(2026) 01 GUJ CK 1463

In the Gujarat High Court

Case No : R/First Appeal No. 2611 Of 2025

Lataben WD/O Jigarbhai Damor & Ors APPELLANT

Vs

Rasulbhai Variyabhai Mavi & ORS RESPONDENT

Date of Decision : 29-01-2026

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2026) 01 GUJ CK 1463

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Nishit A Bhalodi

Final Decision : Partly Allowed

Judgement

Hasmukh D. Suthar, J

1) Feeling aggrieved and dissatisfied with the judgment and award dated 03.10.2024 passed by learned Motor Accident Claims Tribunal (Main), Dahod (which shall hereinafter be referred to as "the Tribunal" for short), in Motor Accident Claim Petition No.299 of 2016, the appellants – original claimants have preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (which shall hereinafter be referred to as "the Act" for short).

2) Heard learned Advocate Mr. N. A. Bhalodi, learned Advocate for the appellants – original Claimants. The respondents were duly served with the notice but did not appear. Perused the original record and proceedings.

3) It is the case of the appellants that on 07.11.2016, the deceased Jigarbhai Manglabhai Damor (who shall hereinafter be referred to as “deceased”) was returning to Nanikharaj on motorcycle after dropping his nephew Bharatbhai at Abhlod. At that time, the opponent no.1 came by driving Tractor bearing Reg. No.GJ-20-B4132, in rash and negligent manner and dashed with the motorcycle whereby Jigarbhai fell down and sustained serious injuries and died. A complaint came to be registered being I-CR No.64/2016 with Jesavada Police Station.

Therefore, the appellants had filed MAC Petition seeking compensation, wherein, the learned Tribunal after appreciating the evidence produced on record has partly allowed the claim petition.

4) The appeal is filed on limited ground that the learned Tribunal has not considered minimum wages of prevalent time and erred in deducting 1/3 for personal expenses of the deceased and also not considered consortium to each appellants.

5) Having heard the learned Advocate for the appellants and going through the record it appears that the learned Tribunal has considered the evidence on record and relied on the judgment in the cases of Bimla Devi Vs. H.R.T.C, reported in AIR 2009 SC 2819, and Parmeshwari Devi Vs. Amir Chand, reported in 2011 (11) SCC 635, and appreciated the evidence based on preponderance of probabilities. The claimant no.1 has tendered the affidavit at Exhibit 17, wherein, all the facts of the accident have been narrated in the chief-examination and supported the claim petition. The complaint is produced at Exhibit 22, panchnama at Exhibit 23, inquest panchnama at Exhibit 24 and charge-sheet at Exhibit 21. The involvement of the vehicle, issue of negligence to the extent to 90% on the part of driver of Tractor and 10% self negligence of the deceased and liability to pay compensation are not in dispute in the present appeal and as such challenge is given for quantum and consortium, hence, the appeal is required to be decided in narrow compass. 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 on 07.11.2016 and during that time the deceased was working on Lathe Machine and as per the Government approved minimum wages the rate was Rs.7,717/-, whereas, the Tribunal has assessed the income of the deceased as Rs.5,000/- per month which is required to be enhanced and hence, the income of the deceased is reassessed as Rs.7,700/- per month. Further, as the deceased was aged 30 years at the time of accident on the basis of which the learned Tribunal has considered future prospective income as 40% and multiplier of 17 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.

6) After the accident the deceased left behind four dependents but during the pendency of the petition before the learned Tribunal the father of the deceased was died and his name was deleted vide order below Exhibit 15, and the learned Tribunal has committed error in considering 1/3 deduction and failed to consider that the father of the deceased was died pendente lite before passing of the award by the Tribunal and hence keeping in mind the benevolent object of the Act, this Court is of the opinion that four dependents were at the time of accident hence four dependents are required to considered for deduction and therefore ¼

deduction towards personal and living expenses of the deceased is considered.

7) Therefore, recalculating the income of the deceased as Rs.7,700/- and future prospect of 40% = Rs.3,080/- which comes to Rs.10,780/- and 1/4 amount is required to be deducted towards personal living expenses of the deceased which comes to Rs.2,695/- and the net amount comes to Rs.8,085/-. In view of above the amount under the head of loss of dependency is required to be reassessed as Rs.8,085/- x 12 x 17 = Rs.16,49,340/-. Therefore, the appellants are entitled to get additional amount of Rs.6,97,270/- towards loss of dependency.

8) Further, the learned Tribunal by relying on the judgment of National Insurance Company Ltd. Vs. Pranay Sethi, reported in 2017 ACJ 2700, has awarded total Rs.1,65,000/-under the three 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 appellants – original claimants are entitled for additional amount of Rs.3,300/- (i.e. Rs.18,150/- - Rs.16,500/- = Rs.1,650/- towards loss of estate and Rs.18,150/- - Rs.16,500/- = Rs.1,650/- towards funeral expenses).

9) 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 learned Tribunal has committed error in awarding Rs.44,000/- towards loss of consortium to the appellant nos.1, 2 and 4, however, in view of above judgments the appellants being legal heirs of the deceased are entitled for Rs.48,400/-each towards the head of loss of consortium. Therefore, the amount towards loss of consortium is reassessed as Rs.1,93,600/- (i.e. Rs.48,400/- X 4). Therefore, the appellants are entitled for additional amount of Rs.61,600/- towards loss of consortium.

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

Heads

Awarded by Tribunal

Reassessed by this Court

Loss of dependency

Rs.9,52,070/-

Rs.16,49,340/-

including additional amount of Rs.6,97,270/-

Loss of estate

Rs.16,500/-

Rs.18,150/-

including additional amount of Rs.1,650/-

Funeral expenses

Rs.16,500/-

Rs.18,150/-

including additional amount of Rs.1,650/-

Loss of consortium

Rs.1,32,000/-

(Rs.44,000/- X 3)

Rs.1,93,600/-

including additional amount of Rs.61,600/-

(Rs.48,400/- X 4)

Total compensation

Rs.11,17,070/-

Rs.18,79,240/-

Deduction of amount for contributory negligence of the deceased to the

extent of 10%

Rs.1,11,807/-

Rs.1,87,924/-

Actual amount of compensation

Rs.10,05,363/-

Rounded to Rs.10,05,360/-

Rs.16,91,316/-

including total additional amount of Rs.6,85,953/-

Additional amount Rs.6,85,956/- (Rs.16,91,316/- - Rs.10,05,360/-)

11) In view of above, as the Tribunal has awarded total compensation of Rs.10,05,360/-, however, as discussed above the appellants are entitled to get additional amount of Rs.6,85,956/- (Rs.16,91,316/- - Rs.10,05,360/-) with proportionate costs and interest as awarded by the learned Tribunal.

12) Hence, present appeal is partly allowed. The judgment and award dated 03.10.2024 passed by learned Motor Accident Claims Tribunal (Main), Dahod, in

MAC Petition No.299 of 2016 stands modified to the aforesaid extent. Rest of the judgment and award remains unaltered. The respondent no.3 - Insurance Company shall deposit the said additional amount of Rs.6,85,956/- 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.

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

14) Award to be drawn accordingly.

