(2026) 01 GUJ CK 1456

In the Gujarat High Court

Case No : R/First Appeal No. 3842 Of 2025

Makvana Hargovanbhai Tejabhai & Ors — APPELLANT

Vs

Kumbhar Prakash Somabhai & Ors — RESPONDENT

Date of Decision : 27-01-2026

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2026) 01 GUJ CK 1456

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Yogendra Thakore, Chetankumar V Darji, Dimple A Thaker

Final Decision : Partly Allowed

Judgement

Hasmukh D. Suthar, J

1. Learned Advocate Mr. S. B. Parikh, states that he has instructions to appear on behalf of the respondent no.5 and thereby, seeks permission to file his Vakalatnama. The Registry is directed to accept the Vakalatnama.

With consent of learned Advocates for respective parties the present appeal is taken for final hearing.

1) Feeling aggrieved and dissatisfied with the judgment and award dated 10.12.2021 passed by learned Motor Accident Claims Tribunal (Auxi.), Mahesana (which shall hereinafter be referred to as "the Tribunal" for short), in Motor Accident Claim Petition No.254 of 2018, 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. Yogendra Thakore, for the appellants – original Claimants, learned Advocate Mr. S. B. Parikh for the respondent no.5 – insurance Company, learned Advocate Mr. C. V. Darji, for respondent no.6 and learned Advocate Ms. D. A. Thaker for respondent no.7 – Insurance Company. Perused

the original record and proceedings.

3) It is the case of the appellants that on 16.04.2018, the deceased Amitkumar Hargovanbhai Makvana (who shall hereinafter be referred to as "deceased") by sitting in Rikshaw bearing Reg. No.GJ-02-VV-9290 was going from Palavasana cross road towards village Boriyavi, the said rickshaw was going towards village Boriyavi through signboard of village Mevad, near Government tube-well, one Tractor bearing No.GJ-02-CL-2724, attached with trolley bearing Reg. No.GRW-5896 came from opposite side in rash and negligent manner and dashed with Rickshaw. Due to which they sustained severe injuries on abdomen and face and taken to Government Hospital where Doctor declared him dead. Therefore, the appellants had filed MAC Petition seeking compensation, wherein, the learned Tribunal after appreciating the evidence produced on record has allowed the claim petition.

4) The learned Advocate for the appellants has submitted that the learned Tribunal has committed error in considering the income of the deceased as Rs.4,500/- whereas the deceased was earning Rs.8,000/- per month by service in Vimal Dairy and agricultural activities. He has further submitted that the learned Tribunal also erred in awarding only Rs.40,000/- towards loss of consortium.

Hence, he has requested to allow the present appeal.

5) Learned Advocates for the respective Insurance Companies have submitted that the learned Tribunal has not committed any error in appreciating the evidence produced on record and awarded just and proper compensation to the appellants in absence of evidence and material on record. They have further submitted that the deceased was bachelor at the time of accident and hence ½ deduction towards personal and living expenses of the deceased is required to be considered and the married sisters of the deceased are not entitled for any compensation under the conventional heads. Hence, they have requested to dismiss the present appeal.

6) Having heard the learned Advocates for the parties 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 24 wherein all the facts of the accident have been narrated in the chief-examination and supported the claim petition and relied on the complaint at Exhibit 37, panchnama at Exhibit 38, inquest panchnama at Exhibit 39, PM Note at Exhibit 40 and charge-sheet at Exhibit 53. 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 16.04.2018 and during that time the deceased was doing job at Vimal Dairy and also doing agricultural labour work and used to earn Rs.8,000/-, whereas, the Tribunal has assessed the income of the deceased as Rs.4,500/- per month as no evidence is produced on record by the appellants, however, as per the rate of minimum wages of the prevalent time the income of the deceased is required to be enhanced and hence, the income of the deceased is reassessed as Rs.8,400/- per month. Further, as the deceased was aged 21 years at the time of accident on the basis of which the learned Tribunal has considered future prospective income as 40% and as the deceased was bachelor 1/2 deduction towards personal and living expenses 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.

7) Therefore, recalculating the income of the deceased as Rs.8,400/-and future prospect of 40% = Rs.3,360/- which comes to Rs.11,760/- and 1/2 amount is required to be deducted towards personal living expenses of the deceased which comes to Rs.5,880/- and the net amount comes to Rs.5,880/-. In view of above the amount under the head of loss of future dependency income is required to be reassessed as Rs.5,880/- x 12 x 18 = Rs.12,70,080/-. Therefore, the appellants are entitled to get additional amount of Rs.5,89,680/- towards the head of loss of future 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.70,000/- 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.6,300/-(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).

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 only Rs.40,000/- towards loss of consortium, however, in view of above judgments the appellant nos.1 and 2 being parents of the deceased they are entitled for Rs.48,400/- each towards filial consortium under the head of loss of consortium, whereas, the appellant nos.3 to 5 being brother and sisters of the deceased are not entitled for any amount towards loss of consortium. Therefore, the amount towards loss of consortium is reassessed as Rs.96,800/- (i.e. Rs.48,400/- X 2). Therefore, the appellants are entitled for additional amount of Rs.56,800/- under the head of 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 future dependency

Rs.6,80,400/-

Rs.12,70,080/-

including additional amount of Rs.5,89,680/-

Loss of estate

Rs.15,000/-

Rs.18,150/-

including additional amount of Rs.3,150/-

Funeral expenses

Rs.15,000/-

Rs.18,150/-

including additional amount of Rs.3,150/-

Loss of consortium

Rs.40,000/-

Rs.96,800/-

including additional amount of Rs.56,800/- (Rs.48,400/- X 2)

Total compensation

Rs.7,50,400/-

Rs.14,03,180/-

including total additional amount of Rs.6,52,780/-

11) In view of above, as the Tribunal has awarded total compensation of Rs.7,50,400/-, however, as discussed above the appellants are entitled to get additional amount of Rs.6,52,780/-(Rs.14,03,180/- - Rs.7,50,400/-) with proportionate costs and interest as awarded by the learned Tribunal.

12) So far negligence part is concerned, in First Appeal No.288 of 2022 preferred by the National Insurance Company Ltd., the findings qua apportionment of the negligence to the extent of 80% of the driver of the Tractor and Trolley and 20%

of driver of Rickshaw have been confirmed by the Co-ordinate Bench of this Court and the same attained finality and the appeal was dismissed. Hence, no interference on negligence part of offending vehicles is required.

13) Moreover, as present appeal was preferred belatedly, the appellants had filed Civil Application No.3617 of 2025, wherein, vide order dated 06.10.2025, the Co-ordinate Bench has been pleased to pass order condoning the delay of 1194 days subject to the condition that the claimants shall not be entitled for any interest, on the enhanced amount of compensation for the delayed period, in case, the appeal for enhancement is allowed. Accordingly, the appellants are not entitled for interest on the enhanced amount for aforesaid period of delay.

14) Hence, present appeal is partly allowed. The judgment and award dated 10.12.2021 passed by learned Motor Accident Claims Tribunal (Aux.), Mahesana, in MAC Petition No.254 of 2018 stands modified to the aforesaid extent. Rest of the judgment and award remains unaltered. The respondent nos.5 and 7 - Insurance Companies shall deposit the said additional amount of Rs.6,52,780/- along with interest as per their respective ratio 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.

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

16) Award to be drawn accordingly.

