

(2026) 02 GUJ CK 1636
In the Gujarat High Court

Case No : R/First Appeal No. 1710 Of 2022, R/Cross Objection No. 219 Of 2022

ICICI Lombard General Insurance Co Ltd	APPELLANT
Vs	
Vallabhbhai Nathabhai Bhalani & Ors	RESPONDENT

Date of Decision : 05-02-2026

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168

Citation : (2026) 02 GUJ CK 1636

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Kirti S Pathak, Hemal Shah

Final Decision : Partly Allowed

Judgement

Hasmukh D. Suthar, J

1) This appeal has been preferred by the appellant – Insurance Company against the impugned judgment and award dated 29.11.2021 passed by the learned Motor Accident Claims Tribunal (Aux), Rajkot, (for short referred to as "learned Tribunal") in Motor Accident Claim Petition No.52 of 2014 under Section 166 of the Motor Vehicles Act, 1988 (for short referred to as "MV Act") wherein the Tribunal has partly allowed the claim petition filed by the claimants.

2) The original claimants – respondents herein have objected the present appeal by filing cross objections being Cross Objection No.219 of 2022. Therefore, First Appeal and Cross-Objections both are hereby taken up for final hearing and decided by this common judgment.

3) Heard Ms. Kirti Pathak, learned counsel for the appellant – Insurance Company and Mr. Nishit Bhalodi, learned counsel for the respondent claimants.

4) The brief facts of the present claim petition are that the accident took place on 01.09.2013, the deceased was going in his car bearing No.GJ-03-DG-6556 on the correct side of the road and when reached near Khodiyar Farm at Jamnagar

Rajkot Highway, one Bolero car bearing No.GJ-10-AC-4424 came from wrong direction in rash and negligent manner with excessive speed and dashed with the car of the deceased. As a result, the deceased got serious and succumbed to it. In this regard, a complaint was lodged against the driver of Bolero car. Therefore, the claimants have filed claim petition before the Tribunal which came to be partly allowed and the Tribunal awarded compensation of Rs.1,19,95,033/- along with interest at the rate of 9 % p.a.

5) Learned counsel for the appellant – Insurance Company has submitted that the Tribunal has committed error in considering monthly income of the deceased. 50 % contributory negligence is required to be considered on the part of the deceased. Further, the Tribunal has straightaway accepted the income returns rather to accept average income of all income tax returns, which ought to have been considered by the Tribunal. However, the Tribunal failed to consider the same. Though the claimants failed to prove the pleadings before the Tribunal based on presumption and assumption, the Tribunal has awarded exorbitant compensation to the claimants. The Tribunal has failed to consider the settled principles of law and ignored the fact that under Section 168 of the Act, just compensation is required to be considered based on fairness, equability and legal standard. Hence, he has requested to allow the appeal and dismiss the Cross-Objections of the claimants.

6) Mr. Hemal Shah, learned counsel for the claimants opposing present appeal and supporting his cross-objection submitted that, the Tribunal has committed error in considering 10 % negligence on the part of the deceased and not awarded just compensation. There was no evidence on the record which suggests that the deceased was negligent in causing the accident because Bolero car came from wrong side jumping divider and dashed with the car of the deceased. Therefore, question does not arise to consider contributory negligence on the part of the deceased. Hence, he has requested to dismiss the appeal and allow the Cross-Objections of the claimants.

7) Having heard the learned counsel for the respective parties and upon perusal of the record and proceedings, it emerges that the Tribunal has relied upon the decisions of the Hon'ble Apex Court in *Bimla Devi v. HRTC*, reported in AIR 2009 SC 2819, and *Parmeshwari Devi v. Amir Chand*, reported in (2011) 11 SCC 635. To substantiate their claim, the claimants have produced oral evidence of claimant No.1 at Exh.16, FIR at Exh.19, panchnama of the scene of accident at Exh.20, inquest panchnama at Exh.21, insurance policy at Exh.22, RC book at Exh.23, driving licence of Ashok Karsariya at Exh.24, post-mortem report at Exh.27, charge- sheet at Exh.28, and income-tax returns of the deceased at Exhs.29 to 31. From the panchnama of the scene of accident, it appears that the width of one side of the road is about 20 feet, with a divider of approximately 8 feet in between. Wheel marks measuring about 4 feet were found on the western side of the road near the divider, and further wheel marks of about 6 feet were noticed at a distance of nearly 70 feet towards the Jamnagar side. At a further

distance of about 38 feet, a pole was found in a damaged and bent condition, and the emergency number board affixed thereto was also found damaged, situated within the divider. The distance between the point where the Bolero vehicle mounted the divider and the damaged pole was approximately 213 feet. The Bolero car was found to be extensively damaged, amounting to a total loss. The post-mortem report reveals that the cause of death was shock and hemorrhage due to multiple traumatic injuries. The Tribunal has rightly observed that while deciding the issue of negligence, the same is required to be established on the touchstone of preponderance of probabilities and not beyond reasonable doubt. It is also noted that the FIR was not lodged by an eyewitness. As per the pleadings, the Bolero car was travelling from Rajkot to Jamnagar, whereas the deceased was travelling from Jamnagar to Rajkot. As reflected in the panchnama, both carriageways were 28 feet wide, separated by an 8-feet-wide divider.

8) The panchnama further reveals that the Bolero vehicle first climbed onto the divider from the Rajkot side, collided with the pole situated within the divider, and thereafter crossed onto the wrong side of the road and dashed against the car driven by the deceased, which was proceeding towards Rajkot from the Jamnagar side. Considering the considerable distance of about 213 feet travelled by the Bolero vehicle after mounting the divider and colliding with the pole, it clearly establishes that the Bolero vehicle was being driven at an excessive speed and that the driver failed to control the vehicle even after the initial impact. It is pertinent to note that the learned advocate for the insurance company of Car No. GJ-03-DG-6556 has produced police statements at Exhs.5 to 61 in the cognate matter being MACP No.1111 of 2013. Upon perusal of the police statement at Exh.57 given by the driver of the Bolero vehicle, it is stated that while driving the Bolero jeep, he felt drowsy, as a result of which the vehicle mounted the divider, crossed onto the wrong side of the road, and collided with the car coming from the Jamnagar side. However, considering the panchnama of the scene of accident and the nature of damage caused to Car No. GJ-03-DG-6556, it appears that the deceased, though travelling on the correct side of the road, might also have been driving at an excessive speed. Otherwise, he could have stopped the vehicle in time or turned it towards a safer side to avert the accident upon noticing the Bolero vehicle approaching after crossing the divider. As per the panchnama, the deceased had sufficient opportunity, from a distance of nearly 300 feet, to take evasive action on observing the Bolero vehicle coming onto the wrong side of the road.

9) Thus, there is substance in the submission of the learned Advocate for the insurance company that deceased being driver of car No.GJ-03-DG-6556 has also contributed to some extent for the occurrence of accident. Hence, considering the FIR, panchnama of the place of accident, charge sheet submitted by police, it transpires that the deceased was also not careful and cautious while driving his car. Standard of proof required being preponderance of probability as has been reiterated in *Mangla Ram v. Oriental Insurance Company Limited*. In this regard,

reliance is also placed on the decision of the Hon'ble Apex Court in case of Srikrishna Kanta Singh Vs. The Oriental Insurance Company Ltd. & Ors. Reported in 2025 INSC 394. Therefore, the Tribunal has not committed any error in assessing contributory negligence on the part of drivers of both the vehicles. Hence, argument canvassed by learned counsel for the appellant is not sustainable.

10) Considering the above facts, it appears that the Tribunal has not committed any error in assessing 90 % negligence on the part of driver of Bolero car and 10 % negligence on part of the deceased. Therefore, no interference is required on the aspect of negligence as per the reasoning given by the Tribunal.

11) So far as the income aspect is concerned, the claimants have produced income-tax returns at Exhs.29 to 31 for the assessment years 2011-2012 to 2013-2014. Claimant No.1, in his affidavit at Exh.16, has stated that the deceased was engaged in the business of share trading and construction and was earning ₹ 15,00,000/- per annum. On perusal of the income-tax return at Exh.29 for the assessment year 2011-2012, the gross total income of the deceased is shown as ₹ 5,94,589/-, on which income tax of ₹ 69,310/- was paid. The income-tax return at Exh.30 for the assessment year 2012-2013 reflects a gross total income of ₹ 4,90,834/- and payment of income tax of ₹ 22,276/-. Further, the income-tax return at Exh.31 for the assessment year 2013-2014 shows a gross total income of ₹ 10,49,033/-, with income tax of ₹ 1,32,380/- paid thereon. It is pertinent to note that the income-tax return for the assessment year 2013-2014 was filed on 12.08.2013, whereas the accident occurred on 01.09.2013. Thus, it is evident that the said return was filed prior to the occurrence of the accident and cannot be said to have been filed after the accident with a view to inflate the income. Upon consideration of the aforesaid documentary evidence, the Tribunal has taken into account the income reflected in the last income-tax return, i.e. for the assessment year 2013-2014, and assessed the annual income of the deceased at ₹ 10,49,033/-.

12) That, as per the judgment of the Apex Court in the case of Shashikala & Ors. Vs. Gangalakshamma & Anr., [2015 (9) SCC 150], when there is a definite evidence on record to show that what was the yearly income in the year of accident, income should be determined as per the last income tax returns. Therefore, in light of the decision of the Hon'ble Supreme Court in Narender Dev Poonia v. Hasan Mohd., reported in 2025 (0) JX (SC) 1619, this Court deems it fit not to interfere with the income assessed by the Tribunal, as the same has been determined with a view to award just compensation. Further, while assessing the income of the deceased, the Tribunal was required to bear in mind the object of the Motor Vehicles Act, which is a beneficial and welfare legislation intended to provide just compensation based on the contemporaneous position of the individual and is essentially forward-looking in nature. In light of the decisions of the Hon'ble Supreme Court in S. Vishnu Ganga v. M/s. Oriental Insurance Co. Ltd., reported in 2025 INSC 123, K. Ramya v. National Insurance Co. Ltd.,

reported in 2022 SCC OnLine 1338, and Shivleela & Ors. v. The Divisional Manager, United India Insurance Co. Ltd., reported in 2025 INSC 357, the arguments canvassed by learned counsel for the appellant are not acceptable. Hence, this Court does not deem it fit to interfere with the income aspect as assessed by the Tribunal.

13) This Court is of considered view that there is no rule in all cases that Court has to consider average income. There is no any gradually increase in the income and there is no bar to consider the last return which is already inspired confidence and was filed prior to the accident. In this regard, reference may be made to the decision of the Hon'ble Supreme Court in Malarvizhi & Ors. v. United India Insurance Company Limited & Anr. , reported in 2020 ACJ 526 (SC), wherein it has been held that income-tax returns are statutory documents and the income of the deceased ought to be considered as per the ITRs. Once the Tribunal has accepted that increase in income is but natural, question does not arise to refuse the income as per the latest income tax return filed. In this regard, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of Nidhi Bhargava v. National Insurance Co. Ltd. reported in 2025 SCC OnLine 872, wherein the Hon'ble Supreme Court in paragraph 12 has observed and held as under :-

"12. Just because on the date of the accident i.e., 12.08.2008, the Return for the Assessment Year 2008-2009 had not been filed, cannot disadvantage the appellants, for the reason that the period for which the Return is to be submitted covers the period starting 1 st of April, 2007 and ending 31st March, 2008. Thus, for obvious reasons, the Return would be only for the period 01.04.2007 to 31.03.2008, and date of submission would be post-31.03.2008. No income earned beyond 31.03.2008 would reflect in the Income Tax Return for the Assessment Year 2008-2009. To reject the Return on the sole ground of its submission after the date of accident alone, in our considered view, cannot be legally sustained.

13. ... In K Ramya v. National Insurance Co. Ltd., 2022 SCC OnLine SC 1338, after taking note of, inter alia, Ningamma v. United India Insurance Co. Ltd., (2009) 13 SCC 710, the Court held that the '... Motor Vehicles Act of 1988 is a beneficial and welfare legislation that seeks to provide compensation as per the contemporaneous position of an individual which is essentially forward-looking. Unlike tortious liability, which is chiefly concerned with making up for the past and reinstating a claimant to his original position, the compensation under the Act is concerned with providing stability and continuity in peoples' lives in the future."

Relying on the said decision, in the case of Sayar Ram vs. Ram Kara rendered in SLP (Civil) No. 24501/2025, the Hon'ble Supreme Court in paragraph 12 has observed and held as under:

"12. What flows from Nidhi Bhargava (supra) is that the Income Tax Returns filed

after the accident/death can also be taken into consideration for calculation of income to award compensation. However, having due regard for the Tribunal's well-placed doubts, in so far as returns filed for the relevant year, we take a different approach. In the instant case, it cannot be simply assumed that there is no profit accruing from the business of the deceased at the time of the accident. To adopt such a presumption would be contrary to the settled principles guiding the assessment of compensation. Rather, the returns for the preceding year or years must be taken as a foundational benchmark, subject to careful judicial examination, recognizing that business profits are seldom static and often exhibit a progressive growth trajectory. The exercise thus calls for a fair and reasonable assessment, grounded in available evidence, of the financial benefits that the deceased would have justifiably earned but for the untimely accident. In our considered view, in order to award just and fair compensation, the annual income of the deceased is re-assessed at Rs.3,50,000/- per annum."

14) Hence, in considered view of this Court, in view of the decision of the Hon'ble Supreme Court in the case of Malarvizhi & Ors (supra), the Tribunal has not committed any error in considering the annual income as per last income tax returns.

15) So far as addition of 40% towards future prospects is concerned, in view of the judgment of the Hon'ble Supreme Court in National Insurance Company Ltd. v. Pranay Sethi, reported in 2017 ACJ 2700, and considering that the deceased was aged 24 years, such addition is just and proper. As the deceased was unmarried, deduction of 1/2 towards personal expenses is in consonance with Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., reported in (2009) 6 SCC 121. The multiplier of 18 has also been correctly applied.

16) Further, the Tribunal by relying on the judgment of Pranay Sethi (supra) 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 original claimants are entitled for additional amount of Rs.6300/- (i.e. Rs.18,150/- - Rs.15,000/- = Rs.3150/- towards loss of estate and Rs.18,150/- - Rs.15,000/- = Rs.3150/- towards funeral expenses).

17) 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 Lombard Insurance Company Ltd., reported in 2022 LiveLaw (SC) 666, the amount towards loss of consortium is reassessed as Rs.96,800/- for 2 claimants.

18) As discussed above, the original claimants are entitled to get compensation computed as under:-

Heads

Awarded by the Tribunal

Reassessed by this Court

Future loss of dependency

1,32,17,814/-

1,32,17,814/-

Loss of Estate

15,000/-

18,150/-

Funeral expenses

15,000/-

18,150/-

Loss of consortium

80,000/-

96,800/-

Total compensation

1,33,27,814/-

1,33,50,914/-

19) As Rs.1,33,27,814/- is already awarded by learned Tribunal, the original claimants are entitled to get additional amount of Rs.23,000/- (Rs.1,33,50,914/- – Rs.1,33,27,814/-) with proportionate costs and interest as awarded by the learned Tribunal.

20) For the foregoing reasons, this Court is of the view that the Tribunal has not committed any error in assessing the income of the deceased or in recording a finding of contributory negligence in causing the accident. Consequently, this Court does not deem it fit to interfere with the judgment and award passed by the Tribunal in Motor Accident Claim Petition No.52 of 2014, so far as the aspects of income and contributory negligence are concerned. Accordingly, the appeal fails and is hereby dismissed.

21) Cross-objection filed by the claimants is partly allowed. The judgment and award dated 29.11.2021 passed by the learned Motor Accident Claims Tribunal (Aux.), Rajkot, in Motor Accident Claim Petition No.52 of 2014 stands modified to the aforesaid extent, while the rest of the judgment and award remains unaltered. Respondent No.2 is directed to deposit the additional amount of Rs.23,000/- 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. The record and proceedings shall be remitted to the concerned Tribunal forthwith.

(22) 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.