

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 2703 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

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Approved for Reporting	Yes	No
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AMBALAL ISHWARBHAI VANKAR (SUTARIYA) & ORS.

Versus

MANUBHAI BHAILALBHAI GOHIL & ORS.

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Appearance:

MR H M SHAH(3997) for the Appellant(s) No. 1,2,3

DECEASED LITIGANT for the Defendant(s) No. 2

MR JITENDRA H SINGH(3199) for the Defendant(s) No. 4

MR RITURAJ M MEENA(3224) for the Defendant(s) No. 3

RULE SERVED for the Defendant(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**Date : 30/06/2026****JUDGMENT**

1. The captioned appeal is filed against the impugned judgment and award dated 21.07.2018 passed by the learned Motor Accident Claims Tribunal, Ahmedabad (Rural) at Mirzapur, Ahmedabad in MACP No.769/2003, whereby the learned Tribunal had partly allowed the claim petition and awarded a sum of Rs.6,01,200/- as a compensation along with interest at the rate of 9% per annum from the date of filing of claim petition till its realization.

2. The succinct facts leading to file the captioned appeal are that on 13.03.2017, at about 10:30 pm, when the deceased-Jayendrabhai Ambalal Vankar was returning after completing his work on a motorcycle bearing registration no.GJ-25-8919, in the meantime, the respondent no.1 came by driving the metador bearing registration no.GJ-7-V-9505, in rash and negligent manner and dashed with the said motorcycle from behind, thereby caused the accident. Due to the impact of the said accident, the deceased sustained serious injuries and succumbed to the injuries during treatment.

3. On being served, the respondent no.3/insurance company filed its written statement at Exh.11, while the respondent no.4 filed the written statement at Exh.27. Both the respondents have denied all the averments made in the claim petition and prayed for rejection of the claim petition.

4. Having considered the pleadings, evidence led by the respective parties and the submissions canvassed by the respective parties, the learned Tribunal had partly allowed the claim petition and awarded a sum of Rs.6,01,200/- as a compensation along with interest at the rate of 9% per annum from the date of filing of claim petition till its realization.

5. Being aggrieved and dissatisfied with the impugned judgment and award, the original claimants/appellants herein challenged the impugned judgment and award on the ground of quantum.

6. Heard learned counsels for the parties.

7. Mr. H. M. Shah, learned counsel appearing on behalf of original claimants/appellants herein vehemently submitted that at the time of accident, the deceased was engaged in the business of Cement Distributor in L&T Company. He submitted that the income of the deceased was not proved on record. In absence of any cogent evidence of income, the learned Tribunal has assessed the income of the deceased as Rs.3,000/- per month. He further submitted that at the time of accident, the deceased was earning considerable amount. He submitted that the learned Tribunal has assessed the income of the deceased at lower side.

8. Learned counsel for the appellants further submitted that the learned Tribunal has awarded meagre amount of compensation under conventional heads. In support of his contention, learned counsel for the appellants placed the reliance upon the judgment rendered by the Hon'ble Apex Court in case of **National Insurance Company Ltd. Vs. Pranay Sethi**, reported in 2017 (16) SCC 680 and **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and Ors.**, reported in 2018 (18) SCC 130. Having placed the reliance upon the aforesaid judgments, learned counsel for the appellants prayed for enhancement of compensation.

9. Per contra, Mr. Rituraj M. Meena, learned counsel appearing on behalf of respondent no.3/insurance company vehemently submitted that the income of the deceased was not proved by leading the cogent evidence on record, therefore, the learned Tribunal has rightly assessed the income of the deceased as Rs.3,000/- per month. He further submitted that the learned Tribunal has awarded just compensation under all the heads of compensation, therefore, the captioned appeal is

liable to be dismissed.

10. Ms. Rutvi M. Modi, learned counsel appearing on behalf of Mr. Jitendra H. Singh, learned counsel for respondent no.4 vehemently submitted that the learned Tribunal has awarded the meagre amount of compensation. She adopted the arguments advanced by the learned counsel for the appellants.

11. Having considered the submissions of the learned counsels for the parties and having gone through the record, it is to be noted that the original claimants/appellants herein have challenged the impugned judgment and award on the ground of quantum.

12. So far as the quantum is concerned, at the time of accident, the deceased was aged about 29 years and he was doing the business of supplying the cement under the name and style of M/s. Mahavir Cement Depot. The registration certificate of the said firm has been proved on record at Exh.32. The sales tax certificate has also been proved on record at Exh.33 and the pan card of the deceased has been proved at Exh.34. The registration certificate and the sales tax certificate would show that the deceased was carrying on the business of supplying the cement under the name and style of M/s. Mahavir Cement Depot. Further, the statement of monthly turnover and voucher (commission) has been placed on record. Thus, considering the nature of avocation carried out at the time of accident, the income of the deceased is reassessed at Rs.5,000/- per month. At the time of accident, the deceased was aged about 29 years, therefore, 40% of the monthly income is to be added on account of future prospects of the deceased. Thus, after adding 40% to the monthly income, it would come to

Rs.7,000/- i.e. $(5,000+5,000 \times 40\%)$.

13. The deceased was survived by four legal representatives i.e. his both parents, sister and widow, therefore, $\frac{1}{4}$ of the income is deducted on account of personal expenses of the deceased. Thus, after deducting $\frac{1}{4}$ on account of personal expenses of the deceased, the monthly income for calculating the future loss of dependency would come to Rs.5,250/- i.e. $(7,000-7,000 \times \frac{1}{4})$. Thus, applying the multiplier of 17 as per the age of the deceased, the future loss of dependency would come to Rs.10,71,000/- i.e. $(5,250 \times 12 \times 17)$.

14. The learned Tribunal has awarded meagre amount of compensation under the conventional heads, therefore, a sum of Rs.18,150/- is awarded under the head of funeral expenses and a sum of Rs.18,150/- is awarded under the head of loss of estate.

15. It is not in dispute that the deceased was survived by 4 legal representatives. In view of the ratio laid down by the Hon'ble Apex Court in case of Nanu Ram @ Chuhru Ram (supra), all the legal representatives are entitled to get the compensation under the head of loss of consortium. Hence accordingly, a sum of Rs.1,93,600/- i.e. $(48,400 \times 4)$ is awarded under the head of loss of consortium.

16. In view of the above discussion, the appellants/claimants shall be entitled for the following amount of compensation under the following heads:-

Sr. No.	Particular	Amount
1.	Future loss of dependency	10,71,000/-

2.	Loss of consortium	1,93,600/-
3.	Loss of estate	18,150/-
4.	Funeral expenses	18,150/-
	Total	13,00,900/-

17. The learned Tribunal has already awarded a sum of Rs.6,01,200/- as a compensation, therefore, the original claimants/appellants shall be entitled for additional compensation of Rs.6,99,700/- i.e. (13,00,900-6,01,200). The learned Tribunal has awarded the interest at the rate of 9% per annum, therefore, the original claimants/appellants shall be entitled for the same rate of interest on additional amount of compensation from the date of filing of claim petition till its realization. It is clarified that the respondent no.4 being the widow of the deceased shall also be entitled to get the enhanced amount of compensation along with interest as per her share of compensation awarded by the learned Tribunal.

18. In view of the above discussion, the captioned appeal stands allowed partly and the impugned judgment and award is to be modified to the aforesaid extent. The respondent no.3/insurance company shall deposit the additional amount of compensation along with interest within a period of 6 weeks from the date of receipt of copy of this order.

19. Upon depositing of the said amount of compensation, the learned Tribunal shall disburse the entire amount of compensation along with interest to the original claimants/appellants and respondent no.4 herein after deducting deficit of Court fee, if any, after due verification. The amount, if any, lying deposited with the registry of this Court, the same shall be transmitted to the learned Tribunal concerned. No order as to costs.

20. Record & Proceedings, if any, be sent back to the learned Tribunal concerned.

HARSHIT

(MOOL CHAND TYAGI, J)