

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 2607 of 2013****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

=====

Approved for Reporting	Yes	No

=====

SANJAY RAMU PAL SINCE DECD. THROUGH HEIRS & ORS.

Versus

OSMAN ALABCHAYA PADHIYAR & ORS.

=====

Appearance:

DELETED for the Appellant(s) No. 3

MR. HEMAL SHAH(6960) for the Appellant(s) No. 1,2,4

MR PALAK H THAKKAR(3455) for the Defendant(s) No. 3

MS KIRTI S PATHAK(9966) for the Defendant(s) No. 5

RULE SERVED for the Defendant(s) No. 1,2

=====

CORAM:HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**Date : 09/12/2025****ORAL JUDGMENT**

1. The captioned appeal is preferred against the impugned judgment and award dated 16.07.2013 passed by the learned Motor Accident Claims Tribunal (Aux.), Kutch-Bhuj in M.A.C.P. No. 387of 2006, whereby the learned Tribunal has partly allowed the claim petition and awarded a sum of Rs.6,99,720/-(Rupees Six Lakhs Ninety Nine Thousand Seven Hundred Twenty Only) along with interest at the rate of 7.5%

per annum, from the date of filing of the claim petition till realization, as compensation.

2. The succinct facts, which lead to the filing of the captioned appeal are summarized as under :-

- i. On 23.04.2006, deceased-Sanjay Ramu Pal was returning from Welspun Company to Gandhidham on a motorcycle bearing Registration No. GJ-12-AD-6870 accompanied by Mr. Fatehaham Faruk Ansari as a pillion rider. Sanjay Ramu Pal was riding the motorcycle on the correct side of the road at a moderate speed and in compliance with all traffic rules. At about 13:00 hours, when they reached the place of the accident, opponent No. 1 - respondent No. 1 herein - arrived there driving a truck bearing Registration No. GJ-12-X-192 in a rash and negligent manner at an excessive speed without observing traffic regulations and in a manner so as to endanger human life. Consequently, he lost control over the steering of the truck and collided with the motorcycle of Sanjay Ramu Pal. As a result of the accident, Sanjay Ramu Pal sustained grievous injuries to which he succumbed. Mr. Fatehaham Faruk Ansari also suffered severe injuries in the said accident.

- ii. It is the case of the claimants-appellants herein before the learned Tribunal that the accident occurred solely due to the negligence of opponent No. 1 - respondent No. 1 herein - the driver of the offending truck. At the time of the accident, the deceased was aged about 35 years and was engaged in the business of Scrap, earning Rs. 8,000/- per month.
- iii. The notices/summons of the Claim Petition were duly served upon the opponents. The opponent nos.1, 2 & 4 have chosen not to appear before the learned Tribunal, however, the opponent no.3-Insurance Company filed Written Statement vide Exh.21, denying the contents of the claim petition and prayed for dismissal of the claim petition.
- iv. Having considered the pleadings of the parties, the learned Tribunal framed the following issues at Exh.35, for determination.
 - i. Whether the applicants prove that the deceased died due to grievous injuries sustained in the vehicle accident due to rash and/or negligent driving on the part of driver of the vehicle involved in the accident?

ii. Whether the applicants are/is entitled to claim compensation? If yes, what amount and from whom?

iii. What award?

v. In order to prove their claim, the Claimants - appellants herein led oral as well as documentary evidence, which reads as under:-

Sr. No.	Description of Documents	Exhibit No.
1	Affidavit in examination in chief and cross-examination of Ramu Sukhdev Pal	38
2	Affidavit in examination in chief and cross-examination of Ramji Ramdas Pathak	41
3	Copy of F.I.R.	45
4	Copy of Inquest Panchnama	46
5	Copy of R.C.Book of offending truck	47
6	Birth Certificate of the deceased	49
7	Certificate of occupation and income of the deceased	50

vi. The opponent-Insurance Company had not led any evidence before the learned Tribunal.

vii. Having considered the oral as well as documentary evidence on record, and having considered the submissions of the learned

counsels for the parties, the learned Tribunal awarded a sum of Rs.6,99,720/-(Rupees Six Lakhs Ninety Nine Thousand Seven Hundred Twenty Only) along with interest at the rate of 7.5% per annum, from the date of filing of the claim petition till realization, as compensation, on account of the death of the deceased-Sanjay Ramu Pal.

viii. Being aggrieved and dissatisfied by the impugned judgment and award, the claimants - appellants herein preferred the present appeal on the ground of quantum.

3. Heard learned counsels for the parties.

4. Mr. Hemal Shah, learned advocate for the claimants/appellants herein vehemently submitted that at the time of accident, the deceased was aged about 32 years and he was engaged in the business of scrap. He further submitted that the certificate of business was proved on record at Exh.50. He further submitted that the claimants by leading oral as well as documentary evidence have proved on record that the deceased was earning a sum of Rs.7500/- to Rs.9000/- per month. Despite this fact, the learned Tribunal has considered the income of the deceased as Rs.3500/- per month. He further submitted that the learned Tribunal has considered the future prospects of the deceased at lower-side

and added 30% of the monthly income to the income of the deceased. He further submitted that the learned Tribunal ought to have added 40% of the notional income to the income of the deceased on account of future prospects. He further submitted that the learned Tribunal had awarded a meagre amount of Rs.25,000/- under the head of loss of consortium though it is on record that the deceased was survived by his widow, his minor son and his parents. He further submitted that all the legal representatives of the deceased are entitled to get the compensation under the head of loss of consortium. He further submitted that the learned Tribunal had awarded a meagre amount of compensation under the head of loss of estate and funeral expenses. He, therefore, prayed for modification of the award.

5. On the other hand, Mr.Palak Thakkar, learned advocate appearing for the respondent no.3-Insurance Company and Ms.Kirti Pathak, learned advocate appearing for the respondent no.5-Insurance Company vehemently submitted that there is no infirmity in the impugned judgment and award, and therefore, the present appeal deserves to be dismissed.

6. Having considered the submissions of the learned counsels for the parties and having gone through the record, it is to be noted that the appellants have not challenged the findings of the learned Tribunal on the ground of negligence. The appellants have challenged the award on the point of quantum. It is an undisputed fact that at the time of accident,

the deceased was aged about 32 years and he was engaged in the business of scrap. It is also an undisputed fact that the income was not proved on record. Therefore, the learned Tribunal had considered the monthly notional income of the deceased as Rs.3500/-.

7. It is evident from the record that the claimants-appellants herein had proved the certificate of business at Exh.50, whereby Shree Ram Traders certified that the deceased was doing the business of Scrap and he used to supply the said scrap to Shree Ram Traders, and thereby, earning the commission. Therefore, it has been proved on record that the deceased was engaged in the business of scrap. The learned Tribunal has considered the income of the deceased at lower-side. In my considered opinion, the person, who was engaged in the business of scrap in the Year-2006 could have easily earned Rs.5000/- per month. Therefore, the income of the deceased is reassessed to Rs.5000/-. Therefore, the notional monthly income of the deceased is taken as Rs.5000/- per month. The learned Tribunal had added 30% of the notional income on account of future prospects of the deceased. It is on record that at the time of accident, the deceased was aged about 32 years, therefore, in view of the the ratio of the judgment of the Hon'ble Apex Court rendered in the case of **Sarla Verma and others Versus Delhi Transport Corporation 2009 AIR (SC) 3104 & National Insurance Company Ltd. Vs. Pranay Sethi 2017 (16) SCC 680**, the learned Tribunal ought to have added 40% of the notional income to the income of the deceased on account of future

prospects. Hence, 40% of the notional income is added on account of future prospects of the deceased. After adding 40% to the notional income, the monthly income of the deceased would come to Rs.7000/- (Rs.5000/- + Rs.2000/- (40% of Rs.5000/-). It is on record that the deceased was survived by 4 legal representatives. Therefore, $\frac{1}{4}$ of the income is to be deducted on account of personal expenses of the deceased. After deducting $\frac{1}{4}$ of the monthly income on account of personal expense of deceased, the monthly income for calculating the loss of dependency would come to Rs.5250/- (Rs.7000/- - 1750 ($\frac{1}{4}$ of the Rs.7000/-). Considering the multiplier of 16 as per the age of the deceased, the future loss of dependency would come to Rs.10,08,000/- i.e. (Rs.5250x 12 x 16). The learned Tribunal had awarded a meagre amount of Rs.25,000/- under the head of loss of consortium though it is on record that the deceased was survived by his widow, minor son and parents. All the claimants/appellants herein are entitled to get the compensation under the head of loss of consortium in view of the judgment of the Hon'ble Apex Court rendered in the case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Ors., reported in (2018) 18 SCC 130**. Hence, a sum of Rs.1,93,600/- i.e. (Rs.48,400/- x 4) is awarded under the head of loss of consortium. The learned Tribunal had awarded a sum of Rs.15,000/- under the head of loss of estate. As per the judgment of the Hon'ble Apex Court rendered in the case of Pranay Sethi (supra), the said amount is further to be enhanced by 10% for each block of 3 years. Therefore, after

adding 10% for each completed 3 years, a sum of Rs.18,150/- is awarded under the head of loss of estate and similarly, a sum of Rs.18,150/- is awarded under the head of funeral expenses.

8. Thus, in view of the above discussion, the claimants/appellants shall be entitled for the following compensation under the following heads:-

Sr. No.	Heads	Amount Awarded in rupees.
1	Loss of dependency	10,08,000/-
2	Loss of consortium	(+) 1,93,600/-
3	Loss of estate	(+) 18,150/-
4	Funeral expenses	(+) 18,150/-
	Total Compensation	(=) Rs. 12,37,900/-
	Compensation awarded by impugned Judgment and Award	(-) Rs. 6,99,720/-
	Enhanced amount of compensation	(=) Rs. 5,38,180/-

9. Thus, in view of the above discussion, the surviving claimants/appellants shall be entitled for an additional compensation of Rs.5,38,180/- (Rs.12,37,900/- - Rs.6,99,720/-). The learned Tribunal has awarded the interest at the rate of 7.5% per annum from the date of the claim petition till realization. Therefore, the surviving claimants shall also be entitled for the same rate of interest on the

additional amount of compensation from the date of filing of the claim petition till realization.

10. In view of the above discussion, the captioned appeal stands allowed partly and judgment and award is modified to that extent. The Insurance Company is directed to deposit the additional compensation amount along with interest, with the concerned learned Tribunal within a period of six weeks from today. Upon depositing the said amount of compensation, learned Tribunal shall disburse the entire awarded amount of compensation along with interest to the surviving claimants/appellants here in after deducting the deficit of Court fee, if any and after due verification.

11. If any amount is lying deposited in the captioned appeal with the Registry of this court, be transmitted to the concerned learned Tribunal. Records & Proceedings, if any, be sent back to the concerned learned Tribunal. No order as to costs.

12. Pending application, if any stands disposed of.

(MOOL CHAND TYAGI, J)

GIRISH

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: PARMAR GIRISH KANTILAL(HC00954), Principal Pvt Secretary, at High Court of Gujarat on 10/12/2025 18:28:38