(2026) 02 GUJ CK 1656

In the Gujarat High Court

Case No : R/First Appeal No. 844 Of 2024

Gopalbhai Visabhai Thakor Father Of Decd & Ors APPELLANT

Vs

Mahavir Gurjar & Ors RESPONDENT

Date of Decision : 16-02-2026

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2026) 02 GUJ CK 1656

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Kaash K Thakkar, KK Thakkar, Dimple A Thaker

Final Decision : Partly Allowed

Judgement

Hasmukh D. Suthar, J

(1) Feeling aggrieved by and dissatisfied with the judgment and award dated 06.12.2023 passed by learned Motor Accident Claims Tribunal (Main), Patan, (hereinafter referred to as "the Tribunal" for short), in Motor Accident Claim Petition No.23/2022, the appellants –original claimants preferred present appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" for short).

(2) Heard Mr. Kaash K. Thakkar, learned Advocate for the appellants – original Claimants and Ms. Dimple A. Thaker, learned counsel for respondent No.2. Though served, none appears for respondent Nos.1 and 3.

(3) It is the case of the claimants that on 01.01.2022, while the deceased Maulik was going as pillion rider on the Motorcycle bearing No.GJ-24-Q-9833 from Varahi to Kandla Highway road, at that time, one Truck Trailor bearing No.RJ-01-GC-4765 came with full speed and in rash and negligent manner dashed the motorcycle of the deceased from behind. As a result, the deceased got serious injuries and succumbed to it. Therefore, the claim petition was filed by the legal heir of the deceased to get compensation of Rs.20,00,000/- from the opponents.

After appreciating the evidence produced on record, the learned Tribunal awarded compensation of Rs.9,37,200/- along with cost and interest @ 9% p.a.

(4) The appeal is filed on limited ground of quantum and no further issue qua liability or contributory negligence is challenged. Therefore, learned counsel for the claimants has mainly argued that, the Tribunal has erred in considering monthly income of the deceased as Rs.6,000/- on notional basis as he was doing labour work and earning Rs.15,000/- p.m. He has submitted that, the Tribunal ought to have considered minimum wage prevailing at the time of accident which was subsequently amended to Rs.11600/-. Therefore, he prays that at least, Rs.10,000/- income p.m. is required to be assessed. Further, the Tribunal has also erred in not awarding adequate compensation under other conventional heads. Hence, he has prayed to allow the appeal as prayed for.

(5) Learned counsel for the respondent No.2- Insurance Company has opposed the present appeal and submitted that, the Tribunal has rightly awarded compensation in absence of any evidence of income and adequate compensation is awarded under the head of loss of consortium. Therefore, requested to dismiss the appeal.

(6) Having considered the submissions made by learned counsel for the parties, it appears that the appeal is filed only on the aspect of quantum and liability is not challenged. The Insurance Company has not filed any cross-objection. Hence, this appeal is required to be decided on the aspect of quantum only. Alleged incident is not not in dispute. Involvement of the vehicle is also not in dispute. In order to prove the claim, the claimant No.1 has filed an Affidavit at Exh:23, FIR at Exh:25, Panchnama of scene of incident at Exh:26, Inquest Panchanama at Exh:27, PM report at Exh:28 and school leaving certificate at Exh:35. After appreciating the evidence produced on record, the Tribunal held the offending vehicle sole negligent relying on the decisions of the Bimla Devi Vs. HRTC reported in AIR 2009 SC 2819 and Parmeshwari Devi Vs. Amir Chand, reported in 2011 (11) SCC 635. Further, the age of the deceased is 17 years as per the school leaving certificate at Exh:35.

(7) As per the law laid down by the Hon’ble Supreme Court in the case of Govind Yadav Vs. National Insurance Co. Ltd., reported in 2012(1) TAC 1 (SC), that if no proof of income is produced on the record, then Tribunal has to consider prevalent minimum wages in absence of evidence of monthly income of the deceased. In the present case, the accident occurred in the year January, 2022 and during that time, the deceased was doing agriculture labour work and as per the minimum wages, the minimum income of unskilled person is required to be considered as Rs.9,050/-. Hence, the income of the deceased is reassessed as Rs.9,050/- per month. Further, the Tribunal has rightly considered future prospective income of the deceased as 40 %, which is proper. As the deceased was unmarried, 1/2 deduction as personal expenditure and living of the deceased and multiplier of 18 were considered by the learned Tribunal as per the judgment of the Apex Court in the case of Sarla Verma (Smt) & Ors. Vs. Delhi Transport

Corporation & Anr. [2009 (6) SCC 121] which are just and proper.

(8) Therefore, calculating the income of the deceased as Rs.9,050/- and future prospect of 40% = Rs.3,620/- which comes to Rs.12,670/- and 1/2nd amount is required to be deducted as personal expenditure and living of the deceased which comes to Rs.6,335/- and the net amount comes to Rs.6,335/-. In view of above, the amount under the head of loss of future dependency is required to be reassessed as Rs.6,335/- x 12 months x 18 multiplier = Rs.13,68,360/-. Therefore, the appellants are entitled to get additional amount of Rs.4,61,160/- under the head of future loss of dependency.

(9) Further, the Tribunal by relying on the judgment of National

Insurance Company Ltd. Vs. Pranay Sethi, reported in 2017 (16) SCC 680 has awarded total Rs.30,000/- under the two conventional heads, however, this Court is of the view that amount is required to be reassessed as Rs.18,150/- towards loss of estate and Rs.18,150/-towards funeral expenses. Therefore, the appellants – original claimants are entitled for additional amount of Rs.6300/- (i.e. Rs.18,150/- - Rs.15,000/- = Rs.3,150/- towards loss of estate and Rs.18,150/- - Rs.15,000/- = Rs.3,150/- towards funeral expenses).

(10) Further, in view of 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 Tribunal has committed error in not awarding loss of consortium. However, in view of above judgments, the appellants are entitled for loss of consortium. Therefore, the amount towards loss of consortium is reassessed as Rs.96,800/- for parents of the deceased.

(11) As discussed above, the appellants – original claimants are entitled to get compensation computed as under:-

Heads

Awarded by the

Tribunal

Reassessed by

this Court

Future loss of dependency

9,07,200/-

13,68,360/-

Loss of Estate

15,000/-

18,150/-

Funeral expenses

15,000/-

18,150/-

Loss of consortium

Not given

96,800/-

Total compensation

9,37,200/-

15,01,460/-

(12) As Rs.9,37,200/- is already awarded by learned Tribunal, the appellants – original claimant is entitled to get additional amount of Rs.5,64,260/- (Rs.15,01,460 - Rs.9,37,200/-) with proportionate costs and interest as awarded by the learned Tribunal.

(13) Hence, present appeal is partly allowed. The judgment and award dated 06.12.2023 passed by learned Motor Accident Claims Tribunal (Main), Patan, in Motor Accident Claim Petition No.23/2022 stands modified to the aforesaid extent. Rest of the judgment and award remains unaltered. It is provided that respondent No.2 shall deposit such additional amount of Rs.5,64,260/- along with interest as awarded by the Tribunal, 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.

(14) The Tribunal is directed to recover or deduct the deficit court fees on enhanced amount and thereafter disburse the amount accordingly. Award to be drawn accordingly.