

(2026) 01 GUJ CK 1453
In the Gujarat High Court
Case No : R/First Appeal No. 1087, 1135 Of 2025

Metaben Mansukhbhai Ninama

APPELLANT

Vs

Shanubhai Runalbhai Amaliyar & Ors

RESPONDENT

Date of Decision : 27-01-2026

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2026) 01 GUJ CK 1453

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Sohil S Dadi, Anand S Tailor, Masumi V Nanavaty, Vibhuti Nanavati

Final Decision : Partly Allowed

Judgement

Hasmukh D. Suthar, J

1. Since both these appeals are arising out of the same accident and the grounds and issue involved in both the appeals are common, they have been heard together and are being decided by this common judgment. The First Appeal No.1087 of 2025 arises out of MAC Petition No.256 of 2019 and the First Appeal No.1135 of 2025 arises out of MAC Petition No.255 of 2019.

1) Feeling aggrieved and dissatisfied with the common judgment and award dated 09.01.2025 passed by learned Motor Accident Claims Tribunal (Aux.), Dahod (which shall hereinafter be referred to as "the Tribunal" for short), in Motor Accident Claim Petition Nos.255 of 2019 and 256 of 2019, the appellants – original claimants preferred present appeals 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. M. M. Hakim, on behalf of Mr. S. S. Dadi for the appellants – original Claimants and learned Advocate Mr. Vibhuti Nanavati, for the respondent no.3 – Insurance Company. Perused the original record and proceedings.

3) It is the case of the appellants that on 01.04.2019, the claimants were standing on Chakaliya Chokdi, Godi Road and waiting for any vehicle to reach to their home, however at about 13:00 hours, one Tempo bearing Reg. No.GJ-20-V-9564, came in full speed and dashed with the claimants, as a result of which the claimants sustained serious accidental injuries on vital parts of the body. Therefore, FIR being I-CR No.29/2019, came to be registered with Dahod Town Police Station. Therefore, the appellants have filed MAC Petitions seeking compensation, wherein, the learned Tribunal after appreciating the evidence produced on record was pleased to partly allowed both the claim petitions.

4) Learned Advocate Mr. M. M. Hakim on behalf of learned Advocate Mr. S. S. Dadi for the appellants has submitted that the learned Tribunal has committed in appreciating the evidence on record and also erred in assessing disability of the claimant – Mansukhbhai Kehjibhai Ninama (MAC Petition No.255 of 2019) as he suffered amputated of left leg which resulted into 80% disability body as a whole and the learned Tribunal ought to have considered 100% functional disability body as a whole. He has further submitted that the learned Tribunal erred in awarding meagre amount towards pain, shock and suffering and loss of amenities and not awarding any amount towards artificial limb. Similarly, the learned Tribunal has also committed error by awarding inadequate compensation to the claimant – Metaben Mansukhbhai Ninama (MAC Petition No.256 of 2019) and erred in awarding meagre amount towards pain, shock and suffering and special diet, attendant charges and transportation charges. Hence, he has requested to allow the present appeals.

5) Learned Advocate Mr. Vibhuti Nanavati for the respondent – Insurance Company has opposed the present appeals and submitted that the learned Tribunal has not committed any error and in absence of any evidence or material the Tribunal has properly awarded compensation. Hence, he has requested to dismiss the present appeals.

FIRST APPEAL NO.1135 of 2025

(MAC PETITION NO.255 of 2019)

6) Perusing the record the record it appears that in order to prove the claim the claimant has filed affidavit in lieu of examination – in – chief at Exhibit 17, wherein, all the facts of the accident have been narrated and supported the claim petition. The claimant has further produced complaint at Exhibit 37, panchnama at Exhibit 38, MLC at Exhibit 39, Medical Bills at Exhibits 34, 52 and 53 and Disability Certificate at Exhibit 54. The involvement of the vehicle, coverage of policy and negligence are not disputed hence the opponent no.1 - driver of the offending vehicle held sole negligent in causing the accident and no further discussion is required. A perusal of Disability Certificate at Exhibit 54, reveals that the claimant sustained multiple accidental injuries and suffered amputated stump left side above knee with around 15-20 cm stump size. The claimant was doing agriculture masonry work and the learned Tribunal has considered 50%

disability on the ground that the Doctor has opined and admitted that 50% disability body as a whole can be taken into consideration. The learned Tribunal has considered 50% disablement but this Court is of the view that considering the nature of injuries as amputation of stump above knee and below hip with stump size of 15-20 cm and also considering that the claimant is engaged in masonry work 85% functional disablement is required to be considered to award just compensation to the claimant. The learned Tribunal has reduced the disability to 50% merely on the opinion of the Doctor which is physical disablement which never be considered as functional disablement. Hence, this Court is of the considered opinion that to award just compensation 85% functional disability of the claimant is considered.

7) Now coming to the income part, 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 claimant. In the present case the accident occurred on 01.04.2019 and during that time the appellant – injured was doing senting work (masonry work), whereas, the Tribunal has assessed the income of the applicant as Rs.8,000/- per month which is required to be enhanced as per the rate of minimum wages of the prevalent time and hence, the income of the injured is reassessed as Rs.8,500/- per month. Further, the learned Tribunal has considered the age of the claimant at the time of accident was 50 years and 02 months and on the basis of the same considered multiplier of 11 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. However, the Tribunal has considered 25% addition towards future prospectus but considering the age of the applicant 10% addition towards future prospectus is required to be considered. Further, the Tribunal has awarded Rs.4,27,780/- towards Medical Expense and Rs.45,000/- towards special diet, attendance charges and transportation charges which are just and proper.

8) Therefore, recalculating the income of the claimant as Rs.8,500/- and future prospect of 10% = Rs.850/- which comes to Rs.9,350/-. Now total income under the head of loss of future income is required to be considered as Rs.9,350/- x 12 x 11 x 85%/ 100 = Rs.10,49,070/-. Therefore, the appellant is entitled to get additional amount of Rs.3,89,070/- towards loss of future income. Similarly, considering the nature of injuries, period of treatment and recovery, age and disablement of the claimant, this Court is of the view that the learned Tribunal has committed error while considering pain, shock and suffering only Rs.50,000/- which is required to be enhanced to Rs.1,50,000/- i.e. additional amount of Rs.1,00,000/- towards Pain, shock and suffering. The Tribunal has also committed error in not awarded any compensation towards loss of amenities, however, considering the disablement Rs.1,50,000/- is awarded towards loss of amenities. Further, as this Court has reassessed the income of the claimant amount of Rs.48,000/- towards actual loss of income is enhanced to Rs.51,000/-

i.e. additional amount of Rs.3,000/-. Moreover, considering the disability of the claimant this Court is of the opinion that Rs.1,00,000/- is awarded towards artificial limb.

9) As discussed above, the appellant is entitled to get compensation computed as under:

Heads

Awarded by

Tribunal

Reassessed by this Court

Loss of future income

Rs.6,60,000/-

Rs.10,49,070/-

including additional amount of Rs.3,89,070/-

Pain, shock and sufferings

Rs.50,000/-

Rs.1,50,000/-

including additional amount of Rs.1,00,000/-

Medical Expenses

Rs.4,27,780/-

Rs.4,27,780/-

Special diet, attendant and

transportation

Rs.45,000/-

Rs.45,000/-

Actual loss of income

Rs.48,000/-

Rs.51,000/-

including additional amount of Rs.3,000/-

Artificial Limb

NIL

Rs.1,00,000/-

including additional amount of Rs.1,00,000/-

Loss of Amenities

NIL

Rs.1,50,000/-

including additional amount of Rs.1,50,000/-

Total compensation

Rs.12,30,780/-

Rs.19,72,850/-

including total additional amount of Rs.7,42,070/-

10) In view of above, as the Tribunal has awarded total compensation of Rs.12,30,780/-, however, as discussed above the appellant is entitled to get additional amount of Rs.7,42,070/- with proportionate costs and interest as awarded by the learned Tribunal.

FIRST APPEAL NO.1087 of 2025

(MAC PETITION NO.256 of 2019)

11) To prove her claim, the claimant has tendered affidavit at Exhibit 20, wherein, all the facts of the accident have been narrated and supported the claim petition. The claimant has further produced complaint at Exhibit 54, panchnama at Exhibit 55, MLC at Exhibit 56, Medical Bills at Exhibits 36 and Disability Certificate at Exhibit 24. The involvement of the vehicle, coverage of policy and negligence are not disputed hence the opponent no.1 - driver of the offending vehicle held sole negligent in causing the accident and no further discussion is required.

12) Now coming to the income part, 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 prevailing rate of minimum wages in absence of evidence of monthly income of the claimant. In the present case the accident occurred on 01.04.2019 and during that time the appellant - injured was doing senting work (masonry work), whereas, the Tribunal has assessed the income of the deceased as Rs.8,000/- per month which is required to be enhanced as per the rates of minimum wages of the year 2019 and hence, the income of the injured is reassessed as Rs.8,500/- per month. Further, the learned Tribunal has considered the age of the claimant at the time of accident was 49 years and 03 months and on the basis of the same 25% addition towards future prospectus and multiplier of 13 were considered 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. Further, the

Tribunal has considered disability of the injured as 11% which is admitted and hence no interference is required. Further, the learned Tribunal has awarded Rs.15,000/- towards pain, shock and suffering, Rs.38,900/- towards Medical Expenses and Rs.30,000/- towards special diet, attendant and transportation and considering the nature of injuries, age and disability of the claimant the said amounts are just and proper. However, as discussed above, the actual loss of income is required to be reassessed as Rs.8,500/- for two months which comes to Rs.17,000/-. Therefore, the appellant is entitled for additional amount of Rs.1,000/- towards actual loss of income as the income of the appellant is reassessed.

13) Therefore, recalculating the income of the claimant as Rs.8,500/- and future prospect of 25% = Rs.2,125/- which comes to Rs.10,625/-. Now total income under the head of loss of future income is required to be considered as Rs.10,625/- x 12 x 13 x 11%/ 100 = Rs.1,82,325/-. Therefore, the appellant is entitled to get additional amount of Rs.10,725/- towards loss of future income.

14) As discussed above, the appellant is entitled to get compensation computed as under:

Heads

Awarded by Tribunal

Reassessed by this Court

Loss of future income

Rs.1,71,600/-

Rs.1,82,325/-

including additional amount of Rs.10,725/-

Pain, shock and sufferings

Rs.15,000/-

Rs.15,000/-

Medical Expenses

Rs.38,900/-

Rs.38,900/-

Special diet, attendant and

transportation

Rs.30,000/-

Rs.30,000/-

Actual loss

Rs.16,000/-

Rs.17,000/-

including additional amount of Rs.1,000/-

Total compensation

Rs.2,71,500/-

Rs.2,83,225/-

including total additional amount of Rs.11,725/-

15) In view of above, as the Tribunal has awarded total compensation of Rs.2,71,500/-, however, as discussed above the appellant is entitled to get additional amount of Rs.11,725/- with proportionate costs and interest as awarded by the learned Tribunal.

16) Hence, present appeals are partly allowed. The common judgment and award dated 09.01.2025 passed by learned Motor Accident Claims Tribunal (Aux.), Dahod, in MAC Petition Nos.255 of 2019 and 256 of 2019 stand modified to the aforesaid extent. Rest of the judgment and award remains unaltered. The respondent No.3 – Insurance Company shall deposit said additional amount of Rs.7,42,070/- in MAC Petition No.255 of 2019 and Rs.11,725/- in MAC Petition No.256 of 2019 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.

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

18) Award to be drawn accordingly.