IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 861 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE NISHA M. THAKORE

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Approved for Reporting	Yes	No

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SHASHIKALA SHRVANKUMAR RAI & ORS.
Versus
RAMESHKUMAR NARANDAS SINDHI & ORS.

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Appearance:
MR ARVIND K THAKUR(2322) for the Appellant(s) No. 6
MR DV BHAVSAR(5575) for the Appellant(s) No. 1,2,3,4,5
MS HETABEN H SHAH(1797) for the Appellant(s) No. 6
MS KIRTI S PATHAK(9966) for the Defendant(s) No. 3
RULE SERVED for the Defendant(s) No. 1,2.1,2.2,2.3,2.4

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CORAM:**HONOURABLE MS. JUSTICE NISHA M. THAKORE**

Date : 30/03/2026

ORAL JUDGMENT

1. The present appeal is filed under Section 173 of the Motor Vehicles Act, 1988, (for short “the Act”) at the instance of the original claimants, being aggrieved and dissatisfied by the judgment and award dated 29.11.2013 passed by the learned Motor Accident Claims Tribunal (Aux.) Bhavnagar in MACP No. 539 of 1995. By the said judgment and award, the Tribunal has partly allowed the claim petition preferred by the original claimants under Section 166 of the Act, 1988 holding them entitled to recover sum of Rs. 5,31,700/- as compensation, to be

realised from the original opponents jointly and severally whether with interest @ of 7.5% per annum and with proportionate costs from the date filing of such claim petition till its actual realisation.

2. The Tribunal has, thus, though entertained the claim petition has not awarded the entire claim of compensation of Rs. 12 lakhs as prayed for by the claimants. Hence, the present appeal seeking for enhancement of the remaining amount of compensation of Rs. 6,68,300 with interest and proportionate costs.

3. Considering the grounds raised in the appeal memo and the submissions made by learned advocate for the appellant, this Court vide order dated 27.10.2015, had admitted the appeal. The record reveals that the notice of admission has been duly served upon the respondents-original opponents. Despite service of notice for respondents No. 1 and 2 they have chosen not to enter appearance or to object to the present appeal.

4. Ms. Kirti S. Pathak learned advocate has entered appearance on behalf of respondent No. 3-Insurance Company. With the able assistance of learned advocates on record, the appeal is peremptorily heard finally.

5. Learned advocate Ms. Hetaben H. Shah has joined

virtually and has assailed the impugned judgment and award mainly on the ground of quantum of compensation being determined on the lower side. The core contention which has been raised by learned advocate is that the Tribunal miserably failed to fix the income of the deceased as Rs. 4,500/- despite cogent material being brought on record. In the cross-examination, the wife of the deceased has categorically deposed that the deceased was earning Rs. 4,500/- per month by serving as Operator in an Oxizon Plant run by Paras Industries. It was submitted that income certificate has been produced on record at Exh. 34 and therefore, the Tribunal ought to have fixed the income of the deceased as Rs. 4,500/-. Merely because the author of the income certificate has not been examined by the claimant, considering the FIR there is no reason to disbelieve the case of the claimants that the deceased was earning his livelihood by serving as an Operator in the Paras Industries. Even the Insurance Company has failed to contradict the aforesaid case of the claimant in the cross-examination. She has further submitted that the amount of compensation awarded under the conventional heads is also required to be revisited in light of the subsequent decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Pranay Sethi & ors** reported in **(2017) 16 SCC 680**. Lastly, learned advocate has urged this Court to award interest @ 15% considering the fact that the accident had taken place on 12.02.1995.

The reliance was placed on the decision of Hon'ble Division Bench of this Court in the case of **Manoj Rambhai Gadhvi Vs. Vaghasia Balubahi Khodabhai in First Appeal No. 2632 to 2637 of 1999**, decided on 02.12.1999 as well as in the case of **United India Insurance Co. Ltd. Vs. Valjibhai Vashrambhai Monpara deceased through his heirs,** in First Appeal No. 2985 of 1996 to First Appeal No. 3010 of 1996 with Civil Application No. 7594 of 2003 decided on 01.10.2004. Learned advocate had therefore, prayed for enhancement of amount of compensation with interest @ 15% from the date of filing of the claim petition till its actual realisation.

6. Per contra Ms. Pathak, learned advocate appearing for respondent No. 3-Insurance Company has vehemently objected as according to her, in absence of proof of income , the Tribunal has rightly fixed the notional income of the deceased as Rs. 1900/- per month. It was submitted that merely because the said document has been marked and exhibited, in absence of the author of such certificate being examined as witness, the contents of the aforesaid document have not been proved. It was further submitted that in her cross-examination, the wife of the deceased has fairly conceded to the fact that no vouchers has been produced on record. Learned advocate has placed reliance upon the minimum wages prevailing at the relevant point of time and has submitted that considering the well settled

principles laid down by the Hon'ble Supreme Court in absence of any direct proof of income being produced on record, the Courts can follow yardstick of minimum wages. Therefore, considering the minimum wages of Rs. 1,100 prevailing at the relevant point of time, the Tribunal has determined reasonable income of the deceased as Rs. 1,900/-. She has therefore, objected to the enhancement sought for under the head of loss of dependency. The reliance was placed on the decision of Hon'ble Supreme Court in the case of **Pranay Sethi (supra)** wherein the Court has observed that the heavy burden lies upon the claimants to not only plead but to prove the income by leading cogent material on record. In absence of such material being brought on record, the Courts were at liberty to follow the yardstick of minimum wages. She has fairly submitted that the Insurance Company has not preferred any appeal. As regards the submission made by learned advocate on the enhancement sought for under conventional heads are concerned, learned advocate has fairly submitted that appropriate enhancement may be considered in light of well settled principles laid down by the Hon'ble Supreme Court in this regard. Lastly, learned advocate had objected to the interest @ 15% being prayed for in the facts of the case and the evidence brought on record. The reference was made to Section 34 of the Code of Civil Procedure to content that normally the rate of interest to be considered in such kind of claim petition would be 6%.

The reliance was placed on the decision of Hon'ble Supreme Court in the case of **Inayath Rajasab Attar Vs. Shantavya decided on 19.02.2020 in Civil Appeal No. 2526 of 2012** wherein the Court had reduced the rate of interest awarded by the High Court from 12% per annum to 6% per annum. The reliance was also placed on the decision of Hon'ble Supreme Court in the case of **Savitha Vs. Cholamandalam MS General Insurance Company Ltd and Ors., reported in 2020, 18 SCC 583,** wherein the interest awarded @ 6% by the Tribunal has been confirmed by the Hon'ble Supreme Court. Learned advocate has therefore, objected to the interest @ 15% being prayed for.

7. I have heard learned advocates appearing for the respective parties and I have also perused the findings and reasons assigned by the Tribunal. Considering the arguments made by learned advocate appearing for the respective parties, the only question which calls for consideration of this Court is as to whether the Tribunal committed any error in determining the quantum of compensation as Rs. 5,31,700/- with interest @ 7.5% per annum, to be realized from the original opponents jointly and severally with proportionate costs from the date of filing of its claim petition till its realization, in the facts of the case and the evidence brought on record, while examining the claim petition preferred under Section 166 of the Motor Vehicle Act, 1988?.

8. At the outset, it would be appropriate to note that in absence of any appeal filed by original opponents-respondents herein, the issue of negligence and the liability of the Insurance Company determined by the Tribunal has attained finality. Thus, foundational facts viz, death of the deceased in motor vehicle accident, the involvement of the vehicle, the negligence of the driver of the offending vehicle, the liability of the Insurance Company stands confirmed. This brings me to the merits of the present appeal more particularly the issue of quantum of compensation. I have carefully re-appreciated the evidence on record in light of the arguments advanced by learned advocates for the respective parties. The core contention which is required to be re-examined is the income of the deceased being determined on the lower side. The Tribunal has appreciated the evidence of the wife of the deceased which is recorded at Exh. 36. The Tribunal has also considered the income certificate produced on record at Exh. 34. On appreciation of the aforesaid evidence on record the Tribunal has noted that though the income certificate has been produced on record with regard to the income of the deceased however, the contents of such certificate in absence of the author of such certificate being examined as witness and in absence of any document in the nature of register, income slip or pay slip being produced on record has refused to believe the income of Rs. 4,500/- being earned by the deceased. The

Tribunal has further taken into consideration the nature of the work of the deceased and the year of the accident and has thereby fixed the notional income of the deceased as Rs. 1,900/- per month.

9. Having noted the aforesaid findings and reasons assigned by the Tribunal and upon re-appreciation of the evidence of the wife of the deceased at Exh. 36 as well as the income certificate being produced on record at Exh. 34, in my view though the certificate has been brought on record as rightly noted by the Tribunal, the author of such document has not been examined as witness. At the same time, learned advocate for the appellant is not justified in contending that there was no challenge to the evidence of the claimant who in her cross-examination has infact reiterated the fact that the deceased husband was earning Rs. 4,500/- per month. It is required to be noted that on overall appreciation of the cross-examination of the wife of the deceased, the respondent-Insurance Company has challenged the aforesaid claim of income inasmuch as the said witness has conceded in her cross that no voucher or register of Paras Industries has been produced on record. It is also not disputed that no other witness verifying the contents of the income certificate, produced on record at Exh. 34, has been examined. Considering such material on record, the Tribunal has rightly proceeded to fix the notional income of the deceased as per Rs. 1,900/- per month by

taking into consideration the vocation of the deceased and the period of the accident. Hence, this Court is not inclined to interfere with the aforesaid findings and reasons assigned by the Tribunal determining the income of the deceased as Rs. 1,900/- per month.

10. As regards the submission made by learned advocate for the appellant praying for enhancement under the conventional heads are concerned, in view of the well settled principles laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi (supra)** as well as the decision of the Hon'ble Supreme Court in the case of **Magma General Insurance Co. Ltd vs. Nanu Ram Alias Chuhur Ram & Ors** reported in **(2018)18 SCC 130**, the claimants having pursued the proceedings praying for enhancement of the amount of compensation under the head of conventional heads as well, shall be entitled to 10% rise of the amount fixed by the Hon'ble Supreme Court under the conventional heads. The original claimants includes the wife of the deceased and three minor children as well as aged parents.

11. From the record it transpires that the father of the deceased had expired pending the original claim proceedings and therefore, has been deleted from array of parties. The widow of the deceased having lost the love, affection, care and the companionship of her husband at

young age, shall be entitled to the loss of spousal consortium which is determined as Rs. 48,400/-. The three minor children of the deceased who have lost love, care and affection of their father at a young age, are entitled to loss of parental consortium. Hence, each of the three minor children shall be entitled to amount of Rs. 48,400/- towards loss of parental consortium. The mother of the deceased having lost her son in the motor vehicle accident, shall be entitled to loss of filial consortium of Rs.48,400/-. Thus, the amount of compensation under the head of loss of consortium is enhanced from Rs. 50,000/- to Rs. 1,93,600/-. As regards the amount of compensation under the head of loss of estate and funeral expenses are concerned the same are enhanced from Rs.10,000/- to Rs. 18,150/- each.

12. This brings me to the issue of the rate of interest to be reconsidered in light of the facts of the case and the evidence brought on record. I have carefully considered the judgment relied upon by learned advocates appearing for the respective parties. Admittedly, the accident had taken place on 12.02.1995. The Tribunal while considering the rate of interest at 7.5% as though referred to the written arguments of the original claimants at Exh. 100 wherein despite various authorities being relied upon, indicating the rate of interest of 12% and 15%, the Tribunal has refused to consider the same by stating the prevailing rate of interest

in the present economy, it would be appropriate to fix the rate of interest as 7.5% per annum. Having appreciated the aforesaid findings and reasons assigned by the Tribunal in light of the various decisions relied upon, in my view the Tribunal failed to follow the binding precedent of the Hon'ble Division Bench of this Court in the case of **Manoj Rambhai Gadhvi and ors. Vs. Vaghasia Balubhhai Khodabhai** (supra) which has subsequently been followed by the Hon'ble Division Bench in the case of **Valjibhai Vashrambhai Monpara (supra).** It would be appropriate to note that the date of accident in the case of **Manoj Rambhai Gadhvi (supra)** as can be gathered from the facts recorded had occurred in July 1994. In the aforesaid group of appeals the only question which was raised was the rate of interest being awarded by the Tribunal as 15% per annum from the date of filing claim petition till actual payment. It is required to be noted that the appeals were filed by the Insurance Company together with the owner and the driver of the offending vehicle. One of the submissions made by learned counsel for the appellant was conceding to the fact that the economy of the country was at its peak in or about the year 1994 and thereafter had stabilized for sometime and had started a dropping trend in or about year 1997. It was therefore, submitted that the Tribunal ought not to have awarded 15%. On the other hand the respondent have placed reliance on the decision of the Hon'ble Supreme Court in the case of **Sovintorg (India) Ltd. Vs. State Bank**

of India reported in AIR (1999) SC 2963 wherein in para 6 of the said decision the Hon'ble Supreme Court has specifically increased the rate of interest from 12% to 15%. Similarly, in the case of **United India Insurance Company Ltd. V. Raman K. Raval and ors., reported in 1996(1) GLH 272,** the Division Bench of this Court had awarded an interest @ 15% per annum. The Court has thus, refused to interfere with the discretion vested with the Tribunal and the Court in awarding the interest, however, while summing up the decisions on the subject, the Hon'ble Division Bench of this Court in para 7 in the case of Manojbhai Gadhvi (supra), noted that interest awardable by the Tribunal and Courts, though discretionary, must have some relationship to the interest rate generally prevalent in the economy, in the interest of uniformity, consistency and stability, in the awards/ decrees on which interest is awarded. With these observation the Hon'ble Division Bench had confirmed the view taken by Tribunal awarding interest @ 15% from the date of occurrence of the accident that is in July 1994, and the filing of the claim petition in the same year and from the date of claim petition till 30.06.1997 to be reasonable and thereafter @ 12% per annum on the awarded amount for the subsequent period till its realization. Despite aforesaid clear principles being laid down by the Hon'ble Division Bench and the attention of the Tribunal being brought to the aforesaid principles, the Tribunal committed serious error in exercising its discretion by fixing the rate of interest as

7.5% per annum.

13. As regards the decision relied upon by learned advocate for the respondent Insurance Company is concerned, on close reading of the decision in the case of **Inayath Rajasab Attar (supra),** it does not transpire that the accident had taken place in the year 1995. As regards the judgment relied upon in the case of **Savitha (supra),** on bare reading of the facts of the case as recorded in para 2, it transpires that the accident had taken place on 25.12.2008. Considering the facts of the case, the judgements relied upon in the present appeal are mis-placed.

14. Considering the overall circumstances of the case, the rate of interest is required to be reconsidered. Thus, the rate of interest is determined as 15% from the date of filing of the claim petition which is 8.11.1995 till 1997. The rate of interest to be considered on the total amount of compensation from the year 1997 till 2000 is fixed as 12% per annum and thereafter till actual realization, it is fixed as 9% per annum.

15. For the foregoing reasons, the appeal is partly allowed. The impugned judgment and award dated 29.11.2013 passed by the learned Motor Accident Claims Tribunal (Auxi), Bhavnagar in MACP No. 539 of 1995, is hereby modified by holding the original claimants entitled to total

amount of compensation of Rs. 7,64,800/- with interest @ 15 % per annum from the date of filing of claim petition which is 8.11.1995 till the year 1997, thereafter from year 1997 till 2000 @ 12% per annum and 9% from the year 2000 till the date of realization of the amount of compensation. The Tribunal shall deposit the enhanced amount of compensation within a period of six weeks from the date of receipt of the certified copy of this order.

16. With these observations, the First Appeal is partly allowed. The Record and proceedings are directed to be sent back forthwith to the concerned Tribunal with the writ of this judgment.

(NISHA M. THAKORE,J)

MARY VADAKKAN