
(2026) 02 GUJ CK 1635
In the Gujarat High Court
Case No : R/First Appeal No. 2321 Of 2022

New India Assurance Company Limited	APPELLANT
Vs	
Varshaben W/O Darshankumar Hiteshbhai Pandya & Ors	RESPONDENT

Date of Decision : 05-02-2026

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2026) 02 GUJ CK 1635

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Rathin P Raval, Chintan S Popat

Final Decision : Dismissed

Judgement

Hasmukh D. Suthar, J

[1.0] This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "MV Act") has been preferred by the appellant—original opponent No.3 – The New India Assurance Company Ltd. against the judgment and award dated 25.03.2022 passed by the learned Motor Accident Claims Tribunal (Auxi.), at Kalol, District Gandhinagar (for short referred to as "learned Tribunal") in Motor Accident Claim Petition No.1256 of 2014 under Section 166 of the MV Act wherein the learned Tribunal has partly allowed the claim petition of respondent Nos.1 and 2 and awarded compensation of Rs.35,84,800/-with interest at the rate of 9% per annum from the date of the claim petition.

[2.0] Though served, none appeared for respondent Nos.3 and 4.

Heard learned advocate Mr. Rathin P. Raval for the appellant.

[3.0] The brief facts of the present appeal are that on 15.04.2018, Darshan Hiteshbhai Pandya was driving Motorcycle No.GJ-18-CQ-9882 and claimant No.1 was pillion rider and at about 11.45 a.m., when they reached at the place of accident, driver of Eicher Truck No.GJ-18-AT-8649 came driving his Truck with

full speed in rash and negligent manner and dashed on front side of the motorcycle and due to the impact, deceased and claimant No.1 fell down and wheel of Eicher Truck rolled over the head and chest of Darshan Pandya (hereinafter referred to as "deceased") and he died on the spot, while claimant No.1 sustained injuries on various parts of her body. Pursuant to the accident, offence being I-CR No.38/2018 came to be registered with Pethapur Police Station. The original claimants being legal heirs and representatives of the deceased filed MACP No.30/2018 seeking compensation.

[3.1] After appreciating the evidence, the learned Tribunal partly allowed the claim petition by holding 80% negligence on the part of driver of Eicher Truck and 20% contributory negligence on the part of deceased motorcyclist and awarded the compensation. However, the appellant herein – insurance company has filed the present appeal on the ground that the learned Tribunal has awarded exorbitant compensation to the claimants.

[4.0] Learned advocate Mr. Rathin P. Raval appearing for the appellant has submitted that the learned Tribunal has committed an error in awarding exorbitant compensation to the claimants and committed an error in considering the income of the deceased at Rs.2,61,000/- per annum though there was no any evidence or bank account statement to that effect. He has further submitted that income tax returns for the AYs 2015-16, 2016-17 and 2017-18 were filed which raise doubt and same were filed with a view to show higher income of the deceased, only with a view to get higher amount of compensation and hence, he has requested to consider minimum wages. He has further submitted that wife of deceased has re-married and hence, deduction towards dependency ought to have been done at 1/2 instead of 1/3 and hence, he has requested to allow the present appeal.

[5.0] Herein, there is no challenge to the negligence and only quantum of compensation is disputed and as involvement of vehicle, coverage of risk is not in question, present appeal is considered in narrow compass.

[6.0] Having heard learned advocate appearing for the appellant and perusing the evidence on record, it appears that the learned Tribunal has considered the evidence produced and adduced by both the parties including the chief examination of claimant No.1 (Exh.24), complaint (Exh.28) and panchnama of scene of accident (Exh.29) and in view of the decisions of the Hon'ble Supreme Court in the case of Bimla Devi vs. H.R.S.T.C. reported in AIR 2009 SC 2819 and Parmeshwari Devi vs. Amir Chand reported in (2011) 11 SCC 635, wherein it is held that it is settled law that negligence is required to be proved in claim petition under section 166 of the MV Act only on the touchstone of the preponderance of probability and not beyond doubt, the learned Tribunal has come to conclusion that driver of Eicher Truck was solely negligent for the accident.

[6.1] The main ground raised by the appellant is that income tax returns

produced on record by the claimants ought to have been discarded and learned advocate for the appellant has raised doubt qua income tax returns produced before the learned Tribunal at Exhs.35 to 37 for the AYs 2015-16, 2016-17 and 2017-18. If we peruse the income tax returns, it appears that income of the deceased in the respective income tax returns is shown as Rs.2,52,013/-, Rs.2,63,250/- and Rs.2,69,050/- respectively for the assessment years 2015-16, 2016-17 and 2017-18 and therefore, the learned Tribunal has considered average yearly income of the deceased at Rs.2,61,000/-, which in considered opinion of this Court is just and proper. In this regard, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of Nidhi Bhargava v. National Insurance Co. Ltd. reported in 2025 SCC OnLine 872, wherein the Hon'ble Supreme Court in paragraph 12 has observed and held as under:

"12. Just because on the date of the accident i.e., 12.08.2008, the Return for the Assessment Year 2008-2009 had not been filed, cannot disadvantage the appellants, for the reason that the period for which the Return is to be submitted covers the period starting 1 st of April, 2007 and ending 31st March, 2008. Thus, for obvious reasons, the Return would be only for the period 01.04.2007 to 31.03.2008, and date of submission would be post-31.03.2008. No income earned beyond 31.03.2008 would reflect in the Income Tax Return for the Assessment Year 2008-2009. To reject the Return on the sole ground of its submission after the date of accident alone, in our considered view, cannot be legally sustained.

13. ... In K Ramya v. National Insurance Co. Ltd., 2022 SCC OnLine SC 1338, after taking note of, inter alia, Ningamma v. United India Insurance Co. Ltd., (2009) 13 SCC 710, the Court held that the '...Motor Vehicles Act of 1988 is a beneficial and welfare legislation that seeks to provide compensation as per the contemporaneous position of an individual which is essentially forward-looking. Unlike tortious liability, which is chiefly concerned with making up for the past and reinstating a claimant to his original position, the compensation under the Act is concerned with providing stability and continuity in peoples' lives in the future. ...'

Relying on the said decision, in the case of Sayar Ram vs. Ram Kara rendered in SLP (Civil) No. 24501/2025, the Hon'ble Supreme Court in paragraph 12 has observed and held as under:

"12. What flows from Nidhi Bhargava (supra) is that the Income Tax Returns filed after the accident/death can also be taken into consideration for calculation of income to award compensation. However, having due regard for the Tribunal's well-placed doubts, in so far as returns filed for the relevant year, we take a different approach. In the instant case, it cannot be simply assumed that there is no profit accruing from the business of the deceased at the time of the accident. To adopt such a presumption would be contrary to the settled principles guiding the assessment of compensation. Rather, the returns for the preceding year or years must be taken as a foundational benchmark, subject to careful judicial

examination, recognizing that business profits are seldom static and often exhibit a progressive growth trajectory. The exercise thus calls for a fair and reasonable assessment, grounded in available evidence, of the financial benefits that the deceased would have justifiably earned but for the untimely accident. In our considered view, in order to award just and fair compensation, the annual income of the deceased is re-assessed at Rs.3,50,000/- per annum."

Hence, in considered view of this Court, in view of the decision of the Hon'ble Supreme Court in the case of Malarvizhi & Ors vs. United India Insurance Company Limited & Anr. reported in 2020 ACJ SC 526, annual income of the deceased is properly assessed at Rs.2,61,000/-.

[6.2] The deceased at the time of accident was in the age group of 21 to 25 years and therefore, in view of decision of Hon'ble Supreme Court in the case of National Insurance Company Ltd. Vs. Pranay Shethi reported in (2017) 16 SCC 680, 40% i.e. Rs.1,04,400/- (40% of Rs.2,61,000/-) towards future prospect is appropriately be added and thus, the amount of future annual income of the deceased comes to Rs.3,65,400/- (Rs.2,61,000 + Rs.1,04,400). Learned advocate for the appellant has submitted that as claimant No.1 after the demise of deceased has married again, learned Tribunal ought to have deducted 1/2 towards personal expenses of the deceased. It is needless to say that as per the decision of the Hon'ble Apex Court in the case of Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation & Anr. reported in (2009)6 SCC 121 and as the deceased was married, question does not arise to consider deduction of 1/2 merely because claimant No.1 i.e. widow of deceased married again and she is not entitled to get any compensation or 1/2 deduction is required to be done. As there were more than one dependents and deceased was married, deduction of 1/3 is appropriately done by the learned Tribunal and therefore, the argument canvassed by the learned advocate for the appellant is not acceptable. Hence, the learned Tribunal has rightly deducted 1/3 for calculating future loss of dependency in view of ratio of Bombay High Court in the case of Nandini Patil vs. Subbarao & Others reported in 2020 ACJ 1206 (Bombay). Hence, the learned Tribunal has rightly awarded Rs.43,84,800/- towards future loss of dependency after deducting Rs.21,92,400/- (1/3) from total amount of Rs.65,77,200/- [Rs.3,65,400 x 18 (multiplier)] which in the considered opinion of this Court is just and proper and does not call for any interference.

[6.3] Further, the learned Tribunal by relying on the judgment of Hon'ble Supreme Court in the case of Pranay Sethi has awarded Rs.16,500/- each under the two conventional heads of loss of estate and funeral expenditures which in considered opinion of this Court is just and proper. Further, the learned Tribunal has awarded Rs.44,000/- towards loss of consortium which in considered opinion of this Court is just and proper in view of the decisions of 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. Hence,

insofar as quantum of compensation is concerned, no interference is called for at the hands of this Court.

[7.0] This Court has taken note of the fact that the learned Tribunal has considered 20% contributory negligence on the part of deceased motorcyclist and therefore, the total compensation of Rs.43,84,800/- is appropriately sliced down by Rs.8,76,960/- [20% towards contributory negligence of the deceased motorcyclist) and therefore, the appellants – original claimants have been awarded total compensation of Rs.35,84,840/- which is maintained.

[8.0] In wake of aforesaid conspectus, present First Appeal stands dismissed. The Impugned judgment and award dated 25.03.2022 passed by the learned Motor Accident Claims Tribunal (Auxi.), at Kalol, District Gandhinagar (for short referred to as “learned Tribunal”) in Motor Accident Claim Petition No.1256 of 2014 hereby confirmed.

[9.0] The learned Tribunal is directed to disburse the amount of compensation with accrued interest thereon as awarded by the learned Tribunal and as per the apportionment made by the learned Tribunal, to the original claimants, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.

[10.0] While making the payment, the Tribunal shall deduct the courts fees, if not paid.

[11.0] Record and proceedings, if any, be sent back to the concerned Tribunal, forthwith.