

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 2067 of 2019

With

R/FIRST APPEAL NO. 1820 of 2019

With

R/FIRST APPEAL NO. 2506 of 2019

With

R/FIRST APPEAL NO. 2511 of 2019

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ORIENTAL INSURANCE COMPANY LIMITED VADODARA

Versus

MANUBHAI CHIMANBHAI VALAND & ORS.

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Appearance:

MR VIBHUTI NANAVATI(513) for the Appellant(s) No. 1

DECEASED LITIGANT THROUGH LEGAL HEIRS/

REPRESENTATIVES for the Defendant(s) No. 2

MR A R DWIVEDI(11319) for the Defendant(s) No. 3

UNSERVED EXPIRED (N) for the Defendant(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA

and

HONOURABLE MR.JUSTICE J. L. ODEDRA

Date : 17/09/2026

JUDGMENT

(PER : HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA)

1. The occurrence of an accident on 09.01.1997 between a Maruti car and the truck is not in dispute.

2. As a result of the said accident, the driver of the said Maruti car was killed and consequentially, his wife and parents has preferred a claim petition.

3. The Tribunal on consideration of the evidence, came to the

conclusion that the accident occurred due to the negligence of both the drivers i.e., the drivers of the Maruti car as well as of the Truck and attributed negligence in the ratio of 10:90. The Tribunal thereafter assessed the income of the deceased at Rs. 3,60,000/- and after deducting an income tax of Rs. 36,000/- concluded that his income was Rs. 3,24,000/-. The Tribunal, thereafter, in total awarded a sum of Rs. 46,89,720/-.

4. Apart from the petition for the death of the driver, another claim petition was filed by the very same claimants, claiming damages that had been inflicted on the Maruti car.

5. The Tribunal, on the basis of the surveyor's report, proceeded to award a lump sum of Rs. 3,60,000/- towards damages for the car.

7. Being aggrieved by these awards, both the claimants as well as the insurer are in appeal.

8. The claimants contend that the attribution of negligence to the extent of 10% was wholly incorrect when the charge sheet was laid against the driver of the truck. It is also contended that the quantum of compensation awarded is on the lower side, and the Tribunal has disregarded an agreement in which the deceased was assured of a house rent by the company which he had founded.

9. The insurer, on the other hand, contends that the amounts awarded are on the higher side, and the negligence ought to have been attributed to a larger extent on the driver of the Maruti car who was killed in the accident.

10. As far as the negligence is concerned, it is not in dispute that a charge sheet was laid against the driver of the truck. In light of the decision of the Supreme Court in **Mangla Ram Vs. The Oriental Insurance Company, 2018 (5) SCC 656**, wherein it is held that laying of a charge sheet against the driver of an offending vehicle is by itself *prima facie* proof of negligence, the finding of the Tribunal cannot be sustained. Furthermore, the driver of the truck has also not been examined to establish that there was indeed negligence on the part of the driver of the Maruti car. In light of this, the finding of the Tribunal that the driver of the Maruti car who was killed in the accident was responsible to the extent of 10% is set aside, and it is held that the driver of the truck alone was responsible for the accident.

11. As far as the income of the deceased is concerned, the evidence on record, that is, the Form 16 which is produced, indicates that the deceased had returned an income of Rs. 3,60,000/- to the income tax authorities.

12. The Tribunal, in our view, was therefore justified in deducting the income tax payable at Rs. 36,000/- and considering the remaining as the income of the deceased.

13. The argument of the claimants' counsel that the house rent which was stipulated in the agreement of appointment would have to be considered cannot be accepted, since there is no proof of the fact that the deceased was paying any rent to a residential accommodation, nor is there proof of the company paying any rent on his behalf to his residential accommodation.

14. We, therefore, sustain the income as assessed by the Tribunal at Rs. 3,60,000/- per annum deducting income tax at 10% assessed the income as Rs. 3,24,000/- per annum.

15. However, the Tribunal has not granted any future prospects. The Supreme Court in **National Insurance Company Ltd Vs. Pranay Sethi**, reported in **AIR 2017 SC 5157**, has categorically held that, if the deceased was having a permanent job, he would be entitled to future prospects and having regard to the fact that the deceased was aged 28 years, in accordance with the judgment rendered in Pranay Sethi (supra), the income would have to be supplemented by 40% future prospects. Consequently, the annual income of the deceased would be Rs. 4,53,600/-. The deceased had a wife and parents as dependents and hence, one-third of his income shall have to be deducted towards personal expenditure. Consequently, the annual income for the purpose of calculating the loss of future income would be Rs. 3,02,400/-.

16. Since, the deceased was aged 28 years, a multiplier of 17 would be adopted. Consequently, the claimants will be entitled for a sum of Rs. 51,40,800/- towards loss of future income.

17. In accordance with the judgment of Pranay Sethi (supra) read with the dictum of **Apex Court** in **Reena Vs. Managing Director, Karnataka State Road Transport Corporation, reported at 2026 (0) ALJEL-SC 77486**, the claimants would also be entitled for loss of consortium and other non-pecuniary sums amounting to Rs. 1,56,000/- (52,000/- x 3) and further sum of Rs. 19,500/- each for loss of estate and funeral expenses.

18. As far as the appeal regarding the amounts awarded towards the damage of the Maruti car, the Tribunal has arrived lump sum of Rs. 3,60,000/- on the basis of the surveyor's report. It is to be noticed here that there is no proof that the vehicle was repaired and this cost was borne by the claimants. In fact, the pleadings indicate that an assertion was made that the vehicle was determined as a total wreck and the bank to which the car was hypothecated had taken custody of the vehicle.

19. Since there is no proof of any sums incurred towards repair of the car, the assessment of lump sum of Rs. 3,60,000/- by the Tribunal cannot be sustained.

20. It is, however, forthcoming from this set of evidence that the car was owned by the deceased and the car was purchased in the year 1995. It is, therefore, obvious that the deceased would have paid the EMIs for the two years and having regard to the cost of the car, which would be about Rs. 5,00,000, in our view, it would be appropriate to award a sum of Rs. 1,50,000 as damages for the loss of the car.

21. Consequently, the appeals are disposed of by holding that the original claimants are entitled to the following sums:

Particulars	Amount (Rs.)
Future loss of income	51,40,800/-
Loss of estate	19,500/-
Loss of consortium	1,56,000/-
Funeral expenses	19,500/-
Total	53,35,800/-

Compensation awarded by the Tribunal	46,89,720/-
Enhanced Amount	6,46,080/-

22. The Tribunal has awarded interest at the rate of 9% per annum. In our view, it is just and proper and does not call for any interference.

23. It is submitted that the insurer had deposited the entire amount awarded towards the damages incurred to the car. The Registry is directed to refund the balance amount after disbursing Rs. 1,50,000/- to the claimants.

24. It is needless to state that the interest that had accrued on the sums deposited by the insurer, to the extent that the claimants are entitled, will be made over to them.

25. The appellant Insurance Company is hereby directed to deposit the enhanced amount of compensation along with interest within a period of EIGHT WEEKS from the date of receipt of copy of this judgment.

26. R&P, if any received, be sent back to the concerned Tribunal forthwith.

(N.S.SANJAY GOWDA,J)

(J. L. ODEDRA, J)

YASH ARORA