(2025) 12 GUJ CK 1906

In the Gujarat High Court

Case No : R/First Appeal No. 1713 Of 2022

Sajjanben Bharatbhai Raval & Anr — APPELLANT

Vs

Rupsinh Jivaji Damor & Ors. — RESPONDENT

Date of Decision : 17-12-2025

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2025) 12 GUJ CK 1906

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Yogendra Thakore, Daxesh T Dave

Final Decision : Allowed

Judgement

Hasmukh D. Suthar, J

[1.0] Feeling aggrieved and dissatisfied with the impugned judgment and award dated 26.08.2021 passed by the learned Motor Accident Claims Tribunal (Main), Mehsana (which shall hereinafter be referred to as "the Tribunal" for short) in Motor Accident Claim Petition No.214 of 2014, the appellants herein – original claimants have filed present First Appeal under Section 173 of the Motor Vehicles Act, 1881 (for short “MV Act”).

[2.0] Though served, respondent No.3 has chosen not to appear before this Court.

[3.0] Heard learned Advocate Mr. Yogendra Thakore for the appellants – original claimants and learned Advocate Mr. Daxesh Dave for respondent No.2 – owner of offending vehicle. Perused the original record and proceedings.

[4.0] It is the case of the appellants that on 23.06.2014, while the deceased i.e. minor son of present appellants was plying his cycle, offending vehicle Maruti Swift Car bearing registration No.GJ-14-BA-6206 came with full speed in rash and negligent manner and dashed with the minor deceased who died during his treatment on 25.06.2014. Therefore, the appellants being legal heirs of the minor deceased had filed MAC Petition seeking compensation wherein the learned Tribunal after appreciating the evidence produced on record was pleased to partly allow the claim petition and awarded Rs.3,03,000/-. Being aggrieved with the compensation on lower side, the present appellants – original claimants have filed the present appeal for enhancement of compensation.

[5.0] Learned Advocate Mr. Yogendra Thakore appearing for the original claimants has submitted that the learned Tribunal has failed to appreciate the evidence and committed error in considering notional income of non-earning person. Admittedly, the learned Tribunal ought to have considered prevailing rate of minimum wages as the deceased was helping his parents and was aged 14 years and therefore rate of minimum wages of the year 2014 is required to be considered. Further, the learned Tribunal has also committed an error in not awarding any consortium to the appellants. Hence, he has requested to allow the present First Appeal.

[6.0] Per contra, learned advocate Mr. Daxesh Dave for the respondent – owner of offending vehicle has opposed the present appeal by submitting that the minor deceased was plying the cycle on road and even otherwise the FIR was filed after three days. The learned Tribunal also failed to appreciate the liability and contributory negligence on the part of minor deceased and committed error in holding the car driver sole negligent for occurrence of the accident. Hence, he has requested to dismiss the first appeal.

[7.0] Having heard the learned Advocates for the respective parties and considering the fact that present appeal is concerning limited issue of quantum of compensation, present appeal is considered in narrow compass.

[8.0] Perusing the record as well as the impugned judgment and award, it appears that the learned Tribunal has relied on the evidence of appellant No.2 who has stated in his evidence that his deceased son was aged about 14 years at the time of accident and was studying in 6th Std. and thereby has considered the age of minor deceased at 14 years. It is pertinent to note that the learned Tribunal has assessed monthly notional income of the minor deceased at Rs.3,000/- i.e. Rs.36,000/- per annum. However, in view of the decision of the Hon'ble Supreme Court in 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 and Hitesh Nagjibhai Patel vs. Bababhai Nagjibhai Rabari & Anr. reported in 2025 INSC 1070, when the Tribunal or the High Court in appeal is concerned with the case involving a child having suffered injury or passed away, the calculation of loss of income necessarily has to be made on the matric of minimum wages payable to a skilled worker in the respective State at the relevant point of time. Considering the aforesaid fact in the case on hand the learned Tribunal has considered the notional income of the deceased child at Rs.36,000/-per annum however, in view of above, as per minimum wages rate of the unskilled labour in the year 2014, the income of the minor deceased is reassessed as Rs.7,000/- per month. Further, the learned Tribunal has committed error in not considering future prospective income of the deceased however, this Court is of the view that 40% addition towards future prospectus is required to be awarded. Further as the deceased was minor bachelor, ½ deduction towards personal expenditure and living of the deceased and multiplier of 15 were considered by the learned Tribunal as per the judgment 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 National Insurance Company Ltd. Vs. Pranay Sethi reported in 2017 ACJ 2700, which in the considered opinion of this Court is erroneous and multiplier of 18 ought to have been taken into consideration as the deceased was admittedly aged 14 years of age.

[8.1] Therefore, recalculating the monthly income of the deceased as Rs.7,000/- and future prospect of 40% = Rs.2,800/- which comes to Rs.9,800/- and 1/2 amount i.e. Rs.4,900/- is required to be deducted towards personal expenditure and living of the deceased and therefore, net amount comes to Rs.4,900/-. In view of above, the amount under the head of future loss of dependency is required to be reassessed as Rs.4,900/- x 12 x 18 = Rs.10,58,400/-. Therefore, the appellants are entitled to get reassessed amount of Rs.10,58,400/- under the head of future loss of dependency.

[8.2] Further, the learned Tribunal by relying on the judgment of Pranay Sethi (Supra) has awarded Rs.16,500/- each under the two conventional heads of loss of estate and funeral expenditures however, this Court is of the view that said amount is required to be reassessed as Rs.18,150/-towards loss of estate and Rs.18,150/- towards funeral expenses.

[8.3] 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 Jana Bai 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 not awarding loss of consortium to the appellants – original claimants however, in view of above judgments the appellants – original claimants being legal heirs of the minor deceased are entitled for Rs.48,400/- each towards the loss of consortium. Therefore, the amount towards loss of consortium is assessed as Rs.96,800/- (i.e. Rs.48,400/- X 2).

[9.0] As discussed above, the appellants – original claimants are entitled to get compensation computed as under:

Heads

Amount awarded by the Tribunal

Reassessed by this Court

Future loss of dependancy

Rs.2,70,000/-

Rs.10,58,400/-

including additional amount of Rs.7,88,400/-

Loss of Estate

Rs.16,500/-

Rs.18,150/-

including additional amount of Rs.1650/-

Funeral Expenses

Rs.16,500/-

Rs.18,150/-

including additional amount of Rs.1650/-

Loss of Consortium

NIL

Rs.96,800/-

including additional amount of Rs.96,800/-

Total Compensation

Rs.3,03,000/-

Rs.11,91,500/-

including additional amount of Rs.8,88,500/-

Thus, total compensation of Rs.3,03,000/- as awarded by the learned Tribunal is on lower side, for the reasons recorded hereinabove, and therefore, same is required to be enhanced to the aforesaid extent i.e. Rs.11,91,500/- and hence, the appellants – original claimants are entitled to get enhanced (additional) amount of Rs.8,88,500/- towards compensation and therefore, the impugned judgment and award passed by the learned Tribunal is modified to the aforesaid extent.

[10.0] In view of ratio laid down by the Hon'ble Supreme Court in case of Nagappa vs. Gurudayal Singh and others, reported in (2003) 2 Supreme Court Cases 274, there is no restriction that compensation could be awarded only up to the amount claimed by the claimant and 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, the amount of compensation more than the claimed amount can be awarded.

[11.0] In wake of aforesaid conspectus, present First Appeal is allowed. The respondent No.3 – New India Insurance Company Limited is directed to deposit enhanced amount of compensation of Rs.8,88,500/- (Rs.11,91,500 – Rs.3,03,000) alongwith accrued interest at the rate of 7% per annum, with the learned Tribunal within a period of FOUR WEEKS from the date of receipt of the present judgment. The Impugned judgment and award dated 26.08.2021 passed by the learned Motor Accident Claims Tribunal (Main), Mahesana in Motor Accident Claim Petition No.214 of 2014 is modified to the aforesaid extent and rest of the impugned judgment and award remains unaltered.

[12.0] After the aforesaid amount of enhanced compensation is deposited by the insurance company, learned Tribunal is directed to disburse the entire amount alongwith the enhanced amount of compensation as well as earlier deposited amount, if any, with accrued interest thereon, if any, to the original claimants, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.

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

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

