(2026) 01 GUJ CK 1410

In the Gujarat High Court

Case No : R/First Appeal No. 1771 Of 2022

Tamuben Rajkubhai Boricha & Ors APPELLANT

Vs

Mehbubbhai Ismailbhai Pathan & Ors RESPONDENT

Date of Decision : 08-01-2026

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2026) 01 GUJ CK 1410

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Monarch K Pandya, Kirti S Pathak

Final Decision : Allowed

Judgement

Hasmukh D. Suthar, J

[1.0] Present First Appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "MV Act") is filed by the appellants – original opponent claimants challenging the impugned judgment and award dated 22.10.2021 passed by the learned Motor Accident Claims Tribunal (Main), Botad (for short "learned Tribunal") in Motor Accident Claim Petition No.7 of 2019, whereby the learned Tribunal was pleased to partly allow the claim petition and awarded compensation of Rs.36,40,000/- to the appellants – original claimants i.e. after deducting 20% towards contributory negligence of the deceased.

[2.0] The brief facts leading to filing of present appeal are as follows:

[2.1] On 29.11.2018, at abour 3.00 hours, Rajkubhai Kanubhai Boricha (hereinafter referred to as "deceased") was coming from Rajkot and proceeding towards Botad in his Wagon-R Car bearing registration No.GJ-07-BN-6381 and he was driving his car on the left side of the road with moderate speed and when he reached on Rajkot-Bhavnagar Highway, near Bhadar river bridge, one Eicher Truck bearing registration No.GJ-14-W-1144 came in excessive speed in rash and negligent manner on wrong side of the road and said Eicher Truck collided with the Wagon-R car of the deceased due to which the deceased sustained grievous injuries and succumbed to his injuries. Therefore, the legal heirs and representatives of the deceased filed MACP No.7 of 2019 seeking compensation.

[2.2] After considering the evidence produced and adduced, the learned Tribunal held the driver of Eicher Truck to be 80% negligent and deceased car driver to be 20% contributory negligent for the accident and awarded compensation of Rs.45,50,000/- however, deducting 20% towards contributory negligence of the deceased – driver of Wagon-R Car, the appellants – original claimants were declared entitled to get compensation of Rs.36,40,000/-. Being aggrieved with decision of learned Tribunal holding the deceased driver of Wagon-R car to be 20% contributory negligent as well as on the ground of quantum, the appellants – original claimants have filed the present appeal.

[3.0] Learned advocate Mr. Monarch Pandya appearing for the appellants – original claimants has submitted that the learned Tribunal has committed an error in considering contributory negligence on the part of deceased and in not considering the admitted income of the deceased which is produced and proved on record and meager compensation is awarded. He has further submitted that merely because there was a head-on collision, is not a ground to deduct the compensation towards contributory negligence of the deceased. In this regard, he has relied on the decision of the coordinate Bench of this Court in the case of United India Insurance Company Limited vs. Jentibhai Khimjibhai Parmar reported in 2017(0) ACJ 2809; Samjudaben Wd/o. Afjalkhan @ Kadarkhan Nasratkhan Makrani vs. Ahmuddin Suleman Muslim reported in 2024 JX (Guj) 1653 and Nishaben Champakbhai Patel vs. Nandlal T. Nishad reported in 2022(0) AAC 219 and has requested to allow the present appeal.

[4.0] Learned advocate Ms. Kirti Pathak appearing for the respondent No.3 – insurance company has opposed the appeal on the ground that the learned Tribunal has not committed any error in holding the deceased driver of Wagon-R came to be held 20% contributory negligent after appreciating the evidence on record i.e. complaint (Exh.32) and panchnama (Exh.33), the learned Tribunal has come to conclusion that there was head-on collision between the Wagon-R car and Eicher Truck on narrow bridge and the deceased car driver ought to have taken extra care and ought to have waited for the Eicher Truck to pass over the bridge however, the deceased driver of wagon-R car did not take proper care and was in hurry to cross the bridge and therefore, the accident took place and the car driver has contributed in the accident. Hence, the learned Tribunal has not committed any error in holding the deceased driver of Wagon-R car to be 20% negligent for the accident.

[4.1] So far as claim of appellants as regards quantum of compensation is concerned, she has submitted that the learned Tribunal properly considered the income-tax returns and has not committed any error in awarding the compensation. Therefore, she has requested to dismiss the present appeal.

[5.0] Having heard learned advocate for the appellants and learned advocate for the insurance company and perusing the record, it appears that the learned Tribunal has considered the evidence produced and adduced by both the parties including the affidavit of the claimant (Exh.21), complaint (Exh.32) and panchnama (Exh.33). Perusing the said evidence, the learned Tribunal has appreciated the issue of negligence and come to the conclusion that Eicher Truck No.GJ-14-W-1144 and Wagon-R Car No.GJ-07-BN-6381 are involved in the accident and accident took place on the bridge of river Bhadar. While going through the documentary evidence and panchnama (Exh.33), it appears that both the vehicles collided head on and accident took place on the narrow bridge and considering the bigger size of Eicher truck in comparison to Wagon-R car, apportionment of negligence is done at 80% on the part of driver of Eicher Truck while deceased driver of Wagon-R is held 20% contributory negligence on the ground that drivers of both the vehicles ought to have taken proper care while passing on the narrow bridge but in the present case, driver of both the vehicles were negligent and the learned Tribunal considering 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 has been observed 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 and the learned Tribunal appreciating the panchnama (Exh.33) has held the driver of bigger size vehicle i.e. Eicher Truck to be 80% negligent and deceased driver of Wagon-R car to be 20% contributory negligent considering the principle of res ipsa loquitur as admittedly the appellants – original claimants are not having personal knowledge.

Hence, this Court is of considered view that the learned Tribunal has properly appreciated the evidence and after re-scanning and re-appreciating the evidence, this Court deems it appropriate to endorse the finding of the learned Tribunal qua apportionment of negligence made by the learned Tribunal. Therefore, the decisions relied on by the learned advocate for the appellants in the case of Jentibhai Khimjibhai Parmar (Supra); Samjudaben Wd/o. Afjalkhan @ Kadarkhan Nasratkhan Makrani (Supra) and Nishaben Champakbhai Patel (Supra) are not helpful to the appellants in the peculiar facts of the present case as in the case on hand, the accident took place on a narrow river bridge and driver of both the vehicles ought to have taken extra care of expected and unexpected situation. The learned Tribunal in the present case has not decided the contributory negligence based on surmises or conjectures that the accident took place due to head-on collision between two vehicles. In this regard, reference is required to be made to the decision of the Hon'ble Apex Court in the case of Sushil Suri v. Central Bureau of Investigation and Another reported in (2011) 5 SCC 708, wherein paragraph 32 reads as under:

"32. It needs little emphasis that even one additional or different fact may make a world of difference between the conclusions in two cases and blindly placing reliance on a decision is never proper. It is trite that while applying ratio, the

Court may not pick out a word or sentence from the judgment divorced from the context in which the said question arose for consideration. (See Zee Telefilms Ltd. V. Union of India, reported in (2005) 4 SCC 659.) In this regard, the following words of Lord Denning, quoted in Haryana Financial Corpn. V. Jagdamba Oil Mills, reported in (2002) 3 SCC 496, are also quite apt: (SCC p.509, para 22)

"22. …. 'Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matUbuntuching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.'"

Hence, the finding of the learned Tribunal as regards apportionment of negligence does not require any interference by this Court.

[6.0] In order to prove the income of the deceased, the appellants – original claimants have examined one Mr. Harsukhbhai Dakiya, LIC Supervisor, Botad Branch at Exh.24 and have produced income-tax returns and Form-16A of the deceased and income tax return is statutory evidence and document, which is required to be considered and relied upon to award just compensation. Perusing the Form-16A of the deceased for the AY 2016-17 produced at Exh.28, income of deceased was Rs.2,90,207/- per annum and for the assessment years 2017-18 and 2018-19, income of the deceased is shown as Rs.3,56,164/- and Rs.6,26,556/- respectively and therefore, taking average of three, the learned Tribunal ought to have considered average income of the deceased as Rs.4,24,309/- per annum i.e. Rs.35,360/- per month though learned Tribunal has considered per annum income of the deceased as Rs.2,50,000/-. This Court is of considered view that once the average income is assessed as Rs.4,24,309/- per annum as per the documentary and statutory evidence produced on record, there was no reason for the learned Tribunal to slice down the said income to Rs.2,50,000/-. In this regard, reference is required to be made to 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, wherein it has been held that income tax return is statutory evidence and document, which is required to be considered and relied upon to award just compensation. Therefore, this Court is of considered view that upto that extent, the learned Tribunal has committed an error.

[6.1] It has come on record by school leaving certificate (Exh.37) that the deceased at the time of accident was aged 32 years and hence in view of decision of the Hon'ble Supreme Court in the case of Smt. Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. reported in 2009 ACJ 1298, multiplier of 16 would apply. As the deceased was self-employed and his monthly income is considered Rs.35,360/-(Rs.4,24,309/- per annum), 40% i.e. Rs.14,144/- (40% of Rs.35,360/-) towards future prospect is required to be added and thus, the amount comes to Rs.49,504/- per month. The deceased was admittedly having five dependants and therefore, 1/5 is required to be deducted towards personal expenses and therefore, monthly loss of dependancy would come to Rs.39,604/- [Rs.49,504 – Rs.9900/- (1/5th of Rs.49,504/-). As discussed above, applying multiplier of 16, appellants – original claimants would be entitled to Rs.76,03,968/-(Rs.39,604 x 12 x 16) towards future loss of dependancy.

[6.2] 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.

[6.3] 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 awarding Rs.44,000/- towards loss of consortium to the appellants – original claimants though there are five dependants however, in view of above judgments the appellants – original claimants being legal heirs of the deceased are entitled for Rs.48,400/- each towards the loss of consortium. Therefore, the amount towards loss of consortium is reassessed as Rs.2,42,000/- (i.e. Rs.48,400/- X 5).

[7.0] Thus, now the appellants original claimants are entitled to the compensation as under:

Heads

Amount awarded by the Tribunal

Reassessed by this Court

Future loss of

Rs.44,72,832/-

Rs.76,03,968/-

dependency

including additional amount of

Rs.31,31,136/-

Loss of Estate

Rs.16,500/-

Rs.18,150/-

including additional amount of

Rs.1,650/-

Funeral Expenses

Rs.16,500/-

Rs.18,150/-

including additional amount of

Rs.1,650/-

Loss of

Rs.44,000/-

Rs.2,42,000/-

Consortium

including additional amount of

Rs.1,98,000/-

TTotal...

Rs.45,49,832/-

Rs.78,82,268/-

Rounded off to

including additional amount of

Rs.45,50,000/-

Rs.33,32,268/-

[8.0] The learned Tribunal has considered 20% contributory negligence on the part of the deceased – driver of Wagon-R car which has been upheld by this Court and therefore, 20% amount is requiredvto be sliced down from the aforesaid reassessed amount of compensation and therefore, the appellants – original claimants now would be entitled to Rs.63,05,815/- [Rs.78,82,268 – Rs.15,76,453/-(20% of Rs.78,82,268/-) and therefore, the impugned judgment and award passed by the learned Tribunal is modified to the aforesaid extent.

[9.0] In wake of aforesaid conspectus, present First Appeal is allowed. The respondent No.3 – Shriram General Insurance Co. Ltd. is directed to deposit Rs.63,05,815/- alongwith accrued interest at the rate of 9% 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 22.10.2021 passed by the learned Motor Accident Claims Tribunal (Main), Botad in Motor Accident Claim Petition No.7 of 2019 is modified to the aforesaid extent and rest of the impugned judgment and award remains unaltered.

[9.1] After the aforesaid amount of compensation is deposited by the insurance company, learned Tribunal is directed to disburse the entire amount with accrued interest thereon, if any, 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.

