

(2026) 01 GUJ CK 1464
In the Gujarat High Court
Case No : R/First Appeal No. 633 Of 2025

Vipulbhai Ashokbhai Barot & Anr

APPELLANT

Vs

Devjibhai Laxmanbhai Chaudhary & Ors

RESPONDENT

Date of Decision : 29-01-2026

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2026) 01 GUJ CK 1464

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Tirth Nayak, KK Maghnani, Masumi V Nanavaty, K B Maghnani, Vibhuti Nanavati

Final Decision : Partly Allowed

Judgement

Hasmukh D. Suthar, J

1. ADMIT. Learned advocate K.B. Maghnani and learned advocate Mr. Vibhuti Nanavati waive service of notice of Admission for respondent Nos.1 & 2 and respondent No.4 respectively. With the consent of learned advocate appearing for respective parties, present appeal is taken up for final hearing today.

[1.0] By way of present First Appeal under Section 173 of the Motor Vehicles Act, 1988, the appellants herein – original claimants have assailed the impugned judgment and award dated 06.01.2025 passed by the learned Motor Accident Claims Tribunal (Auxi.), at Ahmedabad (for short “learned Tribunal”) in Motor Accident Claim Petition No.120/2021, whereby the learned Tribunal has partly allowed the claim petition however, held the deceased to be contributory negligent to the extent of 25% and after deducting the amount of compensation to that extent, learned Tribunal has awarded Rs.9,40,000/- [Rs.12,53,000 – Rs.3,13,250 (25% of Rs.12,53,000)] in favor of the appellants – original claimants with interest at the rate of 9% per annum from the date of claim petition.

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

[2.1] On 03.03.2021 at about 9.00 p.m., deceased Neelamben (hereinafter referred to as "deceased") had gone towards Gayatri Mandir side by walking and at about 9.15 p.m., while she was standing on the corner of the road for crossing the road, original opponent No.1 came driving his Eeco Car bearing registration No.GJ-01-HY-4752 with full speed in rash and negligent manner and hit the deceased thereby causing severe injuries to her and pursuant to the said injuries, deceased died. Therefore, the appellants – original claimants – legal heirs of the deceased filed MACP No.120/2021 seeking compensation.

[2.2] After considering the evidence produced on record by the respective parties, learned Tribunal has been pleased to hold the original opponent No.1 – driver of Eeco Car to be 75% negligent and deceased to be 25% contributory negligent for the accident and awarded compensation of Rs.12,53,000/- however, sliced down the compensation by 25% towards contributory negligence of the deceased and thereby awarded Rs.9,40,000/- to the appellants – original claimants. However, present First Appeal is filed by the appellants – original claimants challenging 25% contributory negligence held on the part of the deceased as well as seeking enhancement of the compensation.

[3.0] Though served, respondent Nos.3, 5 and 6 have chosen not to appear before this Court.

[4.0] Learned advocate Mr. Tirth Nayak appearing for the appellants has submitted that the learned Tribunal has committed an error in considering 25% contributory negligence on the part of the deceased in absence of any evidence. In the impugned judgment, the learned Tribunal has considered contributory negligence on the part of the deceased at 25% though she was crossing the road as a pedestrian and learned Tribunal ought to have considered 100% negligence on the part of the driver of Eeco Car. He has further submitted that the learned Tribunal ought to have considered atleast Rs.15,000/- as per the minimum wages prevailing at the time of accident but the learned Tribunal has considered only Rs.7000/- as monthly income of the deceased though the alleged accident took place in the year 2021. He has further argued that under the conventional heads also, meager amount is awarded. Hence, he has requested to allow the present appeal.

[5.0] Learned advocates Mr. K.B. Maghnani for respondent Nos.1 and 2 and learned advocate Mr. Vibhuti Nanavati for respondent No.4 have opposed the appeal and submitted that the learned Tribunal has not committed any error in considering 25% contributory negligence on the part of the deceased on the ground that the deceased was standing on the middle of the road and alleged accident took place on State Highway near the divider.

However, in absence of any evidence, learned Tribunal has not committed any error in considering the notional income of the deceased at Rs.7000/- and even under the conventional heads and future prospect, compensation is properly

considered by the learned Tribunal. Hence, it is submitted that present appeal be dismissed.

[6.0] Having heard the learned advocate appearing for the respective parties and going through the evidence as well as the record and proceeding, it appears that the learned Tribunal has considered the oral evidence of claimant No.1 (Exh.34) and to prove the factum of accident, two witnesses namely Vandanaben Arunbhai Barot and Prakash Kanubhai Thakor are examined at Exhs.36 and 45 respectively. The complaint is filed at Exh.42, spot panchnama at Exh.43 and post-mortem report at Exh.45 and considering the said evidence, based on the settled principle of 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, learned Tribunal came to conclusion that driver of Eeco Car was 75% negligent and deceased herself was 25% contributory negligent for the accident. As involvement of vehicle and coverage of risk is not in dispute, no further discussion is required.

[6.1] The first blush of argument of learned advocate Mr. Nayak is that the learned Tribunal has committed an error in considering 25% contributory negligence on the part of the deceased. The complaint is produced at Exh.42 before the learned Tribunal. Even, as per the claim petition and averments made in the affidavit (Exh.45) of Prakash Thakor, deceased was standing for crossing the road and she was waiting on the service road for passing of vehicles on the road and in the meantime, offending Eeco Car came from Mahesana side being driven by original opponent No.1 in full speed and rashly and negligently and the said car hit the deceased but perusing the cross-examination of the said witness, who is an eye-witness, it appears that the accident took place due to negligence on the part of the driver of Eeco Car but prior to offering the evidence before the learned Tribunal, said witness has not disclosed anything before the police. The said witness has admitted that claimant No.1 happens to be his friend and whatever he has deposed before the learned Tribunal, he has disclosed for the first time before the learned Tribunal. But, perusing the evidence of the said witness and spot panchnama, it appears that there is variance between the pleading and proof. It is true that while deciding Motor Accident Claims, Court has to decide the same summarily and based on preponderance of probability but at the same time, the Tribunal cannot shut its eye while appreciating the evidence. As per the pleading and spot panchnama, it clearly reveals that the deceased was standing on the divider. It is needless to say that divider was on the middle of the road having width of 2 feet which clearly transpires from the spot panchnama and Eeco car was passing on the State Highway and while deceased was trying to cross the road, at that time, near the divider, the alleged accident took place. Further, blood stains are also found at the place of accident and Eeco car is found on extreme left side of the road. Perusing the said fact, it clearly reveals that the accident took place near the divider on the road and not on the cut of the service road. Further, the driver of the Eeco car has not stepped into the witness box. In considered opinion of this Court, the deceased, who was

major, ought to have taken extra care while crossing the road that too busy State Highway road having heavy traffic, which she did not and therefore, she contributed in the accident and therefore, the learned Tribunal has not committed any error in considering the deceased to be 25% contributory negligent for the accident. The learned Tribunal has rightly appreciated the evidence on record which is also corroborated by the spot panchnama which clearly depicts the factum of accident and based on the principle of *res ipsa loquitor* no interference is required qua finding of the learned Tribunal insofar as it holds deceased to be 25% contributory negligent for the accident. Hence, argument canvassed by the learned advocate for the appellants is not sustainable.

[7.0] Insofar as quantum is concerned, it is the case of the appellants that deceased was earning Rs.15,000/- per month by doing stitching work and preparing food items but no any documentary evidence in that regard is produced on the record. In that event, learned Tribunal ought to have taken minimum wages prevailing in the year 2021 as the accident took place on 03.03.2021 and there was no reason for the learned Tribunal to presume that the deceased was only a homemaker and therefore, minimum wages prevailing in the year 2021 ought to have been considered by the learned Tribunal though the learned Tribunal has considered notional income of the deceased at Rs.7000/- which requires interference. The minimum wages prevalent in the year 2021 was Rs.9000/- for unskilled person and therefore, in view of the decision of the Hon'ble Supreme Court in the case of National Insurance Company Ltd. Vs. Pranay Shethi reported in (2017) 16 SCC 680, as the deceased was aged about 36 years at the time of accident, 40% increase in monthly income was required to be added towards future prospects and therefore, future monthly income of deceased is required to be reassessed at Rs.12,600/- [Rs.9000 + Rs.3600 (40% escalation)].

[7.1] Further, as the deceased was aged 36 years at the time of accident and married, Rs.4200/- (1/3 of Rs.12,600) is required to be deducted towards personal expenses and therefore, monthly loss of dependency would come to Rs.8400 (Rs.12,600 – Rs.4200) and yearly loss of dependency would come to Rs.1,00,800/- (Rs.8400 x

12) and in view of decision of Hon'ble Supreme Court in the case of Smt. Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. reported in 2009 ACJ 1298, as the deceased claimant was aged 36 years, applying multiplier of 15, the appellants – original claimants would be entitled to Rs.15,12,000/- [Rs.1,00,800/- x 15] towards future loss of dependency.

[7.2] 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 Lombard Insurance Company Ltd. reported in 2022 LiveLaw (SC) 666, the learned Tribunal has committed error in awarding only Rs.44,000/- towards loss of consortium,

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 head of loss of consortium. Therefore, the amount towards loss of consortium is reassessed as Rs.96,800/- (Rs.48,400/- x 2).

[7.3] Further, in view of the law laid down by the Hon'ble Supreme Court in the case of Pranay Sethi & Ors. (Supra), claimants are entitled to get an amount of Rs.18,150/- each towards loss of estate and funeral expenses.

[8.0] Hence, now the claimants are entitled to get the compensation as under:

Heads

Awarded by Tribunal

Reassessed by this Court

Future loss of dependency

Rs.11,76,000/-

Rs.15,12,000/-

including additional amount of Rs.3,36,000/-

Loss of Consortium

Rs.44,000/-

Rs.96,800 (Rs.48,400 x 2)

Loss of Estate

Rs.16,500/-

Rs.18,150/-

Funeral Expenses

Rs.16,500/-

Rs.18,150/-

Total ...

Rs.12,53,000/-

Rs.16,45,100/-

Deduction (25%) for contributory negligence of deceased

Rs.3,13,250/-

Rs.4,11,275/-

Total Compensation

Rs.9,40,000/-

Rs.12,33,825/-

As discussed hereinabove, the deceased has been held 25% contributory negligent for the accident and therefore, the compensation to that extent is required to be sliced down and hence, the appellants – original claimants are entitled to get compensation of Rs.12,33,825/- [Rs.16,45,100 – Rs.4,11,275 (25% of Rs.16,45,100)]. To that extent, the impugned judgment and award is required to be modified.

[9.0] In wake of aforesaid conspectus, First Appeal is partly allowed and impugned judgment and award dated 06.01.2025 passed by the learned Motor Accident Claims Tribunal (Auxi.), at Ahmedabad in Motor Accident Claim Petition No.120/2021 is modified and it is held that the appellants – original claimants are entitled to get Rs.12,33,825/- as compensation from the respondent No.4 – insurance company alongwith accrued interest at the rate of 9% per annum within a period of FOUR WEEKS from the date of receipt of this judgment.

[9.1] The Tribunal shall disburse the entire amount of reassessed compensation alongwith with accrued interest thereon, if any, to the claimants, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure and as per the apportionment made by the learned Tribunal.

[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.

Pending civil application, if any, stands disposed of.