IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 3411 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J. L. ODEDRA

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Approved for Reporting	Yes	No

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KHENGARBHAI RATUBHAI
Versus
INAYATKHAN DOLUBHAI CHISTI & ANR.

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Appearance:
MS AMRITA AJMERA(5204) for the Appellant(s) No. 1
MR SUNIL B PARIKH(582) for the Defendant(s) No. 2
RULE SERVED for the Defendant(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE J. L. ODEDRA

Date : 16/09/2025

ORAL JUDGMENT

1. This appeal arises from the judgment and award dated 02.03.2013 passed in M.A.C.P. No.181 of 2003 by learned Motor Accident Claim Tribunal (Auxiliary), Dhrangadhra.

2. Vide the impugned judgment and award, whilst partly allowing the petition, a compensation to the tune of Rs.1,22,400/- was ordered to be paid to the claimant, by the opponents, jointly and severally, with 9% simple interest per

annum from the date of the filing of the petition till actual realization.

3. Again, if the accident is examined, the appellant claims to have been hit by a scooter (bearing Registration No.GJ-01-H-2451) when the appellant had been sitting on his stationary motorcycle (a Hero Honda), on left side of road, talking to a person, Mehboobbhai and others, who, in turn, were on jeep on the other side of the road. The appellant – claimant thus suffered injuries, for which the claim petition was filed before the Tribunal.

4. It appears that whilst adjudicating the said petition the Tribunal was pleased to hold the applicant (victim - motorcyclist) was negligent to the extent of 20%, and; 80% negligence was attributed to the rider of the offending scooter (bearing Registration No. GJ-01-H-2451) involved in the accident.

5. It appears that by way of the present appeal, the appellant (original claimant) has challenged the impugned judgment and award on two counts, namely on account of assessment of negligence, as well as on the assessment of quantum of compensation granted. Arguing the case on negligence, it was

submitted that the Tribunal has skirted the issue of negligence by not giving appropriate reasons. It was submitted that no negligence could possibly be attributed to the appellant – claimant in as much as he was standing on his left side of the road and that therefore, the negligence of the appellant (victim – motorcyclist) should have been held at zero percentage and that as the scooterist had tried to overtake the stationary motorcycle of the appellant, that too from the left side, and therefore, 100% of the negligence ought to have been attributed to the driver of the said scooter (bearing Registration No. GJ-01-H-2451).

6. It was next submitted that the quantum decided in the present matter is neither just nor adequate. It was submitted that the entire agricultural income, to the tune of Rs.3,00,000/- per annum of the agriculturist appellant, has been ignored merely by stating that some bills of the agricultural income though produced, have been so produced after a period of 9 years; that there was no corresponding documentary evidence regarding the bills adduced on record with the plaint, and that therefore, they are not reliable. That it has also been unjustifiably observed in the impugned order that there was no income tax details filed in the said matter and that therefore the

agriculture income of the appellant – claimant cannot possibly be believed. It was submitted that the Tribunal has whimsically taken Rs.3,000/- as the income of the appellant and on that basis, has calculated the compensation payable towards the accident. It was submitted that agricultural income of the appellant ought to have been considered and corresponding income of the appellant ought to have been assessed at Rs.7,000/- per month.

7. It was submitted that the record indicates that 17% permanent disablement of body as a whole of the appellant, was agreed to between the parties. Further, the monthly income should have been assessed at least at Rs.7,000/- per month. It was submitted that the multiplier, as given by the Tribunal to the applicant, is of 10, whereas looking to the age of the appellant in light of the case of **Sarla Verma Vs. Delhi Transport Corporation - (2009) 6 SCC 121**, the multiplier should have been at 13. It was also submitted that the prospective income has also been ignored whilst computing the assessment. The prospective income, according to the appellant, should have been at 25% in tune with the judgment of **National Insurance Company Limited vs. Pranay Sethi – 2017 (16) SCC 680**. It was also submitted that

under the other heads, the loss of income has been computed only at Rs.7,800/-, which is on the basis of income of Rs.3,120/- per month for a period of 78 days presumably as no specific period of injury/treatment has been specified by the learned Tribunal. It was submitted that the actual loss of income should have been computed for the period of 6 months. Similarly, it was submitted that for pain, shock and suffering, the amount should have been higher, looking to the nature of medical evidence and that therefore, the same should have been awarded to the tune of Rs.50,000/-. Further, the compensation towards special diet, attendant and transportation charges, it should have been adjudged at Rs.50,000/-, but the same was only awarded to the extent of Rs.15,000/-. It was thus submitted that the compensation may kindly be enhanced and also it be held that the appellant was not negligent at all.

8. Learned advocate Mr. Sunil Parikh appearing for the respondent – Insurance Company has submitted that insofar as negligence is concerned, the appellant's negligence has correctly been assessed at 20% inasmuch as, at the material point in time, the claimant was not standing on left side of the road, but was standing next to the left side of the jeep. It was submitted

that it is inconceivable that on a highway, a person would talk to somebody in the jeep from across the opposite side of the road, whilst parking on the left side of such road. He has submitted that actually the appellant had parked his motor-cycle on left side of the jeep and therefore, he was on the wrong side of the road. Resultantly when the scooterist passed by the appellant on the road, as the legs of the appellant were extended, the scooterist ended up injuring the appellant on his legs. It was submitted that the scooter had not dashed with the motorcycle as there no corresponding dents found on the motorcycle, but the injury was only to the appellant. It was submitted that the Tribunal is absolutely right in assessing negligence of the original claimant (present appellant) at 20%. Insofar as the income is concerned, it was submitted that mere production of bills of agricultural income would not prove that the agricultural income of the appellant stands proved. It was submitted that along with the bills, the entity issuing the bill (i.e. the person authorized by such entity) should have been examined to give credence to the said bills. Without such evidence, it was absolutely right on the part of the Tribunal to have not considered the agricultural income in terms of the bills. It was further submitted that at the age of 50, a person would not be

doing hard labour or agriculture by himself. In such case, it would only be a case of loss of supervision to the concerned agricultural activities of the appellant. Thus, whatever the loss is, is to the extent of supervisory loss and in that respect, considering the minimum wages prevalent at the time of the accident, the income of the appellant was correctly assessed at Rs.3,000/- per month. Thus, the sums awarded in the said judgment and award are just and proper. It was also submitted that no corresponding enhancement under the head of pain, shock and suffering or under the cumulative head of special diet, attendant, transportation and miscellaneous charges are required to be made. He also submitted that supervisory loss could only be limited to the period of 78 days and that therefore, the amount of Rs.7,800/- towards actual loss is just and proper. It was thus submitted that from the cumulative amount computed by the Tribunal, 20% amount has been deducted and therefore, the resultant amount to the tune of Rs.1,22,400/- is the amount which is correctly awarded by the Tribunal towards compensation in relation to the present accident. It was thus submitted that this Court may not interfere with the findings of the Tribunal in the present matter and may please dismiss this appeal.

9. None of the advocates for other respondents remain present before this Court.

10. Having heard the learned advocates for the respective parties, this Court proceed to decide the present *lis* in terms appearing hereinafter.

11. The following points of determination arise for consideration of this Court :

> *"(a) Whether the income and corresponding computation were correctly assessed by the Tribunal? If not, what would be the just compensation in the present factual matrix? Whether rate of interest applicable on the compensation so awarded is just and proper?*
>
> *(b) Whether the negligence was correctly adjudicated in the matter? If not, what percentage of negligence is attributable to the appellant?"*

12. Firstly, the nature of accident and the corresponding negligence of the appellant. This Court has perused the examination-in-chief of the appellant - claimant wherein he has specifically stated that he has been standing on left side of the road whilst going from Vadgam to Patdi and that the other vehicle in which Taluka Development Officer (TDO) coming from

opposite side, as the TDO was going towards Jainabad and that therefore, they crossed sides. At this juncture, having known each other, stopped their respective vehicles on their respective left sides of the road, and that they were interacting with each other. It is the claim of the appellant that he was on his motorcycle with his legs spread by the motorcycle (*sic* to support the motorcycle). This aspect, when examined against the FIR and Panchnama, it appears that in the FIR, the appellant – claimant has stated "જેથી મારુ મોટર સાઇકલ રોડની ડાબી સાઈડ ઉભું રાખેલ અને મોટર સાઇકલ પર પગ પહોળા કરી ઉભા ઉભા જીપના અધિકારી અને માણસો સાથે વાતો કરતો હતો." The closest English translation to the aforesaid phrase is that "therefore, I stopped my motorcycle on the left side of the road and whilst being on motorcycle with my legs spread across (*sic*, to support the motorcycle), I was talking to the officers and men (*sic*, traveling) in the jeep."

13. It appears that somehow, it has been stated in the impugned judgment and award that the appellant – claimant was sitting on the motorcycle, with his legs, 'expanded'. It is inconceivable that a person would have his legs expanded whilst sitting on the motorcycle because if the legs were so expanded, the motorcycle itself would fall. Thus, it is the view of this Court

that the legs would be by the sides of the motorcycle so that the motorcycle can be supported. Now it is a case in the FIR that the scooter came from behind and was “overtaking” the motorcycle from the left side of the motorcycle and therefore the scooterist caused injury to the left leg of the appellant. Thus, the offending motorcycle came from behind, causing the accident.

14. Similarly, when the Panchnama is perused, it appears that the vehicles, namely the motorcycle and the scooter were found apart on the road, at a distance of about 30 ft from each other. Under the Panchnama, it appears that except for a broken mirror of the Hero Honda, no other damage has been done to the motorcycle. And thus, the motorcycle and scooter have not collided. But, as the Hero Honda fell after the scooterist injured the leg of the appellant, the Hero Honda would have fallen. If there were collision between the vehicles, both the vehicle would suffer dents. Furthermore, what is material is that that there was a vehicle wheel-marks of the scooter on the left side of the motorcycle and therefore, there is a reason to believe that the scooterist was driving at a high speed and had applied short brakes, causing such wheel-marks. Furthermore, in the scooter, damage was found there being scratch marks on the accessories

on the left side of the said scooter. These marks can only happen if post the accident, the scooter fell and skidded on its left side. Now the case of the respondent – Insurance Company, the offending scooterist passed by right of motorcyclist. But if there was indeed a collision between two vehicles, the impact of collision would be on both vehicles, which is not the case. In the Panchnama, the damage to the scooter is on the left side. But same appears to have happened after the scooterist injured the leg of the appellant. Therefore, the story that the scooterist tried to overtake the motorcycle from the left has some basis. Thus, the stand of the insurance company that the motorcycle was on the right side or middle of the road cannot be said to been substantiated. Similarly, the motor-cycle being on the left side of the jeep also has no basis, and more particularly, when issue is examined in light of the FIR and Panchnama. This is so as both the vehicles are found to be lying on left side of the road and the wheel-marks were towards the left side of the motorcycle. In any case, the scooterist appears to have approached the injured from behind. If that is so, and if it is assumed that the motor-cyclist was on wrong side of the road, for the collision to occur, the offending scooterist, too, would have to be on the wrong side of the road. Even in the cross examination of the appellant-

claimant, the only suggestion that appears to have been given was that the scooter was coming from the opposite end which has been denied by the applicant. It is again suggested that scooter had come from the opposite end and had come in a slow speed, which also has been denied by the appellant. There is no other cross examination in respect of the accident in the cross-examination to the said affidavit of examination-in-chief, Exh.60. If at all the case under the cross examination is to be considered (namely that the motorcycle was parked on the wrong side of the road) then it would imply that the scooter, coming from opposite end, it would be highly negligent of the scooter to come from behind the motorcyclist, on the wrong side of road, to the left side of the motorcyclist which is already on right side (wrong side) of the road. Hence, such version cannot be believed. This being the case before the Tribunal, the Tribunal erred in holding the negligence of the claimant to the extent of 20%. The highest negligence possibly that can be attributed to the claimant would be to the tune of 7% as the applicant himself was parking on the highway and was talking, thereby inconveniencing the traffic. Hence, according to this Court, the negligence of the claimant ought to be reduced from 20% to 7%.

15. Now, the income of the appellant. Undisputably, the appellant is of 50 years of age. He has several plots of land as has been indicated by way of various village form no.8, adduced on record. It appears that the cumulative land with the appellant is as follows :

Survey No.	Area Acre – Guntha	Village
169 paiki	02-01	Vadgam
90	22-24	Vadgam
	24-25 (Total)	

16. It appears that both these pieces of land are having wells as is evidenced by respective certificates of Taluka-cum-Mantri, Vadgam and Taluka Development Officer, Patadi. The aforesaid indicates that the appellant is reasonably big an agriculturist possessing about 24-25 Acre-Guntha of lands in aggregate. It is the case of the appellant – claimant that the entire agricultural income is attributable to the efforts of the appellant – claimant. However, the respondent - Insurance Company's case is that the land continues to be held with the appellant and that the loss that is suffered is owing to supervisory loss. It was the contention of the respondent – Insurance Company that at the

age of 50, it cannot be the case of the appellant that it was he himself who was tilling the lands. On the other hand, the appellant's case in the examination-in-chief is that the appellant was healthy and that he was doing the agriculture by modern means. That he also had a tractor bearing registration number GJ-13-B-844. That the appellant used to avail modern fertilizer, advanced seedlings and also pesticides and by using them, was getting an agricultural income of Rs.3,00,000/-. The corresponding bills in respect of cotton, cumin seeds etc., having been sold various market yards namely Chanasma, Unjha etc. were produced on record and after deducting the expenses, a net income of Rs.4,00,000/- per year was claimed, as being earned by the appellant. With this background, when the cross examination of the appellant - original claimant is perused, it appears that therein, the appellant has denied a suggestion, which was put to the appellant, namely that he does the agricultural activities by himself. He also states that he does not have any documentary evidence to prove that he had engaged other persons to work at his agricultural fields. In short, he denies that he is doing agricultural work by himself. Therefore, the assertion in the examination-in-chief that he was doing agricultural activities by himself is not believable. What can

therefore be believed that he was only doing supervision work, over the agricultural fields. It is in that view of the matter that the income of the appellant – claimant will have to be assessed. In the circumstances, the minimum wages, as applicable to the supervisor along with certain other incomes as assessed by the Tribunal appears to be correct. Thus, when the agricultural lands continue to be with the appellant – claimant and his permanent partial disablement of the body as a whole is only 17%, the loss is in respect to supervisory work to the extent of disability. And for a supervisor, the notional income can only be to the extent of Rs.3,000/- per month, more so when the accident is of the year-2003. Therefore, the finding that he was earning Rs.36,000/- yearly ought not to be disturbed.

17. The parties, have submitted that the permanent disability of the body as a whole be taken at 17%. There is no dispute between the parties in this respect, at this stage. And therefore, the calculation towards future loss ought to be computed on that basis. The age of the appellant – claimant, at the relevant time, was 50 years. However, it appears that the multiplier employed by the Tribunal is on the lower side in as much as in terms of the judgment in **Sarla Verma (supra)**, the multiplier should have

been to the tune of 13 whereas that taken by the Tribunal is just 10. The relevant observations in the case of Sarla Verma (*supra*) reads as follows:

> *"21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."*

Hence, the applicable multiplier for an individual suffering an accident at the age of 50 years would be 13. Thus, the corresponding amount of monthly income for calculating future loss would be Rs.6120/- (that being the 17% of the yearly income of Rs.36,000/-). In short, the multiplicand is Rs.6,120/-. The multiplicand, when multiplied by 13, it would come to Rs.79,560/-.

18. It appears that owing to the injury, the appellant – claimant had to undergo an operation. It appears that the said accident had taken place on 05.04.2003. As evidenced from the

certificate issued by Dr.Manoj Joshi, it appears that the discharge of the appellant – claimant was on 17.04.2003. Similarly, in the examination-in-chief, the case of the appellant is that he had to visit Consultant at Ahmedabad for about 7 times. Even after discharge, the patient would have required to rest and therefore the future income loss of income have to be computed for the period of 4 months and therefore that amount of actual loss for four months would be Rs.3,000/- multiplied by 4 which is Rs.12,000/-. Under the heads of pain, shock and suffering, looking to the nature of injuries, Rs.25,000/- ought to be awarded. There would however be no change towards cost of treatment and medications which have already been awarded by the Tribunal at Rs.54,000/-. Similarly, towards special diet, attendant and transportation charges, the figure stands revised to Rs.20,000/-.

19. Therefore, total compensation would be as under, which the claimant/s is/are entitled to get.

Particulars	Amount (Rs.)
Future loss of income =Rs.36,000/- x 13 Multiplier x 17% disability	79,560/-
Pain, shock and suffering	25,000/-
Actual loss of income	12,000/-

Medical expenses	54,000/-
Special diet, attendant charges, transportation	20,000/-
Grand Total...	1,90,560/-
Less: 7% negligence of the deceased (Less: Rs. 1,90,560 X 7%)	13339.2/-
Total...	1,77,221/- (Rounded of)
Less : Amount already awarded by Tribunal	1,22,400/-
Enhancement	**54,821/-**

20. Therefore, this Court holds that the claimant is entitled to get the enhanced compensation of **Rs.54,821/-** with 9% p.a. interest from the date of filing the claim petition till its realisation from opponent Nos.1 and 2, jointly and severally, which would meet the ends of justice. Rest of the direction(s) of the Tribunal remain same.

21. For the reasons recorded above, the following order is passed.

22. The present appeal is **partly allowed**.

23. The Insurance Company is directed to deposit the

enhanced amount **Rs.54,821/-** with 9% p.a. interest from the date of claim petition till its realization before the concerned Tribunal, within a period of eight weeks from the date of receipt of this order.

24. The Tribunal shall disburse the entire awarded amount lying in the FDR and/or with the Tribunal, with accrued interest thereon, if any, to the claimant, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.

25. While making the payment, the Tribunal shall deduct the courts fees, if not paid, in accordance with rules/law.

26. Record and proceedings be sent back to the concerned Tribunal, forthwith.

(J. L. ODEDRA, J)

GAURAV J THAKER/JIGAR J RABARI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: JIGAR RABARI(HCD0067), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 16/09/2025 17:59:29