

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 65 of 2013****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

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Approved for Reporting	Yes	No

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UNITED INDIA INSURANCE CO. LTD

Versus

JYOTSANABEN VASUDEVBHAI JOSHI & ORS.

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Appearance:

MR VC THOMAS(5476) for the Appellant(s) No. 1

MR.HIREN M MODI(3732) for the Defendant(s) No. 1,2,3

RULE SERVED for the Defendant(s) No. 4

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CORAM:HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**Date : 03/02/2026****ORAL JUDGMENT**

1. The captioned appeal is filed against the impugned judgment and award dated 12.10.2012 passed by learned Motor Accident Claims Tribunal, Vadodara in MACP No.820/1992, whereby the learned Tribunal had partly allowed the claim petition and awarded a sum of Rs.5,39,250/- 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 31.12.1990 at about 7:00 pm, deceased-Vasudev bhai was proceeding

on his Job at M/s. Deepak Nitrite on his scooter and when he reached at the place of accident, in the meantime, a truck bearing registration no.GTS-7449, which was being driven by its driver in rash and negligent manner, came from back side and dashed with the scooter of the deceased. As a result of this, the deceased received grievous injuries on head and he was brought to SSG Hospital as an indoor patient. During treatment, he succumbed to the injuries. It has also been averred that the accident had occurred owing to the rash and negligent driving on the part of driver of the offending vehicle bearing registration no.GTS-7449. It has also been averred that at the time of accident, the deceased was aged about 36 years and he was serving with M/s. Deepak Nitrite and thereby earning a sum of Rs.1,800/- per month as a salary and apart from this, he was also working as an insurance agent and thereby earning a sum of Rs.5,000/- per month, therefore, the total income of the deceased was Rs.7,000/- per month. Therefore, they claimed a sum of Rs.9,00,000/- as a compensation.

3. On being served, the owner of the truck filed the written statement at Exh.14, thereby stating that the accident has occurred owing to the negligence of the rider of the scooter. The insurance company has also filed the written statement at Exh.15, thereby denying the negligence on the part of the driver of the offending truck. The insurance company also filed the another written statement at Exh.48, thereby denying the involvement of the offending vehicle in the accident.

4. Having considered the pleadings, evidence adduced by the respective parties and the submissions advanced by the learned counsels for the respective parties, the learned Tribunal had partly

allowed the claim petition and awarded a sum of Rs.5,39,250/- 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 insurance company challenged the impugned judgment and award on the ground of involvement of vehicle as well as on quantum.

6. Heard learned counsels for the parties.

7. Mr. V. C. Thomas, learned counsel appearing on behalf of the appellant/insurance company vehemently submitted that the involvement of vehicle was not proved on record; however, the learned Tribunal has fastened the liability upon the insurance company to satisfy the award. He further submitted that in the present case, no FIR came to be lodged. He further submitted that even otherwise, it is not proved on record that the offending truck bearing registration no.GTS-7449 was involved in the accident, as there is no eyewitness to the accident. Therefore, he submitted that the impugned judgment and award is liable to be modified to the aforesaid extent.

8. So far as the quantum is concerned, learned counsel for the appellant further submitted that the learned Tribunal had added 50% of the monthly income on account of prospective income of the deceased. Though, it is on record that at the time of accident, the deceased was aged about 36 years, therefore, the learned Tribunal could have added 40% instead of 50% on account of future prospective income of the deceased. He further submitted that the deceased was survived by three legal representatives; however, the learned Tribunal had deducted

1/4 of the monthly income instead of 1/3 on account of personal expenses of the deceased. He further submitted that the learned Tribunal has passed the award on higher side, therefore, the awarded amount is required to be reduced.

9. On the other hand, Mr. Hiren M. Modi, learned counsel appearing on behalf of the original claimants/respondent nos.1, 2 and 3 herein vehemently submitted that there is no infirmity in the impugned judgment and award. He further submitted that the owner of the offending vehicle as well as the insurance company had not disputed the involvement of the vehicle before the learned Tribunal, therefore, at the stage of appeal, they cannot be permitted to take a diametrically opposite contention. He further submitted that the owner of the truck has filed the written statement at Exh.14, while the insurance company has filed the written statement at Exh.15. In their respective written statements, the involvement of the vehicle has not been challenged. Therefore, they cannot now be permitted to take a new plea in the captioned appeal.

10. So far as the quantum is concerned, learned counsel for the original claimants submitted that the learned Tribunal had awarded very meager amount under the heads of funeral expenses, loss of consortium and loss of estate. Therefore, the compensation awarded by the learned Tribunal under these heads are required to be enhanced.

11. Having considered the submissions of the learned counsels for the parties and having gone through the record, it is to be noted that in the captioned appeal, the insurance company has challenged the impugned judgment and award on the ground of involvement of the

vehicle as well as on the ground of quantum.

12. So far as the involvement is concerned, the insurance company has filed the written statement at Exh.15, wherein para 4 of the written statement, it has been averred that, "in fact, the deceased was riding the scooter on his extreme right side, very much near to the road divider and the said tanker gave light signal and also blew horn to warn the deceased for giving the side to the said tanker, so deceased tried to swerve towards his left side and while doing so, the said scooter itself dashed with the front left side of the motor tanker and therefore, the deceased was mainly responsible for the accident. If the deceased would have taken proper care and caution and would have observed the traffic rules and regulations, the accident would not have occurred." The owner of the truck has also filed the written statement at Exh.14, wherein he has also stated in para 6 that at the time of accident, the deceased suddenly came ahead of the tanker. The driver of the tanker tried to avoid the accident, but suddenly the rider of the scooter took the right turn. In view of the clear admission of the owner of the offending truck as well as the insurance company, in their respective written statements, the involvement of the vehicle is not under dispute. Neither the owner of the offending truck has disputed the involvement of his truck nor the insurance company has disputed the involvement of the truck in the said accident. Subsequently, the claim was enhanced by way of amendment in the claim petition and in pursuant thereto, the insurance company has also filed another written statement at Exh.48 to the amended claim petition and in subsequent written statement, the insurance company very smartly and cunningly withdrawn its admission of involvement of the vehicle and took the plea that the truck was not involved in the accident. It is settled proposition of law that the

admission in the pleading cannot be withdrawn by way of filing subsequent amended written statement. Therefore, in view of the clear admission of the owner as well as the insurance company in their respective statements at Exhs.14 and 15, there is no iota of doubt that the offending truck was not involved in the occurrence of accident. It is also pertinent to mention that neither the insurance company nor the owner of the offending vehicle stepped into witness box to prove the contrary. So far as the contention of the learned counsel for the appellant that no FIR was lodged in the present case is concerned, the lodging of FIR is not the sine qua non for maintaining the claim petition under MV Act for seeking the compensation. Thus, in view of the above discussion, the submission of the learned counsel for the appellant is not sustainable.

13. So far as the quantum is concerned, the learned Tribunal has determined the annual income of the deceased as Rs.30,000/-. The said income is not under dispute. However, it has been argued that the learned Tribunal instead of adding 40% on account of prospective income, had added 50%. It is not in dispute that at the time of accident, the deceased was aged about 36 years. Therefore, in view of the ratio laid down by the Hon'ble Apex Court in case of **Sarla Verma Vs. Delhi Transport Corporation and Anr.**, reported in AIR (2009) 6 SC 3104 and **National Insurance Company Ltd. Vs. Pranay Sethi**, reported in 2017 (16) SCC 680, 40% of the annual income ought to have been added on account of future prospects instead of 50%. Therefore, after adding 40% to the income, the annual income would come to Rs.42,000/- i.e. $(30,000 + 30,000 \times 40\%)$. It is on record that the deceased was survived by his widow and two sons, therefore, 1/3 of the income ought to have been deducted on account of personal expenses of the

deceased. But instead of $\frac{1}{3}$, the learned Tribunal had deducted $\frac{1}{4}$ on account of personal expenses of the deceased, which is not sustainable. Hence, after deducting $\frac{1}{3}$ of the annual income on account of personal expenses of the deceased, the annual income for calculating the loss of dependency would come to Rs.28,000/- i.e. $(42,000 \times \frac{2}{3})$. Thus, applying the multiplier of 15 as per age of the deceased, the future loss of dependency would come to Rs.4,20,000/- i.e. $(28,000 \times 15)$.

14. The learned Tribunal had awarded a meager amount of Rs.2,000/- under the head of funeral expenses. It is settled proposition of law that the claimants are entitled for just compensation. Hence, in view of the ratio laid down by the Hon'ble Apex Court in case of *Pranay Sethi (supra)*, a sum of Rs.18,150/- is awarded under the head of funeral expenses. The learned Tribunal further awarded a sum of Rs.10,000/- under the head of loss of estate, which is at lower side. Therefore, a sum of Rs.18,150/- is awarded under the head of loss of estate.

15. It is on record that the deceased was survived by his widow and two sons, therefore, all the dependents are entitled to get the compensation under the head of loss of consortium. Therefore, in view of the ratio laid down by the Hon'ble Apex Court in the case of ***Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and Ors.***, reported in 2018 (18) SCC 130, a sum of Rs.1,45,200/- i.e. $(48,400 \times 3)$ is awarded under the head of loss of consortium. The learned Tribunal has awarded Rs.1,000/- under the head of transportation charges. The same is maintained and no interference is required in the compensation awarded under this head. In view of the

above discussion, the original claimants shall be entitled for the following amount of compensation under the following heads:-

Sr. No.	Particular	Amount
1.	loss of dependency	4,20,000/-
2.	Funeral expenses	18,150/-
3.	Transportation charges	1,000/-
4.	Loss of consortium	1,45,200/-
5.	loss of estate	18,150/-
	Total	6,02,500/-

16. The learned Tribunal had awarded a sum of Rs.5,39,250/-, therefore, the original claimants shall be entitled for additional compensation of Rs.63,250/- i.e. (6,02,500-5,39,250). The learned Tribunal had awarded the interest at the rate of 9% per annum, therefore, the claimants shall also be entitled for interest at the rate of 9% per annum on the additional amount of compensation from the date of filing of claim petition till its realization.

17. In view of the above discussion, the captioned appeal stands dismissed and the impugned judgment and award is modified to the aforesaid extent. The insurance company shall deposit the additional amount of compensation along with interest at the rate of 9% per annum from the date of filing the petition till its realization within a period of six weeks from today.

18. Upon depositing of the said amount, the learned Tribunal shall disburse the said amount of compensation along with interest to the

original claimants 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 forthwith. No order as to costs.

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

HARSHIT

(MOOL CHAND TYAGI, J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: HARSHIT SANCHETI(HCD0070), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 07/02/2026 15:25:54