

(2025) 12 GUJ CK 1887

In the Gujarat High Court

Case No : R/First Appeal No. 3259 Of 2024, Civil Application (For Production Of Additional Evidences) No. 1 Of 2025

Minor Vidhi Dhavalkumar Ishwarbhai Patel

APPELLANT

Vs

Mukeshbhai Ranabhai Nandoliya (Deleted) & Ors

RESPONDENT

Date of Decision : 18-12-2025

Acts Referred:

Code Of Civil Procedure, 1908 — Order 41 Rule 27, Motor Vehicles Act, 1988-Section 173

Citation : (2025) 12 GUJ CK 1887

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Disha N Nanavat, Mandeep Singh Saluja

Final Decision : Partly Allowed

Judgement

Hasmukh D. Suthar, J

ORDER IN CIVIL APPLICATION

Learned Advocate for the appellant has filed the present application under Order XLI Rule 27 of the Code of Civil Procedure seeking production of additional evidence i.e. Disability Certificate dated 29.07.2021 issued by Medical Authority, Aravalli, Gujarat, in the present appeal.

Hon'ble Supreme Court in case of Bajaj Allianz General Insurance Company Pvt Ltd Vs Union of India, in Writ Petition(s) (Civil) No(s).534/2020 dated 16.11.2021 has issued certain directions, reads as under:

"(iv) As far as the aspect of the issuance of certificate on disability of victims is concerned it is reiterated that the guidelines laid down by this Court in Raj Kumar v. Ajay Kumar and Anr., (2011) 1 SCC 343 mandatorily must be followed by the MACTs, in respect of loss of income due to injury/disablement. The District Medical Board is also directed to follow the guidelines issued by the Ministry of Social Justice and Empowerment, Government of India vide Gazette Notification

S. No.61, dated 05.01.2018, for issuance of Disability Certificate in order to bring Pan India uniformity.

The consequence is that the MACT would ascertain that permanent disability certificate issued by the District Medical Board or body authorized by it is in accordance with the Gazette Notification alone. Once the certificate is issued in this manner, the same can be marked for purposes of being taken into consideration as evidence without the necessity of summoning the concerned witness to give formal proof of the documents unless there is some reason for suspicion on the document."

In the present case it appears that the claimant has filed application for tendering the said evidence before the learned Tribunal, however, the learned Tribunal has passed the order but inadvertently the same is not signed by the presiding officer. Therefore, considering the above circumstances, this Court is of the view that the said evidence is required to award just compensation and hence the Disability Certificate dated 29.07.2021 (as mentioned in para 3 of the present application) is admitted and allowed to be taken on record.

Accordingly, the present application is disposed of being allowed.

JUDGMENT IN FIRST APPEAL

1) Feeling aggrieved and dissatisfied with the judgment and award dated 31.08.2023 passed by learned Motor Accident Claims Tribunal (Auxi.), Botad (hereinafter referred to as "the Tribunal" for short), in Motor Accident Claim Petition No.260 of 2018, the appellant – original claimant has preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" for short).

2) Heard Ms. D. N. Nanavaty, learned Advocate for the appellant – original Claimant and Mr. Mandeep Saluja learned Advocate for the respondent no.3. Perused the original record and proceedings.

3) It is the case of the appellant – original claimant that on 16.05.2014, Dhavalkumar Ishwarbhai Patel along with his wife and minor claimant – Vidhi Dhavalkumar Patel (who shall hereinafter be referred to as "injured") were going on motorcycle. At that time opponent no.1 was driving Truck bearing Reg. No.GJ-11-Z-5337, came with full speed in rash and negligent manner and dashed with the motorcycle of the claimant from behind due to which they fell down on the road and right leg of minor claimant was crushed under the tyre of the Truck. Thereafter, she was taken to AIMS Hospital and she was amputated with her right leg. Therefore, the appellant had filed MAC Petition seeking compensation, wherein, the learned Tribunal after appreciating the evidence produced on record has allowed the claim petition.

4) Learned Advocate for the appellant has submitted that the learned Tribunal has committed error in not appreciating the aspect that the injured sustained serious injuries in the accident and disability to the tune of 47.5% body as whole

and therefore the Tribunal ought to have considered 100% functional disability for awarding the compensation. She has further submitted that the Tribunal has also erred in awarding Rs.10,000/- towards loss of amenities of life whereas the same should be enhanced to Rs.2 lacs. The Tribunal has also committed error in awarding meagre amount towards special diet, attendant and transportation without considering nature of injuries and disability of the claimant. Therefore, she has requested to allow the present appeal.

5) Learned Advocate for the respondent no.3 – Insurance Company has opposed the present appeal and submitted that the Tribunal has by relying on ratio laid down in case of Mallikarjun Vs. Divisional Manager, National Insurance Co. Ltd. And Anr., reported in 2013 ACJ 2445, has not committed any error and therefore no interference of this Court is required to call for. Hence, he has requested to dismiss the present appeal.

6) Having heard the learned Advocates and going through the record it appears that the learned Tribunal has considered the evidence of claimant at Exhibit 18, FIR at Exhibit 19, panchnama at Exhibits 20 and 32, Discharge Card / MLC / Summary at Exhibits 22 to 24, Disability Certificate at Exhibit 25. The Tribunal has perused the Disability Certificate at Exhibit 25 and by considering the injuries of the claimant assessed the disability as 47.5% body as a whole and further by relying on the judgment in the case of Mallikarjun (supra) has awarded Rs.4,00,000/-. However, as per the law laid down by the Hon'ble Supreme Court in the case of Hitesh Nagjibhai Patel Vs. Bababhai Nagjibhai Rabari & Anr., Neutral Citation – 2025 INSC 1070, relying on the case of Kajal Vs. Jagdish Chand, reported in (2020) 4 SCC 413 and Baby Sakshi Greola Vs. Manzoor Ahmed Simon and Anr, reported in 2024 SCC OnLine SC 3692, reiterated principle of law that a minor child who suffers death or permanent disability in a motor vehicle accident, cannot be placed in the same category as a non-earning individual for the purposes of assessing the amount of compensation because the child was not engaged in gainful employment at the time of the accident. In such a case, the computation of compensation under the head of loss of income ought to be made by adopting, at the very least, the minimum wages payable to a skilled workman as notified for the relevant period in the respective State where the cause of action arises. Considering the aforesaid fact in the case on hand the learned Tribunal has awarded a lump-sum amount of Rs.4,00,000/-towards future loss of income, however, in view of above as per rates of minimum wages of the skilled workman in the year 2014, the income of the minor claimant is reassessed as Rs.6,000/- per month. Further, the learned Tribunal has committed error in not considering future prospective income of the minor claimant, however, this Court is of the view that 40% addition towards future prospectus is required to be awarded. Further, the Tribunal has not considered multiplier, however, consider the age of the claimant as 3 years at the time of accident the multiplier of 18 is required to be 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] and National Insurance Company Ltd. Vs. Pranay Sethi,

reported in 2017 ACJ 2700.

7) Moreover, the Tribunal has considered disability of the injured as 47.5% body as a whole, however, as this Court has allowed the production of additional evidence i.e. Disability Certificate as per which 65% disability is assessed by the Medical Authority, Aravalli. Further, as per the Hon'ble Supreme Court in case of Bajaj Allianz General Insurance Company Pvt Ltd Vs Union of India, in Writ Petition(s) (Civil) No(s).534/2020 dated 16.11.2021 has issued certain directions, reads as under:

"(iv) As far as the aspect of the issuance of certificate on disability of victims is concerned it is reiterated that the guidelines laid down by this Court in Raj Kumar v. Ajay Kumar and Anr., (2011) 1 SCC 343 mandatorily must be followed by the MACTs, in respect of loss of income due to injury/disablement. The District Medical Board is also directed to follow the guidelines issued by the Ministry of Social Justice and Empowerment, Government of India vide Gazette Notification S. No.61, dated 05.01.2018, for issuance of Disability Certificate in order to bring Pan India uniformity.

The consequence is that the MACT would ascertain that permanent disability certificate issued by the District Medical Board or body authorized by it is in accordance with the Gazette Notification alone. Once the certificate is issued in this manner, the same can be marked for purposes of being taken into consideration as evidence without the necessity of summoning the concerned witness to give formal proof of the documents unless there is some reason for suspicion on the document."

Even as per the case of Anoop Maheshwari vs Oriental Insurance Co., Neutral Citation – 2025 INSC 1075, so far the disability is concerned, the Certificate issued by the Medical Board can be accepted, even without a witness being examined.

8) In view of above, considering the Disability Certificate issued by Medical Authority, to award just compensation 65% disability of the claimant is required to be considered.

9) Therefore, recalculating the income of the claimant as Rs.6,000/-and future prospect of 40% = Rs.2,400/- which comes to Rs.8,400/-. In view of above the amount is required to be reassessed as $\text{Rs.8,400/-} \times 12 \times 18 \times 65\% / 100 = \text{Rs.11,79,360/-}$. The Tribunal has awarded Rs.4,00,000/- towards permanent disability, loss of enjoyment, discomforts, however, this Court is of the view that the claimant - appellant is entitled to get additional amount of Rs.7,79,360/- towards permanent disability, loss of enjoyment and discomforts.

10) Further, the learned Tribunal has awarded Rs.3,42,502/- towards medical expenditure which is just and proper, however, the amount of Rs.10,000/- towards pain, shock and suffering is required to be enhanced to Rs.1,50,000/- and amount of Rs.10,000/- towards special diet, attendant and transportation is

required to be enhanced to Rs.50,000/-. Considering the nature of injuries and disablement of the claimant an amount of Rs.2,00,000/- is awarded towards loss of amenities, to award just and proper compensation to the claimant.

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

Heads

Awarded by Tribunal

Reassessed by this Court

Permanent disability, loss of enjoyment and discomforts

Rs.4,00,000/-

Rs.11,79,360/-

including additional amount of Rs.7,79,360/-

Pain, shock and sufferings

Rs.10,000/-

Rs.1,50,000/-

including additional amount of Rs.1,40,000/-

Special diet,

attendant and transportation

Rs.10,000/-

Rs.50,000/-

including additional amount of Rs.40,000/-

Medical expenses

Rs.3,42,502/-

Rs.3,42,502/-

Loss of amenities

NIL

Rs.2,00,000/-

including additional amount of Rs.2,00,000/-

Total compensation

Rs.7,62,502/-

Rs.19,21,862/-

including total additional amount of Rs.11,59,360/-

12) It is needless to say that the Motor Vehicles Act is a benevolent legislation which has been framed with the object of providing relief to the victims, or their families and there is no bar that compensation is restricted up to the claim by the claimant and the High Court and Tribunal have to award the compensation up to that extent. In this regard reference is required to be made to the judgment passed by the Hon'ble Supreme Court in case of Nagappa Vs Gurudayal Singh and others, reported in (2003) 2 Supreme Court Cases 274, wherein, it has been observed that there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal / Court considers that the claimant is entitled to get more compensation than claimed.

13) In view of above, as the Tribunal has awarded total compensation of Rs.7,62,502/-, however, as discussed above the appellant is entitled to get additional amount of Rs.11,59,360/-(Rs.19,21,862/- - Rs.7,62,502/-) with proportionate costs and interest as awarded by the learned Tribunal.

14) Hence, present appeal is partly allowed. The judgment and award dated 31.08.2023 passed by learned Motor Accident Claims Tribunal (Aux.), Botad, in MAC Petition No.260 of 2018 (Old MACP No.1473 of 2014) 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.11,59,360/- 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.

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.