IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1956 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J. L. ODEDRA

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Approved for Reporting	Yes	No

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KAPILABEN GORDHANBHAI PATEL & ORS.
Versus
IRFANBHAI ISUBHAI MANSURI & ORS.

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Appearance:
MR R.K.MANSURI(3205) for the Appellant(s) No. 1,2,3,4,5
MR VIBHUTI NANAVATI(513) for the Defendant(s) No. 3
RULE SERVED for the Defendant(s) No. 1,2

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CORAM:**HONOURABLE MR.JUSTICE J. L. ODEDRA**

Date : 07/01/2026

ORAL JUDGMENT

1. The present appeal arises from judgment and award dated 15.06.2012 passed in MAC Petition No. 303/2009 passed by MAC Tribunal (Main), Sabarkantha at Himmatnagar.

2. By way of the said judgment and award, the Tribunal was pleased to partly allow the claim petition and was further pleased to order opponent No. 1 and 3 to be jointly

and severally liable to pay the claimant (the present appellants), a sum of Rs. 12,98,235/- with simple interest at the rate of 8 per cent per annum from the date of the filing of the petition till realisation, together with proportionate costs of the petitioners.

3. The accident in question happened on 13.03.2009. Allegedly, one Mr. Gordhanbhai Shivabhai Patel was travelling in his Maruti car bearing Registration No. GJ-01-HE-7730. He was travelling towards Himmatnagar and close to the vicinity of a bypass convergence of three roads at Hansalpur village, at about 5:15 pm in the evening, allegedly, a jeep bearing Registration No. GJ-07-AG-1359, being driven in rash and negligent manner, collided with the vehicle of the said Gordhanbhai Shivabhai Patel.As a result of the said accident, the said Mr. Gordhanbhai Shivabhai Patel sustained severe injuries and ultimately, during the course of his treatment, he succumbed to the said injuries. The said Mr. Gordhanbhai Shivabhai Patel shall hereinafter be referred to as "**the deceased**".

4. Learned advocate for the appellants who are the original claimants, have challenged the said award both on the count of negligence and quantum.

5. Referring to the Panchnama Exhibit-29, learned advocate Mr. R.K. Mansuri for the Appellant, had submitted that the Tribunal has erred in appreciating the said Panchnama and has erred by attributing 25% negligence to the deceased. It was submitted that looking to the said Panchnama, it is clear that the deceased was travelling on the correct side of the road and the offending vehicle jeep veered towards the vehicle of the deceased. It was also submitted that this is also apparent from the damage sustained to the vehicles in as much as the Maruti car has suffered damage on the center line of the vehicle whereas the jeep has suffered damage towards the passenger side (i.e., the right side). He also submitted that the Insurance company has not even examined the owner or driver of the concerned jeep and therefore, also the burden to prove that the said jeep was not negligent has not been discharged by the Respondent Insurance Company. It was thus submitted

that this Court may kindly interfere in the finding of the Tribunal qua the negligence attributed to the deceased and be further pleased to hold the driver of the jeep to be solely negligent.

6. It was further submitted that indeed, the computation of the monthly income of the deceased and the corresponding future loss by the Tribunal, are by and large, fair and reasonable. However, the learned advocate submitted that the Tribunal has failed to account for the prospective income to the tune of 25%, keeping in view the age of the deceased, being 41 years. It was submitted that as per the dictum of ***National Insurance Co. Ltd. Versus Pranay Sethi*** *reported at* ***(2017) 16 SCC 680,*** even the persons who are self-employed are eligible to be granted prospective income. It was next submitted that apart, the Tribunal has erred in not allowing the compensation on count of Loss of Estate. He urged that such Loss of Estate may kindly be awarded to the tune of Rs. 18,150/- in the terms of settled case law. He further submitted that Funeral Expenses too have been awarded on the conservative side.

He thus, submitted that the same may also be awarded at the rate of Rs.18,150/-. It was lastly submitted that the deceased was survived by his parents, a wife and by two sons. It was submitted that all of them are eligible to be compensated under the head of Loss of Consortium and accordingly, a sum of Rs. 48,400/- to each of the family members of the deceased may kindly be awarded by this Tribunal. No other heads of compensation awarded by the Tribunal were challenged before this Court.

7. None appears for the respondent no. 1 and 2 being the driver and owner of the offending vehicle jeep -GJ-07-AG-1359. On the other hand, learned advocate for the respondent No. 3 Insurance company has vehemently supported the judgement and award by submitting that the Tribunal has not committed any error whatsoever in assessing negligence. It was submitted that as such, the Panchnama itself indicates that three roads which converged were just 25 feet away from the place of accident. Hence, reasonable caution should have been exercised by both of the drivers of the vehicles. It was submitted that

however, the deceased was driving the vehicle so fast that for about 14 feet, there were brake/skid marks of the maruti vehicle. And despite such skid marks, the accident has occurred. Hence, Maruti car was being driven with excessive speed. Thus, no interference is warranted on the aspect of determination of negligence and that 25% negligence is correctly attributed to the Maruti Van.

8. It was next submitted that even if the damage to the concerned jeep is considered, thereto it is apparent that the damage sustained by the jeep is on the passenger side (i.e., right side) and that therefore too, certain amount of negligence may be contributed to the deceased. It was submitted that in the circumstances, the Tribunal has correctly attributed negligence to the tune of 25% to the deceased, which may not be interfered with looking to the evidence on record.

9. Moreover, learned advocate has submitted that at the time of condoning delay of 803 days in preferring the present appeal by the appellants, this Court vide order

dated 10.09.2025, had ordered that the delay is condoned on the condition that the appellant would not be entitled for the interest for a period of 803 days.

10. It was further submitted that on quantum, the award of the Tribunal is sustainable and that therefore, the same may kindly be confirmed by rejecting the present appeal.

11. Having heard the learned advocates for the respective parties, this Court proceeds the present appeal in terms hereinafter.

12. The point of determination which arises for consideration of this Court in the present appeal is whether the negligence and the quantum of compensation have been correctly assessed by the Tribunal? If not, what would the percentage of negligence that could be attributed to the deceased, Gordhanbhai Shivabhai Patel in the present matter? Furthermore, what would be the fair and reasonable compensation liable to be awarded to the appellants herein?

13. At the outset, the finding of the Tribunal on negligence

is at paragraph nos.12,13,14,15 and 16. The Tribunal has reasoned that as there was a bypass three road near the place of the accident, it was the duty of both of the driver of the vehicles concerned to driver their vehicles in moderate speed.

14. However, reasoned the Tribunal, that looking to the brake marks of the wheels of the involved vehicles as shown in Panchnama Exhibit-29, both the drivers of the vehicles were driving their vehicles with full speed.

15. Further, the Tribunal has reasoned that as the jeep sustained damage towards the passenger side (i.e., the right hand side), it can be said that a Maruti car driver was mostly on the correct side but the jeep driver was "somewhat" on the wrong side and thus dashed with the Maruti car. Moreover, the Tribunal observed that considering that there was sufficient space on the road to avoid the accident, some negligence may be attributed to the driver of the motor car, the deceased Gordhanbhai.

16. This Court, however, does not subscribe to the said

reasoning. The Panchnama is fairly detailed and it appears that the road from Lolasan to Himmatnagar is situated on a North-South direction, wherein Himmatnagar was towards the South and Lolasan towards the North. Hence, for a vehicle which is travelling from Lolasan towards Himmatnagar, the correct side of that vehicle would be the Eastern side as it would be driving on the left side of the road. That being the case, when the Panchnama qua the spot of the accident is examined, it is apparent that the oily liquid which had formed a spot on the road, owing to the accident, was at about 4 feet from the left side (East Side) of the road. Thus, it can be stated that till the accident occurred, the vehicle of the deceased was on the left side itself.

17. On the other hand, the Panchnama indicates that the brake marks of the jeep were at the distance of 6 feet, counting from the Eastern side and those brake marks were only to the extent of 2 feet. This means that the jeep had applied the brakes at the n^{th} hour. And almost immediately after applying brakes by the jeep, the accident had

occurred. Thus, it can be deduced that driver of the jeep veered over to the wrong side and spotting the other vehicle, applied brakes at the n^{th} hour (i.e., at the last minute).

18. It appears that the road concerned was of the width of 24 feet and the brake marks of about 14 feet would indicate that the Maruti car driver had spotted the offending jeep and had made full efforts to avoid collision whilst maintaining in East side. Yet, it appears that the jeep had come in the wrong side and therefore the Maruti car driver could not avoid the accident. Of course, the Maruti car driver paid a very heavy price for the accident. In overall circumstances, this Court believes that attributing any negligence to the Maruti car driver would be a travesty of justice. Accordingly, the finding of the Tribunal that the Maruti car driver was 25% negligent is liable to be interfered with and accordingly the same is set aside, holding the driver of the jeep to be fully negligent i.e., negligent to the extent of 100%.

19. Insofar as the computation of compensation is

concerned, neither side has raised any dispute as the record indicates that the deceased was filing Income Tax Returns for about three years. The Tribunal has taken a correct approach by taking the mean of the income of the said three years to be the yearly income of the deceased, moreso, when the deceased was engaged in the work of Broker business at an Agriculture Produce Market Yard. The record indicates that for substantiating the income of the deceased, not only the Income Tax Returns but the license of broker class was also adduced on record, which has been issued by the Agriculture Produce Market Yard. Hence, on the fact as is apparent on record, the finding that the deceased was earning Rs. 1,48,117/- per annum is sustainable.

20. However, the Tribunal has not included prospective income for the deceased. Taking the undisputed age of 41 years, duly substantiated by photocopy of the driving license of the deceased, the prospective income is liable to be awarded in terms of the decision in **Pranay Shethi *(supra)*,** which would be to the tune of 25% and hence the income would be liable to be enhanced accordingly. The

relevant paragraph 61(iv) of **Pranay Shethi (supra)** reads as follows:

> *"61(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

Thus, the annual income would be **Rs.1,85,146/-** (computed by multiplying Rs. 1,48,117/- with 1.25).

21. Moreover, as there are total of 5 dependents of the deceased, therefore the deduction towards the annual income would be 1/4th based on the judgment of ***Sarla Verma and Others Versus Delhi Transport Corporation*** reported at **(2009) 6 SCC 121**. The relevant paragraph 30 of ***Sarla Verma (supra)*** reads as follows:

> *"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living*

> *expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceed six."*

Therefore, the remaining amount would be **Rs.1,38,860/-** (computed by multiplying Rs.1,85,146/- with 3/4th). The aforesaid amount would be after deducting ¼ income of the said deceased. Now, the future Loss of Income would be **Rs.19,44,040/-** (computed by multiplying Rs.1,38,860 x 14). The reason this Court has adopted 14 to be multiplier is in terms of paragraph 42 of ***Sarla Verma and Others Versus Delhi Transport Corporation*** reported at ***(2009) 6 SCC 121.***

> *"42. 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[1], Trilok Chandra[2] and Charlie[3]), 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."*

1 (1994) 2 SCC 176 : 1994 SCC (Cri) 335
2 (1996) 4 SCC 362
3 (2005) 10 SCC 720 : 2005 SCC (Cri) 1657

Adding to the said amount would be the compensation under the heads of Loss of Estate and Funeral Expenses, each to the tune of Rs. 18,150/-. Therefore, as per the decision of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. Versus Pranay Sethi*** reported at ***(2017) 16 SCC 680.*** The relevant paragraph 59.8 of the judgment reads as follows:

> *"59.8 Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."*

Hence, the additional amount would be Rs.18,150/- x 2, which is equal to Rs. 36,300/- , as the said amount is liable to be awarded both under the heads of "Loss of Estate" and "Funeral Expenses". Lastly, the Tribunal has also failed to award amount towards the Loss of Consortium which would be liable to be paid to each of the five original claimants/ appellants. The same shall be so awarded in terms of the decision of the Hon'ble Apex Court in the case of **Pranay Sethi (supra)**, duly followed in ***United India Insurance Co.***

Ltd, versus Satinder Kaur @ Satwinder Kaur reported in (2021) 11 SCC 780 and in case of ***Rasmita Biswal And Others Versus Divisional Manager, National Insurance Company And Another reported in 2022 (2) SCC 767,*** and as 10% rise was provided in Pranay Sethi (supra), the consortium comes to Rs.48,400/- to each of the original claimants/appellants. Hence, the aggregate amount, liable to be awarded, under the said head of "Loss of Consortium", would be Rs. 48,400/- x 5 which is equal to Rs. 2,42,000/-.

22. No further enhancement to the compensation under head of Medical Expenses has not been agitated by the learned advocate for the appellant. Hence, the same is retained, as awarded by the Tribunal.

23. In the circumstances, the compensation is liable to be awarded would be as follows:-

Sr.No.	Particulars	Amount awarded by the learned Tribunal (in Rs.)	Amount determined by this Court
1	Future Loss of Income /	15,55,232/-	19,44,040/-

	Loss of dependency		(Rs.1,38,860/- X multiplier of 14)
2	Loss of Estate	10,000/-	18,150/-
3	Loss of Funeral Expenses	3,000/-	18,150/-
4	Loss of Consortium	NIL	2,42,400/- (Rs.48,400/- X 5)
5	Medical Expenses	1,62,747/-	1,62,747/-
	TOTAL	17,30,979/-	23,85,487/-
6	Negligence attributed to the deceased	25%	NIL
	TOTAL	12,98,235/-	23,85,487/-
	Less: Already awarded by the learned Tribunal		12,98,235/-
	Enhanced amount by this Court		**10,87,252/-**

24. The interest on the enhanced compensation would be at the rate of 9%. Indeed, the learned advocate for the Insurance Company has argued that the Tribunal has awarded interest at 8% and that therefore the interest at the enhanced amount may also be awarded at 8%. However, considering the inflationary trends prevailing in

the country and sensing that the purchase power of compensation is drastically reduced if it goes into hands of the claimants after the sustained period of time, this Court is inclined to award interest at 9% on the enhanced amount instead of 8% as submitted by the learned advocate for the Insurance Company. However, in computing the interest, effect be given to the order dated 10.09.2025, whereby the interest due to the Appellants, has been ordered to be deducted for a period of 803 days.

25. The Tribunal shall deposit the aforesaid enhanced amount within a period of 8 weeks from the availability of the signed copy of this order. The same shall be deposited by the Insurance Company with the Tribunal and upon such deposit, the same shall be disbursed by the Tribunal as expeditiously as possible, together with any other undisbursed amount lying with the Tribunal, including the FDRs, if any.

26. The present appeal stands disposed of as allowed to the aforesaid extent.

27. R & P be forthwith remitted back to the Tribunal.

(J. L. ODEDRA, J)

RIYA VISHWAKARMA

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: RIYA VISHWAKARMA(HC02365), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 16/01/2026 17:21:46