

(2025) 11 GUJ CK 1947

In the Gujarat High Court

Case No : R/First Appeal No. 1767, 1768, 1769 Of 2023, R/Cross Objection No. 398, 399 Of 2023, Civil Application (For Direction) No. 1 Of 2023 In R/Cross Objection No. 401 Of 2023

Heirs Of DECD. Vikrambhai Babubhai Dabhi & Ors

APPELLANT

Vs

Dashrathsinh J. Dabhi & Anr

RESPONDENT

Date of Decision : 06-11-2025

Acts Referred:

Motor Vehicles Act, 1988 — Section 146, 173

Citation : (2025) 11 GUJ CK 1947

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Vishal C Mehta, Rathin P Raval

Judgement

Hasmukh D. Suthar, J

[1.0] Since these first appeals and cross-objections are arising out of the common judgment and award passed by the learned Motor Accident Claims Tribunal (Main), at Palanpur, District Banaskantha, they are heard, decided and disposed of by this common order.

[2.0] First Appeal Nos.1767, 1768 and 1769 of 2023 are filed by the respective appellants – original claimants under Section 173 of the Motor Vehicles Act, 1988, seeking enhancement of the compensation amount and respective cross objections are filed by the respondent – insurance company seeking quashment of judgment and order passed by the learned Motor Accident Claims Tribunal.

[3.0] The brief facts leading to filing of present appeals and cross-objections are as follows:

[3.1] On 01.02.2015, claimant of M.A.C.P.No.128/2015 was driving his Alto car bearing registration No.GJ-6-CM-4946 and deceased Vikrambhai Babubhai Dabhi and Jesungbhai Chhaganbhai Dabhi were travelling in the said car and they were coming from Danta to Palanpur. When the said car reached near Dhandha three

ways, at that time from Palanpur side the driver of the Jeep bearing registration No.GJ-8-23A-0407 came from Palanpur side at a very high and excessive speed and in rash and negligent manner and while overtaking one bullock cart, the jeep driver dashed the Alto car, though the claimant of M.A.C.P. No.128/2015 had taken the car towards the left side of the road to save accident. As a result, deceased Vikrambhai Babubhai Dabhi and Jesungbhai Chhaganbhai Dabhi died due to the accidental injuries and claimant of M.A.C.P.No.128/2015 suffered serious injuries. The driver of Alto Car filed MACP No.128/2015 and legal heirs and representatives of deceased Vikrambhai Babubhai Dabhi filed MACP No.133/2015 whereas legal heirs and representatives of deceased Jesungbhai Chhaganbhai Dabhi filed MACP No.134/2015.

[3.2] After considering the evidence produced on record by the respective parties, learned Motor Accident Claims Tribunal (Main), at Palanpur (hereinafter referred to as "learned Tribunal") has been pleased to pass an award of Rs.3,15,580/- in favor of the claimant of MACP No.128/2015; Rs.2,61,800/- in favor of the claimants of MACP No.133/2015 and Rs.2,61,800/- in favor of claimants of MACP No.134/2015 with 9% interest per annum. It is pertinent to note that the learned Tribunal deducted the negligence on the part of the deceased persons to the extent of 50% for contributory negligence. Hence, present appeals and cross-objections are filed.

[4.0] Learned advocate for the appellants has mainly challenged the impugned award on the ground that the learned Tribunal has material erred in awarding the compensation without properly appreciating the evidence and minimum wages or income of the deceased. Insofar as First Appeal Nos.1767/2015 and 1769/2023 are concerned, the learned Tribunal has not properly appreciated the fact that the monthly income of the deceased was required to be considered at Rs.7000/- per month considering the minimum wages prevailing at the relevant time of accident and deceased was engaged in agricultural work and animal husbandry work though the learned Tribunal has considered the income of the deceased only at Rs.3000/- per month and committed an error in awarding the compensation towards loss of estate and consortium at Rs.55,000/- though the compensation under the said head ought to have been awarded at Rs.1,76,000/- and towards funeral expenses, only Rs.15,000/- is awarded though it ought to have been awarded at Rs.16,500/-. The bone contention of the learned advocate for the appellants is that the learned Tribunal has committed an error in deducting 50% of amount of compensation. Infact, the deceased persons were occupants in the Alto Car and they have not contributed in the unfortunate accident and thus, there was no negligence on the part of the deceased persons. On the contrary, it was a case of composite negligence for two deceased persons. Hence, the learned Tribunal has committed an error in holding the deceased persons contributory negligence to the extent of 50%.

[4.1] So far as First Appeal No.1769/2023 is concerned, learned advocate for the appellant has submitted that the appellant was the driver of the Alto Car and on

his part 50% contributory negligence is considered. Learned Tribunal has committed an error in not considering the monthly income of the appellant at Rs.7000/- as per prevailing minimum wages at the relevant point of time though appellant was a student and pursuing his study of 2nd BA at the time of accident and due to this reason, the appellant could not pursue his further studies and could not secure his job in police department and has awarded only Rs.1,10,160/- under the head of future loss of income. The learned Tribunal has committed an error in not appreciating the fact that the appellant was hospitalized for 21 days and therefore, under the head of pain, shock and suffering, without considering his injuries, only Rs.15,000/- is awarded. The learned Tribunal has committed an error in awarding only Rs.5000/- towards attendance, transportation and special diet etc. and not considered the actual loss of income though the appellant was entitled to get an amount of atleast Rs.20,000/- towards actual loss of income.

[4.2] Further, he has submitted that the appellant of FA No.1768/2023 was the driver of Alto Car and therefore, only his contributory negligence is required to be considered. Further, he has submitted that so far as contributory negligence is concerned, in a cognate matter being MACP No.86/2016, earlier the learned Tribunal considered negligence of 50% of both the vehicles and said finding has attained the finality. Hence, findings of composite negligence has also attained finality but so far as MACP Nos.133/2015 and 134/2015 are concerned, they are wrongly considered for contributory negligence and instead composite negligence ought to have been considered for them as they were traveling in the Alto Car as passengers.

[5.0] Learned advocate Mr. Rathin Raval appearing for the insurance company has opposed the First Appeals and mainly submitted that this is a case of composite negligence on part of both the vehicles as there was a head on collision. The insurance company has filed cross-objections in respective first appeals and mainly contended that learned Tribunal has awarded proper compensation and properly appreciated the evidence and therefore, has requested to dismiss the First Appeals.

[5.1] Further, he has submitted that appellant of First Appeal No.1768/2023 is a tortfeasor and his negligence is considered at 50% as he was driving the Alto Car which dashed head on with another vehicle i.e. jeep. Though he is a tortfeasor, on his behalf, the insurance company is compelled to pay the compensation and insurance company has a right to recover the amount from other tortfeasor and he owe to the insurance company, as on his behalf the insurance company has paid the amount of compensation to the claimants and therefore, the insurance company has the right to recover the said amount from the tortfeasor i.e. claimant of MACP No.128/2015 namely Kiranbhai Mohanbhai Bhutiya. In this regard, he has relied on the decision of the coordinate Bench of this Court in the case of United India Insurance Company Limited vs. Makanlal Ramjibhai Dalsaniya reported in 2019(3) GLR 2280 and argued that the vehicle

of said claimant was uninsured and as per section 146 of the Motor Vehicles Act, he has to ply the vehicle with insurance and without insurance for third party risk, he has plied the vehicle and alleged accident took place and hence, he is a wrong doer and if enhancement is allowed to him, it would amount to premium to wrong doer and as on his behalf, insurance company has made the payment of compensation, he owe to the insurance company. Hence, he has requested to allow the set off and requested to allow the cross-objections and dismiss the First Appeals with clarification to the learned Tribunal to allow the insurance company to recover the amount of compensation from the tort feisor i.e. Kiranbhai Mohanbhai Bhutiya.

[6.0] Refuting the said submission, learned advocate for the appellants has submitted that the third party has a right to recover the amount of compensation in case of composite negligence from the tort feisor. He has relied on the decision of the Hon'ble Supreme Court in the case of Khenyei vs. New India Assurance Company Limited reported in (2015)9 SCC 273 and argued that no such contention is raised before the learned Tribunal and not joined the claimant of MACP No.128/2015 i.e. tort feisor as a party in other two claim petitions i.e. MACP Nos.133/2015 and 134/2015. Even, the insurance company shall have to file independent proceeding to recover the amount but set off is not permissible in an appeal filed by the claimants. Hence, he has requested to dismiss the cross-objections.

[7.0] Heard learned advocate for the appellants and learned advocate for the insurance company.

[7.1] So far as First Appeal No.1767/2023 is concerned, at the time of accident, the deceased namely Vikrambhai Babubhai Dabhi was traveling in the Alto Car as a passenger. Perusing the evidence on record, it appears that at the time of accident, the deceased was aged 20 years and was earning Rs.8000/- by doing agriculture and animal husbandry work. The claimants of MACP No.133/2015 i.e. legal heirs of Vikrambhai Dabhi have not produced any documentary evidence with regard to income of the deceased however, the learned Tribunal has assessed the monthly income of the deceased at Rs.3000/-. The accident took place in the year 2015 and hence, minimum wages prevailing at the relevant point of time of accident, which was Rs.6968/- per month i.e. lumpsum Rs.7000/-, is required to be considered. The deceased was aged 20 years and hence, as per the 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 18 is required to be considered and as per the decision of Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and Ors. reported in 2017 ACJ 2700, as the deceased was below 40 years of age, additional income under the head of future prospective income at 40% is required to be considered. Hence, 40% of Rs.7000/- would come to Rs.2800/- and hence, monthly income of deceased at the time of accident is required to be considered at Rs.9800/-. As the deceased was a bachelor, 50%

amount is required to be deducted and hence, the claimants of MACP No.133/2015 are entitled to Rs.4900 (Rs.9800/2) x 12 x 18 = Rs.10,58,400/- towards future loss of income. Further, as the deceased was having parents and two minor siblings, as per 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.40,000 x 4 = Rs.1,60,000/- towards filial consortium and Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Hence, the claimants of MACP No.133/2015 are entitled to get the compensation as under:

Future loss of income

Rs.10,58,400/-

Filial Consortium

Rs.1,60,000/-

Loss of Estate

Rs.15,000/-

Funeral Expenses

Rs.15,000/-

Total

Rs.12,48,400/-

[7.2] So far as First Appeal No.1769/2023 is concerned, at the time of accident, the deceased namely Jesungbhai Chhaganbhai Dabhi was traveling in the Alto Car as a passenger. Perusing the evidence on record, it appears that at the time of accident, the deceased was aged 20 years and was earning Rs.8000/- by doing agriculture and animal husbandry work. The claimants of MACP No.134/2015 i.e. legal heirs of Jesungbhai Dabhi have not produced any documentary evidence with regard to income of the deceased however, the learned Tribunal has assessed the monthly income of the deceased at Rs.3000/-. The accident took place in the year 2015 and hence, minimum wages prevailing at the relevant point of time of accident, which was Rs.6968/- per month i.e. lumpsum Rs.7000/-, is required to be considered. The deceased was aged 20 years and hence, as per the decision of the Hon'ble Supreme Court in the case of Smt. Sarla Verma & Ors. (Supra), multiplier of 18 is required to be considered and as per the decision of Hon'ble Supreme Court in the case of Pranay Sethi and Ors., as the deceased was below 40 years of age, additional income under the head of future prospective income at 40% is required to be considered. Hence, 40% of Rs.7000/- would come to Rs.2800/- and hence, monthly income of deceased at the time of accident is required to be considered at Rs.9800/-. As the deceased was a bachelor, 50% amount is required to be deducted and hence, the claimants of MACP No.134/2015 are entitled to Rs.4900 (Rs.9800/2) x 12 x 18 = Rs.10,58,400/- towards future loss of income. Further, as the deceased was

having parents, as per 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.40,000 x 2 = Rs.80,000/- towards filial consortium and Rs.15,000/- towards loss of estate and Rs.15,000/-towards funeral expenses. Hence, the claimants of MACP No.134/2015 are entitled to get the compensation as under:

Future loss of dependency

Rs.10,58,400/-

Filial Consortium

Rs.80,000/-

Loss of Estate

Rs.15,000/-

Funeral Expenses

Rs.15,000/-

Total

Rs.11,68,400/-

So far as composite negligence is concerned, the deceased of MACP Nos.133/2015 and 134/2015 were third party and were traveling in the Alto Car as passengers and hence, learned Tribunal has committed an error in considering contributory negligence on the part of the deceased passengers and therefore, the deceased of MACP No.133 and 134 of 2015 being third party, their legal heirs have the right to recover the amount of compensation from any of the tort feors as per the law laid down by the Hon'ble Supreme Court in the case of Khenyei (Supra). It is also apposite to refer to the decision of the Oriental Insurance Co. Ltd. vs. Raval Rupsibhai Pasabhai (Decd.) and others reported in 2015 (1) GLR 216. Hence, learned Tribunal has committed an error to that extent in the impugned award.

[8.0] So far as cross-objections are concerned, both the deceased were traveling in the Alto Car as third party and as discussed hereinabove, third party has a right to recover the compensation from any of the joint tort feosor and it is always open for the claimants to recover the entire compensation amount from one of the tort feosors in case of joint tort feosors and when compensation is recovered from one tort feosor, other can recover the amount from any tort feosor and upto that extent, if the insurance company has paid any compensation to the claimants, it is always open for the insurance company to recover the apportionment of negligence on the part of another tort feosor. Herein, 50% negligence is decided. It is needless to say that insurance company has the right to recover the said amount from the joint tort feosor by filing appropriate proceeding including the execution proceeding before the learned Tribunal. The findings of the learned Tribunal holding the claimants of MACP

Nos.133 and 134 of 2015 to be contributory negligent is not believed and instead they ought to have been held to be composite negligent. In this regard, reference is required to be made to the decision of the coordinate Bench of this in the case of Kasumben Vipinchandra Shah v. Arvinbhai Narmadashankar Raval reported in 2007 (1) GLH 601.

With this clarification, cross-objection Nos.398/2023 and 399/2023 in First Appeal Nos.1767/2023 and 1769/2023 stand disposed of.

[9.0] So far as First Appeal No.1768/2023 is concerned, at the time of accident, the claimant namely Kiranbhai Mohanbhai Bhatiya who was driving the Alto Car was aged 27 years and was studying in 2nd years of B.A. and due to accidental injuries, he could not complete his B.A. and thereafter completed his B.A. in the year 2017 because of which he could not get job in the police department. The learned Tribunal has assessed the monthly income of the claimant at Rs.3000/-. The accident took place in the year 2015 and hence, minimum wages prevailing at the relevant point of time of accident, which was Rs.6968/- per month i.e. lumpsum Rs.7000/-, is required to be considered. The claimant was aged 27 years and hence, as per the decision of the Hon'ble Supreme Court in the case of Smt. Sarla Verma & Ors. (Supra), multiplier of 17 is required to be considered. The claimant as per the opinion of Doctor had sustained 20% disability body as a whole however, as agreed between the learned advocates for the respective parties, disability body as a whole is considered at 18%. Hence, the claimant is entitled to $\text{Rs.7000} \times 12 \times 17 \times 18\% = \text{Rs.2,57,040/-}$ towards future loss of income. It has come on record that the claimant was hospitalized for a period of 21 days and hence, under the head of pain, shock and suffering, considering 18% of disability body as a whole and the claimant could not have worked for three months and therefore, the claimant is entitled to $\text{Rs.7000} \times 3 \text{ months} = \text{Rs.21,000/-}$ towards actual loss of income. Further, the claimant is entitled to Rs.25,000/- towards pain, shock and suffering and Rs.5000/- towards special diet, attendant and transportation expenses.

[9.1] Further, the claimant has produced medical bills for an amount of Rs.4,91,781/- but after due verification, insurance company has admitted the bills of Rs.3 lakh but the insurance company has failed to show as to how the said medical bills produced on record are false and fabricated. Hence, the learned Tribunal has not considered the contention of the insurance company and awarded Rs.4,92,000/- towards medical expenses. Hence, considering the aforesaid fact, order of compensation is required to be enhanced as under:

Future loss of income

Rs.2,57,040/-

Actual loss of income

Rs.21,000/-

Pain, shock and suffering

Rs.25,000/-

Special diet, attendant and
transportation Expenses

Rs.5,000/-

Medical expenses

Rs.4,92,000/-

Total

Rs.8,00,040/-

[9.2] So far as deduction of 50% towards contributory negligence on the part of claimant is concerned, as there was a head on collision as well as considering the fact that the learned Tribunal in a cognate matter being MACP No.86/2016 has come to conclusion that there was 50% negligence on the part of driver of Alto Car bearing registration No.GJ-06-CM-4946 and 50% of the said amount is required to be deducted from the total amount of compensation. Hence, amount payable to the appellant of First Appeal No.1768/2023 is Rs.4,00,020/- (50% of total amount of Rs.8,00,040/-).

[10.0] So far as cross-objection No.401/2023 in First Appeal No.1768/2023 is concerned, present appellant – original claimant is a wrong doer as he was plying the vehicle without license in breach of section 146 of the Motor Vehicles Act and therefore, the insurance company was compelled to make the payment of compensation on behalf of the tort feisor and hence, insurance company is entitled to recover the said apportioned amount from the enhanced amount of compensation which is required to be paid to the original claimant and thus, the same is required to be set off or recovered by deducting the said amount as other claimants owe to the insurance company, who on behalf of the tort feisor has made the payment of compensation in view of the decision of the Hon'ble Supreme Court in the case of Khenyei (Supra).

[10.1] In First Appeal Nos.1767 and 1769 of 2023, the matters were of composite negligence and without joining the claimant of MACP No.128/2015 i.e. the driver of Alto Car as a party, the claim petitions were filed and on behalf of the driver of Alto Car, who was a tort feisor, insurance company has made the payment and hence, claimant Kiranbhai Mohanbhai Bhatiya owe to the insurance company the said amount and it is settled principle of law that it is always open for the insurance company to recover the amount in execution proceeding or to file appropriate proceeding in accordance with law against the tort feisor. Hence, it would be open for the insurance company to recover the amount to the extent of composite negligence on the part of the driver of the Alto Car i.e. Kiranbhai Bhatiya in absence of his impleadment as party in other two claim petitions from the joint tort feisor i.e. Kiranbhai Mohanbhai Bhatiya – driver of Alto Car by way of filing appropriate proceeding including execution proceeding against the

appellant – Kiranbhai Mohanbhai Bhatiya.

[11.0] For the reasons recorded above, the following order is passed.

[11.1] First Appeal Nos.1767, 1768 and 1769 of 2023 are partly allowed and the respective original claimants are entitled to enhanced amount of compensation as under:

First Appeal No.1767/2023

Future loss of dependency

Rs.10,58,400/-

Filial Consortium

Rs.1,60,000/-

Loss of Estate

Rs.15,000/-

Funeral Expenses

Rs.15,000/-

Total

Rs.12,48,400/-

Less: Amount already awarded by

learned Tribunal

Rs.5,23,600/-

Entitlement of enhanced amount of
compensation

Rs.7,24,800/-

First Appeal No.1769/2023

Future loss of dependency

Rs.10,58,400/-

Filial Consortium

Rs.80,000/-

Loss of Estate

Rs.15,000/-

Funeral Expenses

Rs.15,000/-

Total

Rs.11,68,400/-

Less: Amount already awarded by
learned Tribunal

Rs.5,23,600/-

Entitlement of enhanced amount of
compensation

Rs.6,44,800/-

First Appeal No.1768/2023

Future loss of income

Rs.2,57,040/-

Actual loss of income

Rs.21,000/-

Pain, shock and suffering

Rs.25,000/-

Special diet, attendant and
transportation Expenses

Rs.5,000/-

Medical expenses

Rs.4,92,000/-

Total 50% towards contributory
negligence

Rs.8,00,040/-

Rs.4,00,020/-

Less: Amount already awarded by
learned Tribunal

Rs.3,15,580/-

Entitlement of enhanced amount of compensation

Rs.84,420/-

[11.2] The Insurance Company is directed to deposit the enhanced amount with interest at the rate of 9% per annum as within a period of six weeks from the date of receipt of this order.

[11.3] 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 claimants, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.

[12.0] Insofar as First Appeal No.1768/2023 is concerned, the insurance company shall have liberty to file appropriate proceeding including the execution proceeding to recover the amount of compensation which the driver i.e. Kiranbhai Mohanbhai Bhatiya (appellant of First Appeal No.1768/2023) owes to the insurance company as he was the joint tortfeasor on whose behalf insurance company paid the amount to the claimants.

[13.0] Respective Cross-objections also stand disposed of in aforesaid terms.

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

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