

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 2371 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J. C. DOSHI****Sd./-**

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Approved for Reporting	Yes	No
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SHARDABEN MOHANBHAI CHABHAIYA & ORS.

Versus

DEEPSANGJI DIPUBHA BADHUBHA RATHOD & ORS.

Appearance:

MR VISHAL C MEHTA(6152) for the Appellant(s) No. 1,2,3,4

UNSERVED EXPIRED (N) for the Appellant(s) No. 5,6

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

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

CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI**Date : 03/09/2026****JUDGMENT**

1. The instant appeal is filed, under Section 173 of the Motor Vehicles Act, challenging the judgment and award passed by the learned Motor Accident Claims Tribunal (Auxi.6), Kachchh at Bhuj (in brief, 'Tribunal'), Dated: 13.03.2014, passed in Motor Accident Claim Petition No. 609 of 2002, whereby, the tribunal assessed compensation at Rs.5,14,500/-, but, paid Rs.3,85,875/-, after deducting Rs.1,28,625/-, i.e. towards 25% self-negligence on the part of the deceased - Mohanbhai Chabhaiya, along with interest at the rate of 7.5% per annum, from the date of filing of the

claim petition, till realization. The award was passed against opponent Nos. 1 to 3 and they were held liable to pay amount of compensation.

1.1 Being aggrieved with the aforesaid judgment and award, the claimants have preferred the present first appeal, mainly on two counts, (i) learned tribunal incorrectly attributed self-negligence on the part of the deceased – Mohanbhai to the extent of 25% and (ii) the amount of compensation worked out by the learned tribunal is not just, fair and adequate and the same is also missing, some of the non-pecuniary heads.

2. The brief facts of the case are that on 20.04.2002, in the morning at about 08:30 a.m., the deceased – Mohanbhai was going to Bhitara from Khirsara on his scooter, bearing registration No. GJ-12-C-5385, along with one Ladhhabhai Mavani as a pillion rider and when they reached near cross-roads, near Danada, on Vejalpur – Kotda road, opponent No.1, who was driving jeep bearing registration No. GJ-12-B-8841 in rash and negligent manner, came from wrong side and dashed the said scooter. On account of that the deceased Mohanbhai received serious injuries. Therefore, firstly, he was taken to Kotda Hospital and then to hospital of Dr. Mukesh Chande at Bhuj and then to hospital of Dr. Prakash Modh at Rajkot, where, while undergoing the treatment, he breathed his last on 21.04.2002.

2.1 Hence, the heirs and legal representatives of the deceased – Mohanbhai filed the aforesaid claim petition, under Section 166 of the MV Act, against the driver, owner and the insurance company, seeking compensation of Rs.20,00,000/-, pleading that the deceased – Mohanbhai was earning Rs.1,00,000/- per annum from the agricultural field and he also used to earn Rs.5,000/- per month as agricultural advisor. It was also pleaded that the deceased was aged 38 years and was hale and hearty and he was the sole breadwinner of his family. The claimants also claimed compensation under other conventional heads, as well.

2.2 Learned tribunal, after taking into consideration the evidence on record, was pleased to pass the impugned judgment and award dated 13.03.2014. Hence, the appellants, being aggrieved with the same, have approached this Court by way of this appeal, seeking enhancement of compensation.

3. Heard, learned advocate, Mr. Mehta, for the appellants and learned advocate, Mr. Thakkar, for Respondent No.3- insurance company. Though served, Opponent Nos. 1 and 2 did not chose to appear before this Court.

4. Learned advocate, Mr. Mehta, appearing for the appellants relied on the decision of the Hon'ble Apex Court

in the case of '**M. Nithya Vs. SBI General Insurance Co. Ltd.**', reported in 2026 (0) ACJ 1099. It was submitted that the tribunal committed a serious error in attributing self-negligence to the extent of 25% on the ground that the deceased – Mohanbhai was riding the scooter without helmet. Such finding is contrary to the judgment of the Hon'ble Supreme Court and therefore, he submitted that the finding recorded by the tribunal that the deceased – Mohanbhai was riding scooter without helmet has to go.

4.1 Secondly, he submitted that, though, jeep driver was one of the eye-witnesses of the accident in question, he did not enter the witness box and despite that, the tribunal did not draw any adverse inference and thereby, committed a serious error.

4.2 It was submitted that the pillion rider, namely Ladhhabhai, being an eye-witnesses of the accident and the first informant entered into the witness box and vide his deposition, Exhibit-42, categorically stated that the accident took place due to sole negligence on the part of the jeep driver. From his cross-examination, nothing could be brought out, which would favour the case of the insurance company. It was submitted that unfortunately, the learned tribunal, which has recorded self-negligence or contributory negligence on the part of the deceased – Mohanbhai to the extent of 25% in Paragraph-16 of the impugned judgment,

did not refer to the evidence on record and therefore, it appears that the learned tribunal recorded such finding only on the basis of conjectures and surmises. By making the above submission, learned advocate, Mr. Mehta, prayed to set aside the findings of the learned tribunal to that extent.

4.3 Learned advocate, Mr. Mehta, next submitted that, though, the learned tribunal accepted the income of the deceased at Rs.4,000/- per month, it did not grant benefit of loss of future prospects.

4.4 It was also submitted that the statutory deduction towards personal and pocket expenses ought to have been 1/4 in view of the numbers of heirs, who are six in numbers, and despite that the tribunal deducted 1/3 amount towards personal and pocket expenses.

4.5 Insofar as, the compensation under the non-pecuniary heads, i.e. loss of estate, loss of consortium etc. is concerned, it was submitted that in view of the decision Hon'ble Apex Court in the case of '**National Insurance Company Ltd. Vs. Pranay Sethi**', reported in 2017 (16) SCC 680 and '**Magma General Insurance Company Vs. Nanu Ram @ Charu Ram & Ors.**', reported in AIR ONLINE 2018 SC 189, the same may be enhanced.

4.6 By making the above submissions, it was prayed that this appeal be allowed.

5. *Per contra*, learned advocate, Mr. Thakkar, appearing for Opponent No.3 – insurance company submitted to sustain the findings arrived at by the learned tribunal with regard to attributing 25% self or contributory negligence on the part of the deceased – Mohanbhai.

5.1 Learned advocate, Mr. Thakkar, referred to Paragraph-16 of the impugned judgment and award and submitted that it is the case, where, the accident took place at Danada cross-roads and therefore, when a vehicle is passing through a cross-roads, the driver of each vehicle is required to take proper care before crossing the cross-roads. It was submitted that, in the present case, the site-map or the panchnama of the place of accident is not produced on record by the claimants to unfurl actual picture of the accident and therefore, the learned tribunal rightly assessed 25% self or contributory negligence on the part of the deceased – Mohanbhai.

5.2 Learned advocate, Mr. Thakkar, secondly submitted that the learned tribunal assessed the monthly income of the deceased at Rs.4,000/- per month, as against the minimum wage rate of Rs.2200/- for a skilled worker prevailing at that point of time. It was submitted that, in

this case, no concrete evidence was led by the claimants to establish that the deceased was earning Rs.5,000/- per month as agricultural advisor. Thus, it can be considered that the tribunal has taken care of the granting compensation for loss of future prospects by assessing income of the deceased at Rs.4,000/- per month, which is on higher side than the rate of minimum wages for a skilled worker prevailing at that point of time and hence, there is no need to add any income under the head of loss of future prospects.

5.3 By making the above submissions, learned advocate, Mr. Thakkar, submitted that this appeal may be dismissed.

6. Having heard the rival submissions and having considered the impugned judgment and award as well as R&P of the claim petition, at the outset, let me address the issue of self or contributory negligence. On perusal of the findings recorded by the learned tribunal in that regard, it appears that the deceased – Mohanbhai was riding scooter without helmet and was passing through cross-roads and these two findings weighed with the learned tribunal to hold the deceased – Mohanbhai negligent to the extent of 25%. The issue of riding a motor-cycle without helmet has been addressed by the Hon'ble Apex Court in the case of '**M. Nithya**' (Supra) and the relevant observations read thus;

“5. The Tribunal had concluded that the accident took place only due to the negligence of the driver of the lorry. The Insurance Company in their Counter before the Tribunal had stated that the deceased rode the motorcycle without wearing a helmet and was riding rashly behind the lorry and thereby contributed to the accident and hence, contributory negligence has to be determined. The Tribunal considered the Final Report that showed that the driver of the lorry was charged for offences under Section 279 and 304(A) IPC. The Motor Vehicle Inspection Reports made it clear that the lorry and motorcycle were involved in the accident. Therefore, the Tribunal rejected the argument of the Insurance Company that the deceased contributed to the accident. Hence, it was determined by the Tribunal that the owner of the lorry and the Insurance Company are jointly and severally liable to pay the compensation to the claimants.

6. The High Court, on the other hand, observed that the driver of the lorry drove the vehicle at a normal speed and if he had given indication while stopping the vehicle, he would have averted the accident. The High Court was of the view that though there was negligence on the part of the driver of the lorry, the deceased could have avoided the accident by being vigilant and maintaining proper distance from the lorry. Therefore, it was held that there was contributory negligence on the part of the driver of the lorry plus the deceased and fixed the liability to be 60% on the part of the

driver of the lorry and 40% on part of the deceased. The High Court recalculated the compensation payable to the claimants and awarded a reduced amount of Rs.37,94,500/- as compensation.

7. It is pertinent to observe that the Tribunal noted that the Insurance Company in their Counter contend that contributory negligence of the part of the deceased has to be fixed. However, the Tribunal did not frame any specific issue in that regard for determination. The Tribunal clearly finds negligence only on part of the driver of the lorry and therefore, the owner of the lorry and the Insurance Company which insured the said lorry are jointly and severally found liable to pay compensation. Therefore, when the Tribunal did not even frame an issue on contributory negligence, the High Court ought not to have considered that argument in order to reduce the compensation awarded. Even otherwise the Insurance Company did not lead any evidence on this aspect nor insisted for framing an issue. Merely making a bald assertion in their Counter Affidavit cannot derive any advantage. Hence, we are in agreement with the findings of the Tribunal that the accident took place only due to the negligence of the driver of the lorry and therefore, the contributory negligence awarded on part of the deceased by the High Court suffers from an error and cannot be sustained. ”

6.1 Thus, in view of the aforesaid findings recorded by the Hon'ble Apex Court, the contention raised by the learned advocate for Opponent No.3 – insurance company that the deceased was not wearing helmet at the time of accident is a contributory factor and contributory negligence is required to be negated. Moreover, what transpires from the record is that the driver of the offending jeep, for no reason, neither filed any written-statement nor entered into the witness-box to unfold the correct facts of the road accident and that makes it a clear case for drawing adverse inference against the driver of the jeep. However, the pillion rider, namely Ladhabbhai, had entered into the witness-box and he had stated that the driver of the jeep was solely negligent for the accident. During the cross-examination, this witness was asked whether, the deceased – Mohanbhai was also negligent and except that, no question was put to the said eye-witness.

6.2 The Hon'ble Apex Court in the case of **'Reena Vs. Managing Director, Karnataka State Road Transport Corporation'**, reported in 2026 (0) INSC 889, has observed that a 'Site Map' or accident sketch cannot be read in isolation or used as a sole basis to record contributory negligence against a deceased driver, in absence of corroborating ocular evidence.

6.2.1 In the present case, the situation is much better,

wherein, the claimants have examined the popular witness and the popular witness successfully stated that jeep driver was fully negligent in causing the accident. Thus, the findings recorded by the learned tribunal, holding the deceased – Mohanbhai negligent to the extent of 25%, is entirely based on conjectures and surmises and cannot be sustained. Thus, the findings of the tribunal to that extent are set aside.

6.3 Insofar as, the calculation of the compensation is concerned, evidently, opponent No.3 – insurance company has neither filed any appeal nor any cross-objections against the impugned judgment and award of the tribunal, assessing the monthly income of the deceased – Mohanbhai at Rs.4,000/- per month. In that view of the matter, the contention raised by learned advocate, Mr. Thakkar, that the tribunal ought to have assessed the income of the deceased – Mohanbhai at Rs.2200/- per month, which was the minimum wages prevailing at the relevant point of time for the skilled worker, deserves to be negatived and is negatived. The tribunal has recorded the findings, with regard to assessing the income of the deceased – Mohanbhai at Rs.4,000/- per month, in Paragraphs-17 and 18 of the impugned judgment and award, wherein, the tribunal has elaborately discussed, how the deceased was obtaining income from the agricultural produce and his agricultural land. The extract of Village Form No. 7/12 was also

produced on record vide Exhibit-64, whereas, other relevant evidences were produced vide Exhibits-66 onward. Thus, as the findings arrived at by the learned tribunal has not been challenged by Opponent No.3 – insurance company, the income of the deceased assessed by the tribunal at Rs.4,000/- appears to be just and proper.

6.4 Now, what is noticeable is that the learned tribunal did not grant any amount towards loss of future prospects and the deduction towards personal expenses made by it was on higher side, as the deceased had left behind six heirs, the tribunal ought to have deducted 1/4 amount towards persons expenses and hence, the findings of the tribunal in that regard deserves to be modified to that extent. Further, the appellants-claimants shall also be entitled to get compensation under non-pecuniary heads, i.e. funeral expenses, loss of estate etc..

6.5 In view of the aforesaid discussion, the appellants-claimants shall be entitled to the following amounts towards compensation, which are just, fair and adequate;

Sr. No.	Heads	Amount Awarded by the Tribunal	Amount Awarded in the Appeal
1.	Income Future Rise (40%)	Rs.4,000/- -	Rs.4,000/- + <u>Rs.1,600/-</u>

			Rs.5,600/-
	Deduction Towards Personal Expenses	Rs.4,000/- ~~-Rs.1,333/-~~ (1 / 3 rd) Rs.2,667/-	Rs.5,600/- ~~-Rs.1,400/-~~ (1 / 4 th) Rs.4,200/-
	Yearly Income	<u>12</u> Rs.32,000/-	<u>12</u> Rs.50,400/-
	Multiplier	<u>15</u> Rs.4,80,000/-	<u>15</u> Rs.7,56,000/-
2.	Medical Expenses	Rs.12,500/-	Rs.12,500/-
3.	Transportation Charges	Rs.5,000/-	Rs.5,000/-
4.	Pain, Shock and Suffering	Rs.7,500/-	Rs.7,500/-
5.	Funeral Expenses	Rs.2,500/-	Rs.18,150/-
6.	Loss of Estate	Rs.2,000/-	Rs.18,150/-
7.	Loss of Consortium	Rs.5,000/-	Rs.2,90,400/-
8.	Negligence (25%)	Rs.5,14,500/-	Rs.11,07,700/-

		-Rs.1,28,625/- Rs.3,85,875/-	- Rs.11,07,700/-
	Additional Amount with interest @ 7.5% per annum		Rs.7,21,825/-

7. Thus, the appellant-claimants shall be entitled to get total enhanced compensation of Rs.7,21,825/- along with interest at the rate of 7.25% per annum from the date of the filing of the claim petition, till realization and the following order is passed;

- 1) Resultantly, this appeal is ***partly allowed***;
- 2) The findings of the learned Tribunal, vide order dated 13.03.2014, holding the deceased - Mohanbhai negligent to the extent of 25% is set aside;
- 3) The total amount of the enhanced compensation, which the appellants-claimants shall be entitled to get, is worked out at Rs.11,07,700/- and after deducting the amount already awarded by the tribunal, i.e. Rs.3,85,875/-, the appellant-claimants shall be entitled to get additional amount of compensation of Rs.7,21,825/-;

- 4) The appellant-claimants shall be entitled to get interest at the rate of 7.25% per annum, from the date of the filing of the claim petition, till realization;
- 5) Opponent No.3-Insurance Company is directed to deposit the additional amount of compensation along with interest and the proportionate costs with the learned Tribunal within the period of **twelve weeks** from the date of receipt of a copy of this order;
- 6) After the amount of compensation is deposited, the learned Tribunal shall disburse the same by passing a fresh order, as the original claimant Nos. 5 and 6 have already expired;
- 7) R&P be send back, forthwith;

Direct service is permitted.

UMESH/-

Sd./-
(J. C. DOSHI,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: CHAVDA UMESH(HC00203), Principal pvt Secretary, at High Court of Gujarat on 08/09/2026 11:23:10