(2025) 12 GUJ CK 1880

In the Gujarat High Court

Case No : R/First Appeal No. 2089 Of 2025

Laljibhai Dhanabhai Parmar APPELLANT

Vs

Josephbhai Simon Parmar & Anr RESPONDENT

Date of Decision : 22-12-2025

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2025) 12 GUJ CK 1880

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Nishit A Bhalodi, Tanmay B Karia

Final Decision : Partly Allowed

Judgement

Hasmukh D. Suthar, J

1. Feeling aggrieved by and dissatisfied with the judgment and award dated 25.11.2024 passed by learned Motor Accident Claims Tribunal (Main), Kheda at Nadiad, (hereinafter referred to as "the Tribunal" for short), in Motor Accident Claim Petition No.229/2023, the appellant –original claimant preferred present appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" for short).

2. Heard Mr. Nishit Bhalodi, learned Advocate for the appellants – original Claimants and Mr. Tanmay B. Karia, learned counsel for respondent No.2. Respondent No.1 is reported as expired.

3. It is the case of the claimants that on 07.12.2022, while the deceased Vimlaben Dhanabhai Parmar was returning from the field by walking and when she reached near Ambika Pipe, National Highway, at that time, one vehicle bearing GJ-23-CB-5294 came with excessive speed and in rash and negligent manner dashed with 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.25,00,000/-from the

opponents. After appreciating the evidence produced on record, the learned Tribunal awarded compensation of Rs.7,96,500/-along with cost and interest @ 7.5 % 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 claimant has mainly argued that, the Tribunal has erred in considering monthly income of the deceased as Rs.7500/- on notional basis as she was doing agriculture work and animal husbandry and earning Rs.15,000/- p.m. Further, the Tribunal has also erred in not awarding future prospective income and other conventional heads are required to be awarded. 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 has filed an Affidavit at Exh:16, FIR at exh:20, Panchnama of scene of incident at Exh:21, Inquest Panchanama at Exh:22 and PM report at Exh:23. 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 46 years as per the claim petition and PM report which is at Exh:23 from which it reveals that the deceased was 50 years.

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 2022 and during that time, the deceased was doing agriculture labour work and animal husbandry and as per the minimum wages, the minimum income is required to be considered as Rs.9,500/-. Hence, the income of the deceased is reassessed as Rs.9,500/- per month. Further, the Tribunal has not considered future prospective income of the deceased. However, this Court is of the view that, 25 % future prospective income is required to be considered. As the deceased was unmarried, 1/2 deduction as personal expenditure and living of the deceased and multiplier of 13 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.9,500/- and future prospect of 25% = Rs.2,375/- which comes to Rs.11,875/- and 1/2nd amount is required to be deducted as personal expenditure and living of the deceased which comes to Rs.5938/- and the net amount comes to Rs.5,938/-. In view of above, the amount under the head of loss of future dependency is required to be reassessed as Rs.5,938/- x 12 months x 13 multiplier = Rs.9,26,328/-. Therefore, the appellant is entitled to get additional amount of Rs.1,65,828/- under the head of future loss of dependency.

9. Further, the Tribunal by relying on the judgment of Pranay Sethi (supra) has awarded total Rs.36,000/- 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, Rs.18,150/- towards funeral expenses. Therefore, the appellant – original claimant is entitled for additional amount of Rs.300/- (i.e. Rs.18,150/- - Rs.18,000/- = Rs.150/- towards loss of estate and Rs.18,150/- - Rs.18,000/- = Rs.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 appellant is entitled for loss of consortium. Therefore, the amount towards loss of consortium is reassessed as Rs.48,400/-for claimant).

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

7,60,500/-

9,26,328/-

Loss of Estate

18,000/-

18,150/-

Funeral expenses

18,000/-

18,150/-

Loss of consortium

Not given

48,400/-

Total compensation

7,96,500/-

10,11,028/-

12. As Rs.7,96,500/- is already awarded by learned Tribunal, the appellants – original claimant is entitled to get additional amount of Rs.2,14,528/- (Rs.10,11,028 - Rs.7,96,500/-) with proportionate costs and interest as awarded by the learned Tribunal.

13. Hence, present appeal is partly allowed. The judgment and award dated 25.11.2024 passed by learned Motor Accident Claims Tribunal (Main), Kheda at Nadiad, (hereinafter referred to as "the Tribunal" for short), in Motor Accident Claim Petition No.229/2023 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.2,14,528/- 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.