head on collision, 50-50% apportionment of liability ought to have been done by the learned Tribunal. She has further submitted that panchnama clearly depicts that the deceased scooterist was negligent and he has caused the accident however, the learned Tribunal has assessed only 20% contributory negligence of the deceased scooterist instead of 80% and has requested to hold the

deceased scooterist to be 80% negligent for the accident. She has relied on the decision of the Hon'ble Supreme Court in the case of **T.O. Anthony vs. Karvarnan and Others** reported in **(2008) 3 SCC 748** and requested to either dismiss the appeal or to hold both the vehicles equally negligent for the accident.

[6.0] Having heard learned advocate for the appellants – original claimants and learned advocate for the insurance company and perusing the record, it appears that the learned Tribunal has considered the evidence produced and adduced by both the parties including the affidavit of the claimant No.1 – wife of the deceased at Ex.19. The said witness in her cross-examination has admitted that she is not an eye-witness. The learned Tribunal has also considered FIR (Ex.22) and Panchnama (Ex.23) and perusing the said documents, it appears that both the vehicles were damaged mostly on their respective front side and hence, it is clear that both the vehicles collided with each other head on. Perusing the oral as well as documentary evidence namely affidavit of claimant No.1, complaint, panchnama etc., it is an admitted position of fact that the driver of Eeco Car, who was the best person to depose on oath, did not step into the witness-box and therefore, the learned Tribunal has drawn adverse inference against the driver of Eeco Car driver. If the drivers of both the vehicles would have taken due care then the accident could have been avoided. It is a cardinal principle of law that a person driving a motor vehicle on a road must drive the vehicle with reasonable care, strictly observing the traffic regulations and the rules of the road and should always be conscious of the motto "expect the unexpected" and should be apprehensive of a vehicle from the opposite direction. It is cardinal principle of law that one has to drive his vehicle in such a fashion that it may not cause any damage/injury to

any property/person but in the case on hand, both the drivers have failed in their duty. Thus, considering the oral as well as documentary evidence, the learned Tribunal held the deceased scooterist i.e. driver of Activa bearing registration No.GJ-7-CL-0564 to be negligent to the extent of 20% and driver of Maruti Eeco Car bearing registration No.GJ-23-BL-7990 to be negligent to the extent of 80% in causing the accident.

[6.1] So far as reliance placed by the learned advocate for the appellants on the case of ***Rehanaben Salimbhai Mukindo (Supra)*** in support of his submission that the driver of Eeco Car ought to have been held 100% negligent is concerned, the facts of the said case are distinguishable with the facts of the case on hand. Considering the panchnama produced at Exh.23, the learned Tribunal has opined that both the vehicles were mostly damaged on their front portion and both the vehicles collided with each other head on. In the case on hand, the accident took place on Umreth – Sarsa road having width of 24 feet and on both the sides, parapet wall is situated and the middle portion of the bonnet of Eeco car is damaged and even headlight and windshield of eeco car is also broken and driver side door glass is also broken. Thus, there was sufficient chance for the scooterist to keep aside his vehicle however, the deceased scooterist failed to do so. Further, in absence of any evidence of eye-witness and claimant No.1 having no personal knowledge about the negligence of driver of offending vehicle and considering the fact that driver of offending vehicle did not step into the witness box, due to this reason the learned Tribunal has relied upon the panchnama produced on record which is an admitted document. The panchnama substantiates the finding which is based on admission of the claimant herself which is required to be considered and relied upon in light of sections 61 and

58 of the Indian Evidence Act. The learned Tribunal has rightly relied upon the said panchnama and contents thereof and come to the conclusion that deceased scooterist was 20% contributory negligent for the accident. In this regard, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **Oriental Insurance Company Limited vs. Premlata Shukla and Others** reported in **(2007) 13 SCC 476.**

[6.2] In the case of ***Rehanaben Salimbhai Mukindo (Supra)***, facts were different and therein, the luxury bus was in excessive speed which dashed with the maruti van and considering the panchnama, the Division Bench come to the conclusion that both the vehicles were badly damaged but maruti van was lying near the road side petrol pump. It is true that merely based on the panchnama or position of vehicle, negligence is not required to be considered. But, in the case on hand, specific evidence is led and claimants have also failed to lead any evidence by examining any eye-witness to show sole negligence of the driver of Eeco Car. Therefore, in the considered opinion of this Court and in view of the decision of the Hon'ble Supreme Court in the case of ***T.O. Anthony (Supra)***, learned Tribunal has rightly come to the conclusion that driver of both the vehicles were liable to cause the accident and it was a case of 20% contributory negligence on the part of the deceased scooterist and 80% on the part of the driver of Eeco Car. At this stage, it is apposite to refer to the decision of the Hon'ble Apex Court in the case of **Sushil Suri v. Central Bureau of Investigation and Another** reported in **(2011) 5 SCC 708**, wherein paragraph 32 reads as under:

> *"32. It needs little emphasis that even one additional or different fact may make a world of difference between the conclusions in two cases and blindly placing reliance on a decision is never proper. It is trite that while applying ratio, the Court may not pick out a word or sentence from the*

> *judgment divorced from the context in which the said question arose for consideration. (See Zee Telefilms Ltd. V. Union of India, reported in (2005) 4 SCC 659.) In this regard, the following words of Lord Denning, quoted in Haryana Financial Corpn. V. Jagdamba Oil Mills, reported in (2002) 3 SCC 496, are also quite apt: (SCC p.509, para 22)*
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> > *"22. …. 'Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matUbuntuching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.'"*

In view of above, reliance placed on the decision of Hon'ble Supreme Court in the case of ***Rehanaben Salimbhai Mukindo (Supra)*** would not avail any assistance to the appellants – original claimants.

[7.0] In order to prove the income of the deceased, claimant No.1 has stated in her affidavit that the deceased was doing agricultural work and animal husbandry work for which the claimants had produced village abstracts 7/12 and 8-A at Exhs.30 to 42 however, the learned Tribunal considering oral as well as documentary evidence and the fact that accident took place in the year 2019, has considered Rs.8000/- as monthly income of the deceased however, in considered opinion of this Court, monthly income ought to have been considered at Rs.8100/- per month and considering the Aadhar Card (Exh.28) wherein birth date of deceased is shown as 02.06.1987 and accident occurred on 10.02.2019 and therefore, the deceased was aged 32 years at the time of accident and hence in view of decision of the Hon'ble Supreme Court in the case of **Smt. Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.** reported in **2009 ACJ 1298**, multiplier of 16 is rightly applied by the learned Tribunal.

[7.1] Further, in view of the decision of the Hon'ble Supreme Court in

the case of **National Insurance Company Ltd. Vs. Pranay Shethi** reported in **(2017) 16 SCC 680,** as the deceased was aged about 32 years at the time of accident i.e. below 40 years and hence, 40% towards future prospects is required to be added in monthly income and therefore, future monthly income of deceased is required to be reassessed at **Rs.11,340/- [Rs.8100 + Rs.3240 (40% of Rs.8100)]**. It is not in dispute that the deceased was married and therefore, Rs.3780/- (1/3 of Rs.11,340) is required to be deducted towards personal expenditure of the deceased and accordingly, monthly future loss of dependency would come to Rs.7560/- (Rs.11,340 – Rs.3780) and applying multiplier of 16, the appellants – original claimants would be entitled to **Rs.14,51,520/- (Rs.7560 x 12 x 16)** towards **future loss of dependency**.

[7.2] Further, in view of the 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 learned Tribunal has committed error in awarding only Rs.44,000/- towards loss of consortium and Rs.40,000/- towards parental consortium, however, in view of above judgments the appellants – original claimants being legal heirs of the deceased are entitled for Rs.48,400/- each towards the head of loss of consortium. Therefore, the amount towards **loss of consortium** is reassessed as **Rs.1,45,200/- (Rs.48,400/- x 3).**

[7.3] Further, in view of the law laid down by the Hon'ble Supreme Court in the case of ***Pranay Sethi & Ors. (Supra)***, claimants are entitled to get an amount of **Rs.18,150/- each towards loss of estate** and **funeral expenses**.

[8.0] Thus, now the appellants – original claimants are entitled to the compensation as under:

Heads	Amount awarded by the Tribunal	Reassessed by this Court
Future loss of dependency	Rs.14,33,664/-	Rs.14,51,520/- including additional amount of Rs.17,856/-
Loss of Consortium	Rs.44,000/- Rs.40,000/-	Rs.1,45,200/-
Loss of Estate	Rs.16,500/-	Rs.18,150/-
Funeral	Rs.16,500/-	Rs.18,150/-
Total...	Rs.15,50,664/-	Rs.16,33,020/-
Deduction (20%) for contributory negligence of deceased	**Rs.3,10,132/-**	**Rs.3,26,604/-**
Total Compensation	**Rs.12,40,532/-**	**Rs.13,06,416/- including additional amount of Rs.65,884/-**

As discussed hereinabove, the finding of the learned Tribunal as regards deceased scooterist to be 20% contributory negligent for the accident being upheld, the compensation to that extent is required to be sliced down and hence, the appellants – original claimants are entitled to get compensation of **Rs.13,06,416/- [Rs.16,33,020 – Rs.3,26,604 (20% of Rs.16,33,020)]**. To that extent, the impugned judgment and award is required to be modified.

[9.0] In wake of aforesaid conspectus, present First Appeal is **partly allowed**. The impugned judgment and award dated 21.12.2021 by the learned Motor Accident Claims Tribunal (Auxi.), Nadiad in Motor Accident Claim Petition No.304 of 2019 is modified and respondent No.3 – Insurance Company is directed to deposit reassessed amount of compensation of **Rs.13,06,416/-** alongwith accrued interest at the rate of 7.5% per annum, with the learned Tribunal within a period of four weeks from the date of receipt of the present judgment.

[9.1] After the aforesaid amount of reassessed compensation is deposited by the insurance company, learned Tribunal is directed to disburse the entire amount with accrued interest thereon, if any, to the original 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.

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

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

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 13/02/2026 10:49:58