

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 1263 of 2025**

=====

ANANDBA WD/O ASHWINSINH JASHWANTSINH ZALA & ORS.
Versus
ZUBER HANIF & ORS.

=====

Appearance:

MR.HIREN M MODI(3732) for the Appellant(s) No. 1,2,3,4,5
MR YOGI K GADHIA(5913) for the Defendant(s) No. 3
NOTICE NOT RECD BACK for the Defendant(s) No. 1
NOTICE UNSERVED for the Defendant(s) No. 2

=====

CORAM:HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 01/07/2025

ORAL ORDER

1. Heard Mr. Hiren M. Modi learned advocate on record for the appellant, Mr. Yogi K. Gadhia learned advocate has appeared on behalf of respondent no.3-Insurance Company.

2. The present appeal is filed at the instance of original claimants under Section 173 of the Motor Vehicle Act, 1988 being aggrieved and dissatisfied with the judgment and award dated 20.11.2024 passed by the Motor Accident Claim Tribunal (Main), Sabarkantha at Himmatnagar in Motor Accident Claim Petition No.187/2017. By the said impugned judgment and award, the Tribunal has partly allowed the claim petition preferred by the present appellant-original claimant under Section 166 of the Motor Vehicle Act, 1988, thereby holding the original claimants entitled to compensation of Rs.9,31,650/- with interest at the rate of 9% from the date of filing of claim petition till its actual realization. At the

same time, the Tribunal has also held the deceased negligent to the extent of 25% towards the occurrence of the accident. The present respondents-original opponents are jointly and severally held liable towards the payment of compensation.

3. Noticing the grounds raised in the appeal memo and the submissions made at the stage of admission hearing of the present appeal, this Court vide order dated 30.04.2025 had admitted the appeal. Today, when the matter is notified for final hearing, learned advocate for the appellant has placed on record the proposed calculation and hence, submitted that the only issue which is required to be considered by this Court in the present appeal is the aspect of income. The learned advocate had invited my attention to the findings and reasons assigned by the Tribunal while assessing the income of the deceased. It is submitted by the learned advocate that in absence of any challenge made by the respondents against the finding of facts arrived upon by the Tribunal, the same has attained finality. Learned advocate had further submitted that indisputably, it has transpired on record that the deceased was aged 28 years 2 months and he was doing job in petrol pump situated at Ilol and was getting Rs.293/- per day. It was also pointed out that the salary certificate issued by Urja Petrol Pump dated 15.08.2017 has also been produced on record at Exh.40 wherein it has been stated that the deceased was paid Rs.293/- per day. At the same time, deceased was also engaged in animal husbandry related work

and by supplying milk to the corporative society, he used to earn additional income of Rs.7,000/- per month. In all, the applicant was earning an amount of Rs.15,800/- per month. The Tribunal, however, considering the evidence of the claimant who has fairly admitted in her cross-examination that no documentary evidence like salary slip has been brought on record, has taken into consideration the notional income of the deceased at Rs.4,500/- per month. While referring to the aforesaid findings and reasons assigned, learned advocate has submitted that in absence of any proof of the income, it is settled legal position that in motor accident cases, the Tribunal can follow the yardstick of standard wages notified by the State Government under the Minimum Wages Act. He had further submitted that the accident relates to year 2017 and therefore, considering the minimum wages prevailing at relevant point of time, the Tribunal ought to have taken into consideration at least an amount of Rs.8,000/- per month towards his earning by doing job at petrol pump. Learned advocate had further submitted that indisputably, the deceased was earning additional income by doing animal husbandry related activities as it is proved that he used to supply milk to the milk cooperative society which is evident from the document produced on record. Learned advocate further submitted that though the Tribunal has refused to entertain the aforesaid claim by holding that the aforesaid means of earning had continued even after the death of deceased and therefore there was no question of loss of income

arising out of such activities, however, the Tribunal ought to have considered the supervisory loss in such circumstances. By making aforesaid submission, learned advocate has urged this Court to consider the amount of Rs.10,000/- towards the assessment of the income of the deceased. As regards the dependency loss is concerned, learned advocate has submitted that the prospective income and the deduction of 1/4th as considered by the Tribunal, in the facts of the case, are in accordance with the legal principle, laid down by the Hon'ble Supreme Court in the case of **Pranay Shety (supra) and Sarla Verma (supra)**. He has therefore urged this Court to accordingly apply 40% future rise of the income and 1/4th deduction towards personal expenses of the deceased and has urged this Court to enhance the amount of compensation towards dependency loss from Rs.56,700/- to Rs.1,26,000/-. As regards the loss of consortium is concerned, learned advocate has submitted that the Tribunal has rightly arrived at conclusion, in light of the decision of the Hon'ble Supreme Court, and has therefore not disputed the aforesaid amount awarded towards loss of consortium. Learned advocate had also not disputed the amount of compensation awarded under the head of loss of estate and funeral expenses are concerned. By making aforesaid submissions, learned advocate has urged this Court to enhance the total amount of compensation from Rs.12,42,200/- to Rs.24,20,300/-. He had fairly pointed out that the Tribunal has held deceased 25% negligent towards the accident. Therefore, the aforesaid part is required to be

deducted from the total amount of compensation. According to him, the appellants are required to be held entitled to enhance amount of compensation to the tune of Rs.8,84,225/- and has prayed for appropriate interest on the aforesaid enhanced amount of compensation and to direct the respondent-Insurance Company to deposit such amount within stipulated time frame.

4. Per contra, the learned advocate appearing for the respondent no.3-Insurance Company, has vehemently objected to the aforesaid submissions made by learned advocate for the appellant. Learned advocate had mainly relied upon the findings and reasons assigned by the Tribunal. According to learned advocate, considering the aforesaid findings and reasons assigned by the Tribunal, the Tribunal, in absence of any documentary proof of income, has rightly determined the notional income of the deceased as Rs.4,500/- per month. He has, therefore, urged this Court to not to entertain the present appeal and to uphold the impugned judgment and award.

5. Having heard the learned advocates appearing for the respective parties and having perused the findings and reasons assigned by the Tribunal in light of the submissions made by learned advocates for the respective parties and in light of the settled legal position laid down by the Hon'ble Supreme Court in view of the authorities which this Court intends to rely upon, this

Court is of the view that the appeal deserves consideration. As considering the arguments canvassed by learned advocates for the respective parties, the only issue which falls for consideration of this Court in the present appeal is the aspect of income of the deceased. In absence of any appeal being preferred by the respondents-original opponents, the issue of negligency has attained finality, no submissions are canvassed on this issue. Thus, the claimants have successfully proved the involvement of the vehicle and the deceased having succumbed to the injuries sustained in motor vehicle accident. The only issue, which therefore requires consideration is the quantum of compensation to be determined, mainly the income of the deceased. On close examination of the findings and reasons assigned, in light of the evidence of the claimant who is the widow of the deceased, it has indisputably transpired on record that the deceased was earning his income through various sources. The salary certificate has been produced on record at Ex.40. On appreciation of this certificate, it is evident that said certificate is issued by the concerned owner of the petrol pump, acknowledging the fact of payment of Rs.293/- per day to the deceased. Even if their claim is examined in light of the minimum wages as notified by the State Government for the aforesaid period, treating the deceased to be engaged in unskilled work. It can safely be concluded that the deceased was earning income of Rs.8,000/- per month. This brings me to the second source of income as contended by the original claimant. The

Tribunal has refused to entertain their case about the earning of the additional income from animal husbandry and supply of milk by holding that the source of income was continued even after the death of the deceased-husband, however, the Tribunal has refused to accept the supervisory loss. The attention of this Court was invited to the decision of the Hon'ble Supreme Court in the case of **New India Insurance Company Ltd. Vs. Yogesh Devi & Ors., reported in 2012 (3) SCC 613**, wherein the claim was based on assertion that the deceased owned agricultural land as well as derived income from three mini buses. The High Court rejected the claim in so far as based on agricultural land on the ground that the income still continue to accrue to benefit of family. Despite no evidence being adduced to show such loss of income, the Supreme Court had considered the supervisory loss to the tune of Rs.26,68,00/- per annum. The Hon'ble Supreme Court had modified the order of the High Court which opined that the deceased would have contributed to the amount of income by making reasonable conjecture that somebody is to be employed for the purpose of managing the business. The Hon'ble Supreme Court had in the facts of the case, determined an amount of Rs.3,900/- towards the loss which the family would sustained in absence of the deceased. Considering the aforesaid legal principles in the facts of the present case on hand, the assertion of income being generated from working at Petrol Pump and additionally by doing animal husbandry is corroborated by evidence. In absence of any

contradictions, this Court is inclined to accept the case of the claimants more particularly noticing the fact that the aforesaid oral version of the claimant has been corroborated by the documents, more particularly when the claimant had been cross-examined and the aforesaid facts has remained uncontroverted. Applying the minimum wages standards, considering the notification issued by the State Government notifying the rates between Rs.7946/- to Rs.8388/- in case of unskilled and skilled workers of Petrol Pump, this Court finds it just and reasonable to consider income of deceased from working at Petrol Pump as Rs.8000/- per month. As regards, additional income earned, considering the ratio laid down in the case of **Yogesh Devi (supra)**, as prayed for Rs.2000/- is justified amount of supervisory loss as in absence of deceased, the claimant-dependants shall have to look upto service of person to take care of animals and supply of milk to cooperative societies. For the forgoing reasons, this Court is inclined to accept the amount of Rs.10,000/- as the contribution of the deceased towards income at the time of the accident. Having held so, the total amount of compensation is re-determined which is reproduced in tabular form as under:-

Head	Amount in Rs.
Loss of Dependency	21,42,000/-
Loss of Consortium	2,42,000/-
Loss of Estate	18,150/-
Loss of Funeral expenses	18,150
Grand Total	24,20,300/-

Deduction of Negligence 25%	6,05,075/-
Total Compensation	18,15,225/-
Awarded amount	9,31,650/-
Enhanced amount	8,84,225/-

6. For the forgoing reasons, the present appeal is allowed. The original claimants are held entitled to the total amount of compensation to the tune of Rs.24,20,300/-. Noticing the fact that the deceased was held 25% negligent towards the occurrence of accident, an amount of Rs.6,05,075/- is required to be deducted from the aforesaid amount and hence, the original claimants are held entitled to the amount of compensation to the tune of Rs.18,15,225/-. In light of the impugned judgment and award passed by the Tribunal holding the original claimants are held entitled to an amount of Rs.9,31,650/-, the appellant-original claimants entitled to enhance amount of compensation to the tune of Rs.18,15,225 – Rs.9,31,650. The respondents are held jointly and severally liable to pay the aforesaid enhanced amount of compensation which would carry interest at the rate of 9% from the date of filing of claim petition till its actual realization. That the aforesaid entire award amount with interest and proportionate cost be deposited with the concerned Tribunal within a period of 8 weeks from the date of receipt of this order. On deposit of the aforesaid amount, the Tribunal shall be at liberty to release and disburse the aforesaid amount within a period of 2 weeks from the

date of the deposit of such amount. That the aforesaid amount be distributed in light of the directions as regards apportionment being made by the Tribunal in its impugned judgment and award.

7. With these observations, the first appeal stands disposed of. Record & proceedings be sent back to the concerned Trial Court forthwith.

(NISHA M. THAKORE,J)

P D

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: PARUL DUTTA(HCD0073), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 13/08/2025 17:40:58