

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 2754 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)

Versus

MANUBHAI BHAILALBHAI GOHIL & ORS.

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Appearance:

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

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.770/2003, whereby the learned Tribunal had partly allowed the claim petition and awarded a sum of Rs.87,940/- 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 claimant-Ambalal Ishwarbhai 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 claimant sustained serious injuries.

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.87,940/- 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 claimant/appellant 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 claimant/appellant herein vehemently submitted that at the time of

accident, the claimant/appellant was engaged in the business of Cement Distributor in L&T Company. He submitted that the income of the claimant was not proved on record. In absence of any cogent evidence of income, the learned Tribunal has assessed the income of the claimant/appellant as Rs.3,000/- per month. He further submitted that at the time of accident, the claimant/appellant was earning considerable amount. He submitted that the learned Tribunal has assessed the income of the claimant/appellant at lower side.

8. Learned counsel for the appellant further submitted that the learned Tribunal has awarded meagre amount of compensation under conventional heads. In support of his contention, learned counsel for the appellant 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 appellant 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 claimant/appellant was not proved by leading the cogent evidence on record, therefore, the learned Tribunal has rightly assessed the income of the claimant/appellant 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 appellant.

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 claimant/appellant herein 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 claimant/appellant was aged about 52 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. The registration certificate and the sales tax certificate would show that the claimant/appellant 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 claimant/appellant is reassessed at Rs.5,000/- per month. At the time of accident, the claimant/appellant was aged about 52 years, therefore, 10% of the monthly income is to be added on account of future prospects of the claimant/appellant. Thus, after adding 10% to the monthly income, it would come to Rs.5,500/- i.e. $(5,000 + 5,000 \times 10\%)$. It is not in dispute that the claimant/appellant has sustained the disability of 20% body as a whole and with the consent of

the learned counsels for the respective parties, learned Tribunal has assessed the functional disability of the claimant/appellant at 14%, which is not in dispute. Thus, considering the functional disability of 14% and applying the multiplier of 11 as per age of the claimant/appellant, the future loss of dependency would come to Rs.1,01,640/- i.e. $(5,500 \times 14\% \times 12 \times 11)$.

13. It is not in dispute that owing to the injuries sustained in the accident, the claimant/appellant remained hospitalized as an indoor patient and thereafter, he received the treatment as an outdoor patient, therefore, the actual loss of income is awarded for a period of three months, which comes to Rs.15,000/- i.e. $(5,000 \times 3)$.

14. The learned Tribunal has awarded a sum of Rs.15,000/- under the head of pain, shock and suffering. Considering the nature of injuries sustained by the claimant/appellant and having regard to period of treatment as indoor as well as outdoor patient, the compensation awarded under this head is enhanced from Rs.15,000/- to Rs.25,000/-.

15. The learned Tribunal has awarded a sum of Rs.6,500/- under the head of medical expenses. The learned Tribunal has awarded the said amount on the basis of actual bills produced on record before the learned Tribunal. Hence, the compensation awarded under this head requires no interference and accordingly, the same is maintained.

16. The learned Tribunal has awarded a sum of Rs.8,000/- under the head of special diet, attendant charges and transportation. Considering the attending circumstances, the compensation awarded under this head is enhanced from Rs.8,000/- to Rs.15,000/-.

17. In view of the above discussion, the appellant/claimant shall be entitled for the following amount of compensation under the following heads:-

Sr. No.	Particular	Amount
1.	Future loss of dependency	1,01,640/-
2.	Pain, shock and suffering	25,000/-
3.	Actual loss of income	15,000/-
4.	Medical expenses	6,500/-
5.	Special diet, transportation and attendant charges	15,000/-
	Total	1,63,140/-

18. The learned Tribunal has already awarded a sum of Rs.87,940/- as a compensation, therefore, the original claimant/appellant shall be entitled for additional compensation of Rs.75,200/- i.e. (1,63,140-87,940). The learned Tribunal has awarded the interest at the rate of 9% per annum, therefore, the original claimant/appellant 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.

19. 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.

20. Upon depositing of the said amount of compensation, the learned Tribunal shall disburse the entire amount of compensation along with

interest to the original claimant/appellant 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.

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

HARSHIT

(MOOL CHAND TYAGI, J)