(2026) 01 GUJ CK 1420

In the Gujarat High Court

Case No : R/First Appeal No. 4278 Of 2025

Birju Mohanbhai Makwana & Anr — APPELLANT

Vs

Heirs Of Deceased Ranjanben Jayendrabhai Gamar Arjunbhai Jayendrabhai Gamar & Ors — RESPONDENT

Date of Decision : 12-01-2026

Acts Referred:

Citation : (2026) 01 GUJ CK 1420

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Nishit A Bhalodi, Ankitkumar B Patel, Yogi K Gadhia

Final Decision : Allowed

Judgement

Hasmukh D. Suthar, J

1. Admit. Learned advocates waive service of notice of admission for the respective parties. Since notice was already issued by this Court on 02.12.2025 and has been duly served upon the respective respondents, and the learned advocates for the parties are present before this Court and have requested that the appeal be taken up for final hearing at the admission stage, the matter is taken up for final hearing today.

2. This appeal has been preferred by the appellant–Insurance Company against the judgment and award dated 18.01.2025 passed by the Motor Accident Claims Tribunal (Main) Rajkot in Motor Accident Claim Petition No.993 of 2016.

3. Heard learned advocates for the respective parties.

4. The brief facts of the case are that on 15.08.2015, the deceased Jyotsnaben Mohanbhai Makwana and the deceased Gelabhai @ Ghelabhai Vashrambhai Gamara, along with the claimants of MACP No. 890 of 2016 and MACP No. 76 of 2017 and others, were travelling in Motor Car No. GJ-3-ER-5316. When they reached near the place of the accident, a cow suddenly came onto the road and,

while trying to avoid it, Motor Car No. GJ-3-ER-5316 collided with another Motor Car No. GJ-1-KD-6171. As a result of the accident, the deceased Jyotsnaben Mohanbhai Makwana and Gelabhai @ Ghelabhai Vashrambhai Gamara sustained grievous injuries and succumbed thereto, whereas the claimants of MACP No. 890 of 2016 and MACP No. 76 of 2017 suffered grievous injuries resulting in permanent disability.

4. The learned advocate for the appellant has submitted that the learned Tribunal has committed an error in not considering the evidence produced on record. It is contended that the learned Tribunal has committed an error in considering the income of the deceased on a notional basis. The learned Tribunal ought to have considered at least minimum wages which was prevailing in the year 2015. It is submitted that the learned Tribunal has not awarded the proper compensation. Hence, the learned advocate for the appellant has prayed that the present appeal be allowed.

5. On the other hand, the learned advocates appearing for the respondents have strongly opposed the appeal and submitted that the learned Tribunal has rightly awarded just and proper compensation in view of the evidence available on record. Therefore, this Court should not interfere with the award passed by the learned Tribunal. It is further submitted that the learned Tribunal has passed the impugned judgment and award after taking into consideration the entire material on record and hence, no interference is called for at the hands of this Court and the present appeal may be dismissed.

6. Having heard the learned advocates for the respective parties and upon perusal of the record, it is an undisputed and admitted fact that the accident occurred in the year 2015. The evidence led before the Tribunal includes the deposition of witness Birju Mohanbhai Makwana at Exhibit-40, the charge-sheet at Exhibit-52, the insurance policy at Exhibit-55, the driving licence of the driver of the motor car at Exhibit-53, the injury certificate at Exhibit-58 and the post-mortem report at Exhibit-60.

7. It appears that the learned Tribunal appreciated the evidence in the light of the decisions in Bimla Devi v. HRTC, AIR 2009 SC 2819 and Parmeshwaridevi v. Amir Chand, (2011) 11 SCC 635. Upon appreciation of the evidence, the learned Tribunal came to the conclusion that the driver of Ertiga Car No. GJ-3-ER-5316 was solely negligent in causing the accident and that there was no negligence on the part of Indigo Car No. GJ-1- KD-6171. The finding on liability has not been challenged.

8. So far as the quantum of compensation is concerned, although the accident occurred in the year 2015, the learned Tribunal considered the monthly income of the deceased as Rs.3,000/-. It is pertinent to note that, considering the prevailing minimum wages for the year 2015, the income ought to have been taken at Rs.6,968/-, rounded off to Rs.7,000/- for the purpose of awarding just and proper compensation. The learned Tribunal committed an error in assessing

the income. Further, as the deceased was aged 54 years, the learned Tribunal added 25% towards future prospects and upto that extent committed an error, in view of the decision of the Hon’ble Supreme Court in National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 68 , only 10% is required to be added towards future prospects.

9. Therefore, by adding 10% (Rs.700/-), the total monthly income would come to Rs.7,700/-. As the claimants are two in number, in view of the settled principles laid down in Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121, one-third of the income, i.e. Rs.2,566/-, is required to be deducted towards personal expenses. Accordingly, the monthly loss of dependency comes to Rs.5,134/- (Rs.7,700 – Rs.2,566).

10. Considering that the deceased was 54 years old at the time of the accident, the appropriate multiplier applicable is “11” as per Sarla Verma (supra). Thus, the total loss of dependency would come to Rs.6,77,688/- (Rs.5,134 × 12 × 11).

11. As regards the conventional heads, the Tribunal awarded Rs.80,000/- towards loss of consortium, which is required to be enhanced to Rs.96,400/- (Rs.48,200 × 2), as the claimants are two in number. The Tribunal awarded Rs.15,000/- towards loss of estate, which is required to be enhanced to Rs.18,150/-, and Rs.15,000/- towards funeral expenses, which is also required to be enhanced to Rs.18,150/-.

12. Accordingly, the claimants are entitled to Rs.18,150/-towards loss of estate, Rs.96,400/- towards loss of consortium, and Rs.18,150/- towards funeral and transportation expenses.

13. Therefore, the claimants are entitled to Rs.6,77,688/-towards loss of future income. Upon recalculating the compensation under the conventional heads, the amount is as under:

Sr. No.

Nature of heads

Amount

1

Future loss of income

Rs.6,77,688/-

2

Loss of Consortium

Rs.48,200x2= Rs.96,400/-

3

Loss of estate

Rs.18,150/-

5

Funeral expenses

Rs.18,150/-

Total

Rs.8,10,388/-

14. Therefore, the claimants are entitled to an additional compensation of Rs.3,70,388/- (Rs.8,10,388 – Rs.4,40,000/-) along with interest at the rate of 9% per annum from the date of the claim petition till realization.

15. For the reasons recorded above, the present appeal is allowed. The impugned judgment and award passed by the learned Tribunal is modified and enhanced to Rs.8,10,388/-from Rs.4,40,000/-. Respondent – Insurance Company shall deposit the said additional amount of Rs.3,70,388/- along with interest at the rate of 9% per annum, 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.

16. The learned Tribunal is directed to recover or deduct the deficit court fees on enhanced amount and thereafter disburse the amount accordingly.

17. Award to be drawn accordingly.