

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 630 of 2018****With****R/FIRST APPEAL NO. 625 of 2018****With****R/FIRST APPEAL NO. 626 of 2018****With****R/FIRST APPEAL NO. 627 of 2018****With****R/FIRST APPEAL NO. 629 of 2018****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

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Approved for Reporting	Yes	No
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SHRI KHUSHALDAS GOPALDAS THACKER & ORS.**Versus****DRIVER OF TRUCK NO. GQY-4720 & ORS.****Appearance:****MR. HEMAL SHAH(6960) for the Appellant(s) No. 1,2,3****MR GC MAZMUDAR(1193) for the Defendant(s) No. 3****MR HG MAZMUDAR(1194) for the Defendant(s) No. 3****MR RATHIN P RAVAL(5013) for the Defendant(s) No. 4****RULE SERVED for the Defendant(s) No. 2****CORAM:HONOURABLE MR.JUSTICE MOOL CHAND TYAGI****Date : 15/12/2025****ORAL JUDGMENT**

1. The captioned appeals have been preferred against the common impugned judgment and award dated 29.09.2017 passed by the Motor Accident Claims Tribunal (Auxi- 10), Bhuj-Kachchh in Motor Accident Claim Petition Nos.505 of 1995, 509 of 1995, 510 of 1995, 503 of 1995 and 504 of 1995, whereby the

learned Tribunal had partly allowed the claim petition except the Motor Accident Claim Petition No.510 of 1995.

2. The succinct facts leading to file the captioned appeals are that the accident had occurred on 04.02.1995 near a minor bridge, about 12 to 13 km away from Bhachau on the way to Samakhiyali. On the fateful day, the deceased and their family members were proceeding from Adipur to Bhabhar to attend religious ceremony in a car bearing registration No.GJ-8-A-2553, which was being driven by the deceased Girishkumar K. Thacker on the left hand side of the road in a moderate and controllable speed. At about 10:00 am when they reached near the place of accident, in the meantime, a truck bearing registration No.GQY-4720 came from the opposite direction in a rash and negligent manner at excessive speed and the driver of the said truck lost the control over the steering and came on wrong side of the road and dashed with the said car. Due to the impact of the said accident, the occupants of the car sustained multiple injuries. Out of them, three succumbed to the injuries and other sustained grievous injuries. It is also stated in the claim petition that the car was damaged beyond repairs. It is also stated that the accident took place due to the sole negligence of the truck driver.

3. On being served, the Insurance Company of the car filed the written statement in the claim petitions thereby contending that the driver of the offending truck was solely negligent and prayed for exoneration of the Insurance Company.

4. The Insurance Company of the truck also filed the written statement thereby denying the contents of the claim petition and prayed for rejection of the claim petition. It is also stated that the accident took place owing to the sole negligence of the driver of the car, therefore, the Insurance Company of the truck also prayed for exoneration.

5. Having considered the pleadings of the parties, the learned Tribunal framed the following issues for determination:-

- “1. Whether the applicants prove that the deceased died and the injured claimants were injured by rash and/or negligent act of the driver of vehicle involved in the incident?*
- 2. Whether applicants are entitled to compensation from the opponents or any of them? If yes, what amount and from whom?*
- 3. What award?”*

6. In order to prove their respective claims, the claimants have led the following oral as well as the documentary evidence before the learned Tribunal:-

Sr No.	Particulars	Exhibit
1.	Panchanma of scene of occurrence	60

2.	Affidavit in examination-in-chief and cross-examination	55
3.	Post mortem report of Girishkumar Khushaldas	77
4.	Birth certificate of Girishkumar Khushaldas	80
5.	Post mortem report of Alkaben Girishkumar	78
6.	Post mortem report of Shardaben Khushaldas	79
7.	Registration certificate (Vijay Builders)	81 & 82
8.	Affidavit in examination-in-chief of Geetaben Sanjaybhai Thacker	37
9.	Discharge card of Geetaben Sanjaybhai Thacker	61
10.	Injury certificate of Geetaben Sanjaybhai Thacker	62
11.	Case-papers of Geetaben Sanjaybhai Thacker	63
12.	X-ray report of Geetaben Sanjaybhai Thacker	64, 65 & 66
13.	Medical bill	66
14.	Certificate of tuition fees of Geetaben Sanjaybhai Thacker	69
15.	Disability certificate of Geetaben Sanjaybhai Thacker	76
16.	Affidavit in examination-in-chief of Sanjaybhai Muljibhai Thacker	38
17.	Disability certificate	58
18.	Injury Certificate of Sanjaybhai Muljibhai Thacker	74
19.	X-ray report of Sanjaybhai Muljibhai Thacker	75
20.	Bill for medical treatment of	81

	Sanjaybhai Muljibhai Thacker	
21.	Discharge card of Sanjaybhai Muljibhai Thacker	73

7. Having considered the evidence on record, the learned Tribunal came to the conclusion that the accident occurred owing to the sole negligence of the driver of the Fiat car bearing registration No.GJ-8-A-2553. The learned Tribunal had also held that there was no negligence for causing the accident on the part of the driver of the truck bearing registration No.GQY-4720.

8. So far as the quantum is concerned, the learned Tribunal partly allowed the claim petitions, preferred by the claimants except the Motor Accident Claim Petition No.510 of 1995 filed by the legal representatives of Girishkumar K. Thacker.

9. Being aggrieved and dissatisfied with the impugned judgment and award, the appellants have challenged the impugned judgment and award on the point of quantum.

10. Heard learned advocates for the parties.

In First Appeal No.625 of 2018 (In MACP No.505 of 1995)

11. Mr. Hemal Shah, learned advocate appearing on behalf of the appellants in all the claim petitions, vehemently submitted that the appellants are not challenging the negligence, however,

the appellants are challenging the common impugned judgment and award on the point of quantum. He further submitted that at the time of accident, the deceased was aged about 30 years, however, the learned Tribunal has not considered the prospective income. He further submitted that at the time of accident deceased Alkaben was engaged imparting the private tuition and her I.T.-returns were placed on record, therefore, 40% of the notional income should have been added on account of the future prospects of the deceased. He further submitted that the learned Tribunal awarded the meager amount of compensation under the head of funeral expenses and loss of estate. He further submitted that the deceased was survived by five legal representatives, however, the learned Tribunal has not awarded any single penny under the head of loss of consortium. He further submitted that the award is required to be modified to that extent.

In First Appeal No.626 of 2018 (In MACP No.503 of 1995)

12. Learned advocate for the appellant further submitted that though at the time of accident, the claimant/appellant was aged about 28 years, the learned Tribunal has not considered the prospective income of the original claimant/appellant. Therefore,

40% of the notional income is to be added on account of future prospects of the claimant/appellant. Therefore, the impugned judgment and award is required to be modified to that extent.

In First Appeal No.627 of 2018 (In MACP No.504 of 1995)

13. Learned advocate for the appellant also submitted that at the time of accident, claimant/appellant was aged about 29 years, however, the learned Tribunal has not considered the future prospects of the claimant /appellant. Therefore, 40% of the notional income is required to be added on account of future prospects of the claimant/appellant. Therefore, the impugned judgment and award is required to be modified to that extent.

In First Appeal No.630 of 2018 (In MACP No.509 of 1995)

14. Learned advocate for the appellant further submitted that the learned Tribunal has considered the annual income of the deceased as Rs.18,000/- which is at very lower side. He further submitted that at the time of accident, the deceased was aged about 53 years old, therefore, 10% of the notional income is required to be added on account of future prospects of the deceased. He further submitted that the learned Tribunal had awarded a meager amount under the head of funeral expenses

and loss of estate. He further submitted that though the deceased was survived by three legal representatives, the learned Tribunal had not awarded any amount of compensation under the head of loss of consortium, therefore, the award is required to be modified to that extent.

In First Appeal No.629 of 2018 (In MACP No.510 of 1995)

15. Learned advocate for the appellant submitted that the learned Tribunal had dismissed the claim petition on the ground that the deceased was himself negligent for causing the accident. He further submitted that considering the facts and circumstances of the case, the appropriate order may be passed.

16. On the other hand, Mr. Rathin P. Raval, learned advocate appearing on behalf of the Insurance Company of the car, vehemently submitted that there is no infirmity in the impugned judgment and award, therefore, the present appeals are liable to be dismissed.

17. On the other hand, Mr. H. G. Mazmudar, learned advocate appearing on behalf of the Insurance Company of the truck, vehemently submitted that the learned Tribunal has rightly determined the issue of negligence, therefore, the learned Tribunal has rightly exonerated the Insurance Company of the

truck. Therefore, there is no infirmity in the impugned judgment and award, the present appeals are liable to be dismissed.

18. Having considered the submissions of the learned advocates for the parties and having gone through the records, it is to be noted that the negligence has not been disputed by the learned advocate for the appellant during the course of argument. Learned advocate for the appellants has challenged the impugned judgment and award on the point of quantum.

In First Appeal No.625 of 2018 (In MACP No.505 of 1995)

19. The captioned appeal/ Motor Accident Claim Petition was filed on behalf of the legal representatives of the Alkaben. It is not in dispute that at the time of accident, the deceased Alkaben was aged about 30 years. It is also not in dispute that at the time of accident she was running the tuition classes. The learned Tribunal had determined the annual income of the deceased at Rs.25,000/-. The said income has not been challenged by the appellant. Perusal of the impugned judgment and award transpires that though the deceased was aged about 30 years at the time of accident, however, the learned Tribunal has not considered the future prospects of the deceased. In view of the ratio of the judgment rendered in the case of **Sarla Varma & Ors**

Vs. Delhi Transport Corp. & Anr. reported in **2009 (06) SCC 121** and **National Insurance Company Ltd. Vs. Pranay Shethi**, reported in **(2017) 16 SCC 680**, 40% of the notional income is required to be added on account of future prospects of the deceased. Therefore, after adding 40% to the annual notional income of the deceased, the income would come to Rs.35,000/- (25,000 + 40% of 25,000).

20. It is not in dispute that at the time of accident, the deceased was survived by five legal representatives. Therefore, 1/4 of the annual income ought to have been deducted on account of personal expenses of the deceased. However, the learned Tribunal had deducted the 1/3 of the income on account of personal expenses of the deceased Alkaben. Therefore, the learned Tribunal has committed illegality in deducting the 1/3 of the income on account of personal expenses of the deceased. After, deducting 1/4 of the annual income, the annual income for calculating the loss of dependency would come to Rs.26,250/-. It is not in dispute that at the time of accident, the deceased Alkaben was aged about 30 years, therefore, after applying the multiplier of 17 as per the age of the deceased. Future loss of dependency would come to Rs.4,46,250/- (26,250

x 17).

21. The learned Tribunal had awarded a sum of Rs.5,000/- under the head of funeral expenses. In view of the ratio of judgment of Apex Court rendered in the case of **Sarla Varma(supra)** and **Pranay Shethi(supra)**, the said compensation is required to be enhanced to Rs.18,150/- and accordingly, a sum of Rs.18,150/- is awarded under the head of funeral expenses.

22. The learned Tribunal has awarded a meager sum of Rs.2,500/- under the head of loss of estate. Thus, in view of the ratio of the judgment of Apex Court rendered in the case of **Sarla Varma(supra)** and **Pranay Shethi(supra)** a sum of Rs.18,150/- is awarded under the head of loss of estate. Learned Tribunal has not awarded any amount of compensation under the head of loss of consortium. Though, it is on record that the deceased was survived by five legal representatives. Therefore, all the representatives are entitled for the compensation under the head of loss of consortium in view of the ratio of the judgment of Apex Court rendered in the case of **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram** reported in **2018 (18) SCC 130** and accordingly, a sum of Rs.2,42,000/-

(48,400 x 5) is awarded under the head of loss of consortium.

23. Thus, in view of the above discussions, the appellants/claimants shall be entitled for the following amount of compensation under the following heads in the First Appeal No.625 of 2018 (in M.A.C.P No.505 of 1995):-

Particulars	Amount (Rs.)
Future Loss of Dependency	4,46,250/-
Funeral Expenses	18,150/-
Loss of Estate	18,150/-
Loss of Consortium	2,42,000/-
Total	7,24,550/-
Less: compensation already awarded	2,90,800/-
Enhancement	4,33,750/-

24. The learned Tribunal has already awarded a sum of Rs.2,90,800/-. Therefore, the appellant shall be entitled for the additional compensation of Rs.**4,33,750/-** i. e. (Rs.7,24,550/- - (less) Rs.2,90,800/-).

In First Appeal No.626 of 2018 (In MACP No.503 of 1995)

25. It is not in dispute that at the time of accident, the Geetaben Sanjaybhai Thacker was aged about 28 years and she was running private tuition classes. The learned Tribunal has

determined the annual income of the claimant/appellant as Rs.25,000/-. The said income was not disputed, however, it was argued on behalf of the learned advocate for the appellant that the learned Tribunal has not considered the future prospects of the claimant/appellant. It is not in dispute that at the time of accident she was aged about 28 years, therefore, in view of the ratio of the judgment of the Apex Court rendered in the case of **Sarla Varma(supra)** and **Pranay Shethi(supra)**, 40% of the annual income is required to be added on account of future prospect of the claimant/appellant. Therefore, after adding 40% of the annual income, the total notional annual income would come to Rs.35,000/- (25,000 + 40% of 25,000). It is not in dispute that the learned Tribunal has considered the functional disability to the extent of 20%. Thus, after applying the multiplier of 17 as per the age of the claimant/appellant, the future loss of income would come to Rs.1,19,000/- (35,000 x 20% x 17).

26. The compensation awarded under the other heads have not been challenged. Thus, in view of the above discussions, the appellant/claimant shall be entitled for the following amount of compensation under the following heads in the First Appeal

No.626 of 2018 (in M.A.C.P No.503 of 1995):-

Particulars	Amount (Rs.)
Future Loss of Dependency	1,19,000/-
Pain, Shock and Suffering	10,000/-
Attendant Charges and Transportation	5,000/-
Medical Expenses	15,000/-
Actual Loss of Income	2,500/-
Total	1,51,500/-
Less: compensation already awarded	1,17,500/-
Enhancement	34,000/-

27. The learned Tribunal has already awarded a sum of Rs.1,17,500/-. Therefore, the appellant shall be entitled for the additional compensation of Rs.**34,000/-** i. e. (Rs.1,51,500/- - (less) Rs.1,17,500/-).

In First Appeal No.627 of 2018 (In MACP No.504 of 1995)

28. The learned Tribunal has considered the income of the claimant/appellant at Rs.25,000/- per annum. The said income has not been challenged, however, it has been argued that the learned Tribunal has not considered the future prospects of the claimant/appellant. It is not in dispute that at the time of accident, the claimant/appellant was aged about 29 years and he was doing the business. Thus, considering the age of the

claimant/appellant, the learned Tribunal ought to have considered the future prospects of the claimant/appellant. Therefore, 40% of the notional income is added to the annual income of the claimant/appellant on account of the future prospects. Therefore, after adding 40% of the annual income, the annual income would come to Rs.35,000/- (25,000 + 40% of 25,000). It is not in dispute that the functional disability was determined by the learned Tribunal to the extent of 15%. Thus, considering the multiplier of 17 as per the age of the claimant/appellant, the future loss of income would come to Rs.89,250/- (35,000 x 15% x 17).

29. The compensation awarded under the other heads are not under challenge, therefore, in view of the above discussions, the appellant/claimant shall be entitled for the following amount of compensation under the following heads in the First Appeal No.627 of 2018 (in M.A.C.P No.504 of 1995):-

Particulars	Amount (Rs.)
Future Loss of Income	89,250/-
Pain, Shock and Suffering	10,000/-
Attendant Charges and Transportation	5,000/-
Medical Expenses	22,000/-
Actual Loss of Income	2,500/-
Total	1,28,750/-

Less: compensation already awarded	1,03,300/-
Enhancement	25,450/-

30. The learned Tribunal has already awarded a sum of Rs.1,03,300/-. Therefore, the appellant/claimant shall be entitled for the additional compensation of Rs.**25,450/-** i. e. (Rs.1,28,750/- -(less) Rs.1,03,300/-).

In First Appeal No.630 of 2018 (In MACP No.509 of 1995)

31. It is not in dispute that at the time of accident, the deceased Shardaben was aged about 53 years and she was engaged in house-hold work. The learned Tribunal had determined the income of the deceased at Rs.18,000/- per annum at the time of accident.

32. It has been argued that the learned Tribunal has determined the income at a very lower side. Considering the year of the accident, the age of the deceased at the time of accident and the nature of occupation, it would be just and proper in my considered view, if the annual income of the deceased re-assessed at Rs.25,000/- at the time of accident.

33. It is not in dispute that at the time of accident the deceased was aged about 53 years, therefore, 10% of the

notional income is required to be added on account of future prospects of the deceased. After, adding 10% to the annual income, the total annual income would come to Rs.27,500/- (25,000 + 10% of 25,000).

34. It is also on record that the deceased was survived by three legal representatives, therefore, the learned Tribunal has deducted the 1/3 of the income on account of personal expenses of the deceased. Therefore, after deducting 1/3 of the annual income on account of personal expenses of the deceased, the annual income for calculating the future loss of dependency would come to Rs.18,332/-.

35. Thus, after applying the multiplier of 11 as per the age of the deceased, the loss of dependency would come to Rs.2,01,652/- (18,332 x 11). The learned Tribunal has also awarded a meager amount under the head of funeral expenses, loss of estate and loss of consortium. Thus, considering the ratio of the judgment of Apex Court rendered in the case of **Sarla Varma(supra)**, **Pranay Shethi(supra)** and **Nanu Ram @ Chuhru Ram(supra)**, a sum of Rs.18,150/- is awarded under the head of funeral expenses, further a sum of Rs.18,150/- is awarded under the head of loss of estate and a sum of

Rs.1,45,200/- (48,400 x 3), is awarded under the head of loss of consortium as the deceased was survived by three legal representatives.

36. In view of the above discussions, the claimants/appellants shall be entitled for the following amount of compensation under the following heads in the First Appeal No.630 of 2018 (in M.A.C.P No.509 of 1995):-

Particulars	Amount (Rs.)
Future Loss of Dependency	2,01,652/-
Funeral Expenses	18,150/-
Loss of Estate	18,150/-
Loss of Consortium	1,45,200/-
Total	3,83,152/-
Less: compensation already awarded	1,44,500/-
Enhancement	2,38,652/-

37. The learned Tribunal has already awarded a sum of Rs.1,44,500/-. Therefore, the claimants/appellants shall be entitled for the additional compensation of Rs.**2,38,652/-** i. e. (Rs.3,83,152/- -(less) Rs.1,44,500/-).

In First Appeal No.629 of 2018 (In MACP No.510 of 1995)

38. Though the learned Tribunal had determined the compensation on account of death of Girishkumar K. Thacker as

Rs.2,66,667/-. However, the learned Tribunal dismissed the claim petition on the ground that as the Girishkumar K. Thacker was himself negligent for causing the accident. Therefore, the legal representatives of the deceased Girishkumar K. Thacker are not entitled to get any compensation. It is argued on behalf of the appellant that the accident had occurred owing to the some negligence of the driver of the truck. Perusal of the record, transpires that it is pleaded in the claim petition that the accident occurred owing to the sole negligence of the truck driver but perusal of the record transpires that the truck was nowhere find in the panchnama and there is a contradiction between the pleadings and the oral evidence of the claimant of Motor Accident Claim Petition Nos.503 of 1995 and 504 of 1995. In their oral evidences, they admitted that the accident had occurred owing to the negligence of the driver of the car. It is not in dispute that there is a contradiction between the pleadings and the oral evidence of the eye-witnesses on record, therefore, the learned Tribunal has not considered any illegality in holding that the driver of the car was solely negligent for causing the accident.

39. This Court has also perused the policy of the car produced on record. Perusal of the policy transpires that no premium was

paid for owner/driver. In absence of payment of any premium for covering the death of the owner-cum-driver of the offending car, the learned Tribunal has not committed any error in holding that the claimants of the present claim petition are not entitled to get any compensation.

40. In view of the above discussions, the captioned appeals except the First Appeal No.629 of 2018 (in Motor Accident Claim Petition No.510 of 1995) stands allowed partly and impugned judgment and award modified accordingly.

41. So far as the First Appeal No.629 of 2018 is concerned, the said Appeal stands dismissed.

42. The Insurance Company of car shall deposit the additional amount of compensation along with the interest at the rate of 9% per annum as awarded by the learned Tribunal, within a period of 6 weeks from today.

43. Upon depositing of the said amount, the learned Tribunal shall disburse the amount to the original claimants, after deducting the deficit court fees, if any, and after due verification.

44. Amount, if any, lying deposited with the Registry of this Court, the same be transmitted to the concerned learned Tribunal forthwith.

45. R & P, if any, be sent back to the concerned learned Tribunal forthwith. No order as to costs.

CDP

(MOOL CHAND TYAGI, J)