(2026) 02 GUJ CK 1615

In the Gujarat High Court

Case No : R/First Appeal No. 2660 Of 2022

Somabhai Nathubhai Rabari & Ors — APPELLANT

Vs

Patel Bhikhabhai Prabhudas & Anr — RESPONDENT

Date of Decision : 02-02-2026

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2026) 02 GUJ CK 1615

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Yogendra Thakore, Rathin P Raval

Final Decision : Partly Allowed

Judgement

Hasmukh D. Suthar, J

1) Feeling aggrieved and dissatisfied with the judgment and award dated 31.07.2021 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.261 of 2015, 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 Mr. Yogendra Thakore, learned Advocate for appellants – original claimants and Mr. R. P. Raval, learned Advocate for respondent – Insurance Company.

3) It is the case of the appellants that on 10.02.2014, the deceased Puriben (who shall hereinafter be referred to as “deceased”) along with other by sitting in Chhota Hathi bearing Reg. No.GJ-18-AV-4659, of their relative Maheshbhai Rabari were returning from Delmal after offering prayer and were going from Chanasma to Mahesana. At that time one Turbo Truck bearing Reg. No.GJ-02-Z-6437, being driven in rash and negligent manner and dashed with Chhota Hathi due to which the deceased sustained injuries and shifted to Lions General

Hospital for treatment. On 15.02.2014 the deceased succumbed to the injuries. Therefore, the appellants had filed MAC Petition seeking compensation, wherein, the learned Tribunal after appreciating the evidence produced on record has partly allowed the claim petition.

4) Learned Advocate for the appellants – claimants has submitted that the learned Tribunal has committed error in considering the income of the deceased at only Rs.4,500/- and failed to consider that she was doing cattle feeding and selling milk to Borissana Dudh Utpadak Sahakari Mandali Ltd., and also erred in not awarding sufficient amount towards conventional heads. Hence, he has requested to allow the present appeal.

5) Learned Advocate for the respondent – Insurance Company has opposed the present appeal on the ground that the learned Tribunal has rightly assessed the income of the deceased in absence of evidence of income and properly appreciated the evidence produced on record and awarded the compensation. Hence, he has requested to dismiss the present appeal.

6) The appeal is filed on limited ground that the learned Tribunal has not considered minimum wages of prevalent time and also not awarded sufficient amount towards conventional heads, hence, the appeal is required to be decided in narrow compass. 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 10.02.2014 and during that time the deceased was doing business of selling milk to Mandali and animal husbandry, whereas, the Tribunal has assessed the income of the deceased as Rs.4,000/- 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 deceased is reassessed as Rs.5,750/- per month. Further, as the deceased was aged 51 years at the time of accident on the basis of which the learned Tribunal has considered future prospective income as 10% and as the deceased was having five dependents 1/4 deduction towards personal and living expenses of the deceased and multiplier of 11 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.5,750/-and future prospect of 10% = Rs.575/- which comes to Rs.6,325/-and 1/4 amount is required to be deducted towards personal living expenses of the deceased which comes to Rs.1,581/- and the net amount comes to Rs.4,744/-. In view of above the amount under the head of loss of future dependency income is required to be reassessed as Rs.4,744/- x 12 x 11 = Rs.6,26,208/-. Therefore, the appellants are entitled to get additional amount of Rs.1,36,158/- towards loss of dependency income.

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 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 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 appellants – original claimants being legal heirs of the deceased they are entitled for Rs.48,400/- each towards the head of loss of consortium. Therefore, the amount towards loss of consortium is reassessed as Rs.2,42,000/- (i.e. Rs.48,400/- X 5). Therefore, the appellants are entitled for additional amount of Rs.2,02,000/-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 dependency income

Rs.4,90,050/-

Rs.6,26,208/-

including additional amount of Rs.1,36,158/-

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.2,42,000/-

including additional amount of Rs.2,02,000/- (Rs.48,400/- X 5)

Total compensation

Rs.5,60,050/-

Rs.9,04,508/-

including total additional amount of Rs.3,44,458/-

11) In view of above, as the Tribunal has awarded total compensation of Rs.5,60,050/-, however, as discussed above the appellants are entitled to get additional amount of Rs.3,44,458/- (Rs.9,04,508/- - Rs.5,60,050/-) with proportionate costs and interest as awarded by the learned Tribunal.

12) Hence, present appeal is partly allowed. The judgment and award dated 31.07.2021 passed by learned Motor Accident Claims Tribunal (Aux.), Mahesana, in MAC Petition No.261 of 2015 stands modified to the aforesaid extent. Rest of the judgment and award remains unaltered. The respondent no.2 - Insurance Company shall deposit the said additional amount of Rs.3,44,458/- 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.

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

14) Award to be drawn accordingly.