

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 1578 of 2015****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE J. L. ODEDRA**

=====

Approved for Reporting	Yes	No

=====

DINESH RAGHUNATHRAI GAKHAR**Versus****ZALA PRATHVISINH LAXMANSINH & ORS.**

=====

Appearance:

MR ANAND B GOGIA(5849) for the Appellant(s) No. 1

MR BB GOGIA(5851) for the Appellant(s) No. 1

MS KAJAL L KALWANI(6623) for the Appellant(s) No. 1

MR TANMAY B KARIA(6833) for the Defendant(s) No. 3

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

=====

CORAM:HONOURABLE MR.JUSTICE J. L. ODEDRA**Date : 27/01/2026****ORAL JUDGMENT**

1. The present Appeal arises from the judgment and award dated 30.04.2015 passed in MACP No.326 of 2002 by the learned Motor Accident Claims Tribunal (Aux.), Gandhidham – Kachchh.

2. By way of the impugned judgment and award, the learned

Tribunal was pleased to order that the claimant (present appellant) was entitled to claim an amount of Rs.1,96,223/- with proportionate costs and interest at the rate of 9% per annum from the date of filing of the claim petition till its actual realization from the opponents who were held liable, jointly and severally.

3. At the outset, the accident in question may be examined. It appears that the appellant was traveling in his car with certain individuals – Lalit Lakhwani, Vikaschandra More and Randhir. The car was a Maruti Esteem car bearing registration no. GJ-12-P-1160. They were traveling from Gandhidham to Mata No Madh. It appears that when they reached near Sag River, Anjar, allegedly, a luxury bus bearing registration no.GJ-12-T-4384, coming from Anjar, allegedly on wrong side, dashed against the Maruti Esteem car belonging to the appellant and as a result, the appellant sustained injuries over his right leg, chest, head and other body parts. The appellant also suffered partial disablement owing to the injuries and hence, the claim petition.

4. The impugned judgment and award has been challenged by

the appellant both on the account of negligence and on quantum.

5. Learned advocate for the appellant Mr. Anand B Gogia has submitted that the Tribunal has not properly discussed the aspect of negligence and that it has only reasoned that it was a head-on collision and therefore, 50% of negligence has been attributed to the appellant (original claimant). It was submitted that the same is to the detriment and prejudice of the appellant as no other factors pertaining to the accident were considered by the Tribunal. It was submitted that in the affidavit of examination-in-chief, the appellant has specifically pleaded that it was the offending vehicle – luxury bus which was being driven on the wrong side, and therefore, no negligence could have been possibly attributed to the appellant. Attention of this Court was also drawn to the FIR and Panchmnama to submit that no negligence can possibly be attributed to the appellant.

6. Arguing on the quantum, it was submitted that as such, the Tribunal has not committed any error insofar as assessing yearly income of the appellant at Rs.2,80,000/-. However, he submitted that the fact remains that the

appellant was engaged in hotel business as he is one of the partners of Hotel City Plaza. Furthermore, it was also submitted that the appellant was also managing and running Hotel Aakashdeep at Gandhidham. It was, thus, submitted that in terms of the judgment in case of **National Insurance Co. Ltd vs Pranay Sethi** reported at 2017 (16) **SCC 680**, the appellant is entitled for prospective income to the tune of 40%. It was, therefore, urged that appropriate prospective income ought to have been factored while arriving at the future loss of income of the appellant. Therefore, it was urged that the multiplicand may be considered at Rs.3,92,000/- (Rs.2,80,000 X 1.40).

7. It was next submitted that the age of the appellant, as on the date of the accident, was 27 years. It was, thus, submitted that in terms of the judgment of **Sarla Verma & Ors vs Delhi Transport Corp. & Anr.** reported at 2009 (2) **SCC (CRI) 1002**, the applicable multiplier would be 17. Multiplying the said multiplier with multiplicand i.e., Rs.3,92,000/-, the future loss of income may be calculated, subject to the extent of the disability suffered by the appellant. It was also submitted that in the Disability Certificate, Exhibit 38, the learned advocate for

the other side i.e., learned advocate B J Bhindi, has made an endorsement to the effect, that if 16% disability is taken to be the disability for the body as a whole, the same would be admitted by the other side. It was submitted that, however, the Tribunal has ignored the said endorsement and has taken the disability at 8%, which may kindly be corrected. It was further submitted that accordingly, once the said disability is factored into, the Future Loss of Income may kindly be considered at Rs.10,66,240/- (calculated by multiplying Rs.3,92,000/- X 17 X 16%).

8. It was also submitted that owing to serious injuries suffered by the appellant, appropriate amounts under Attendant Charges, Special Diet and Medical Expenses may be awarded. It was prayed that Rs.50,000/- each under the head of Special Diet, Attendant Charges and Medical Expenses may be awarded. It was also submitted that, moreover, under the head of Pain, Shock and Suffering, an additional amount of Rs.50,000/- may kindly be awarded.
9. None has appeared for respondent nos.1 and 2, though they have been served.

10. Learned advocate for the respondent no.3 – Insurance Company Mr. Tanmay Karia has submitted that the Tribunal's judgment and award is not erroneous to any extent, and therefore, it may kindly be retained. It was submitted that the Tribunal, after assessing the medical papers and the nature of injury suffered by the appellant, has correctly assessed the negligence of the appellant at 8%. It was submitted that the Tribunal would have had the occasion to examine, first hand, the status of the disability suffered by the appellant, and therefore, the assessment by the Tribunal may not be disturbed.

11. It was next submitted that looking to the medical bills on record, they are totaling to the tune of Rs.2,647/-. It was submitted that, therefore, it can safely be assumed that the treatment did not last too long. It was thus submitted that, therefore, the amounts claimed under the head of Special Diet to the tune of Rs.50,000/- would be highly exaggerated. Similarly, it was submitted that for Attendant Charges also, a sum of Rs.50,000/- as claimed by the appellant cannot be sustained. It was submitted that *de hors* any additional medical documents, even the sum awarded towards medical expenses i.e., Rs.2,647.65 would

be sustainable and no additional amount, as claimed by the learned advocate for the appellant may be awarded. It was submitted that even when the disability suffered by the appellant is only to the extent of 8%, and the expenses towards medical treatment is only to the tune of Rs.2,647.65, amount awarded by the Tribunal under the head of Pain, Shock and Suffering viz., Rs.3,000/- is also sustainable. It was thus submitted that the Tribunal's award may kindly be sustained.

12. Having heard learned advocates for the respective parties, this Court proceeds to decide the present appeal in terms appearing hereinafter.

13. The points of determination which arise for consideration of this Court in the present matter are as follows:

1. Whether the negligence of 50%, attributed to the appellant in the present case, is correct? If not, what would be the actual negligence liable to be attributed to the appellant?
2. Whether the Tribunal has correctly assessed the compensation liable to be awarded to the appellant? If not, what would be the compensation liable to be

awarded to the appellant?

14. At the outset, it may be noted that for the negligence, the Tribunal has stated that it was a head-on collision. However, it may be noted that in the present case, the affidavit of examination-in-chief of the appellant (original claimant) in terms states that he was traveling on the correct side of the road and that it was the offending vehicle – luxury bus which had veered towards the vehicle of the appellant and had caused a collision. Now, to check the veracity of such assertion, this Court is inclined to look into the corresponding FIR and Panchnama. It may be noted that the FIR has been lodged by the victim himself, wherein it has been stated by the victim that it was the offending vehicle – the luxury bus, which had veered towards the wrong side and caused the accident. Looking to the Panchnama, again, it may be seen that the road was 16 ft. wide and the offending vehicle - luxury bus is stated to be lying on the road itself. The Panchnama further indicates that the other vehicle i.e., the vehicle in which the appellant was traveling, was also lying nearby. Thus, it can be seen that after the accident, the vehicles had not been moved.

15. Under the Panchnama, the bus is stated to be lying in the middle of the road. Naturally therefore, on the left side of the bus, there will be at least a gap of about 5 to 7 ft. for the bus to be said to be lying in the middle of the road. Again, as far as the damage that the accident has caused to the bus, it can be seen that the damage is on the front part of the vehicle, though in the Panchnama, it has been described as a damage towards the driver side. Now, “damage to the driver side” could be construed as follows:

- (a) It could be damage on the front part of vehicle, towards the driver side i.e., towards the right hand side of the front part;
- (b) It could be damage on the right side of the bus (where the door from which the driver usually boards the bus is situated) as that part of bus also would be towards the right hand side of the driver.

16. However, no damage is reflected on the said door, and therefore, it can be deduced that the accident so occurred that there was a damage on front part of the bus, towards the side where the driver sits. Insofar as the damage to the car is concerned, the damage is occurred towards the bonnet, engine and the door towards the driver side. Thus,

the impact was such that it damaged not only the bonnet and the engine but also the door towards the driver.

17. Considering that the bus was lying in middle of the road and that the damage was towards the side of the driver of the luxury bus, it can be deduced that it was the bus which veered towards the right, causing the accident. Thus, the negligence of the driver of the car (present appellant) is liable to be reduced to 10% only. This would be more reasonable and practical assessment of the negligence attributed to the driver.

18. Insofar as the quantum is concerned, the yearly income of the appellant is not disputed to the extent of Rs.2,80,000/-, as assessed by the Tribunal. However, to that, prospective income to the tune of 40%, is liable to be awarded in terms of the judgment in case of **Pranay Sethi**. Relevant paragraph of the judgment in case of **Pranay Sethi (supra)** is quoted hereinbelow for the ease of reference:

59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be

regarded as the necessary method of computation. The established income means the income minus the tax component.

19. Prospective income, when factored to the tune of 40%, the yearly income would be Rs.3,92,000/- (calculated by multiplying Rs.2,80,000 /- with 1.40).

20. Now, the disability. It appears that the endorsement on the disability certificate by the learned advocate for the other side reads as follows:

“Body As Hole (sic., whole) 16% Disability (sic., disability) admitted.

*Sign/-
(B.J. Bhindi)
advocate
D.8/1/10*

*seen
signature/-
(S.H. Sachde)
Adv for oppo.
8-1-10”*

21. The advocate, Ms. S H Sachde was a learned advocate for the Insurance Company. Her endorsement, as can be seen, is only, “seen”. The same merely indicates that she, as an advocate for the Insurance Company has become aware of the “inclination” of the learned advocate for the applicant to limit the disability of the injured – applicant to 16%.

However, this does not translate to her accepting the so called proposal of the applicant to limit the disability of the applicant at 16%. Despite this factual position, it appears that the applicant did not deem it necessary to examine the doctor issuing the Disability Certificate. This, of course, is to the peril of the applicant. It was in these circumstances that the Tribunal has assessed the disability at 8% for the body as a whole. Indeed, it was the Tribunal who had seen the applicant, first hand. Moreover, the cost treatment of the injured applicant too was of a meager amount of Rs.2,648/-. And, it is the disability, post treatment, which the applicant continues to suffer with, which matters. And in absence of the applicant refraining from examining the doctor issuing the Disability Certificate, this Court would be very circumspect in reassessing disability. Hence, this Court too retains the finding of the Tribunal on disability at 8%, for the body as a whole. In the circumstances, the computation on Future Loss of Income would be Rs.5,33,120/- (computed:- Rs.3,92,000/- X 17 X 8%).

22. However, the fact remains that the negligence attributable to the appellant has been assessed by this Court at 10%.

Therefore, the total compensation, liable to be deducted would be to the extent of 10%.

23. Insofar as the medical expenses are concerned, the Tribunal has correctly taken the said medical expenses at Rs.2,646/-, for the reason that the bills have been produced by appellant – original claimant at document Exhibit-36. The total whereof is Rs.2647.65, rounded to Rs.2,648/-.

24. Insofar as the compensation on ground of Special Diet and Attendant Charges, there is nothing on the record to indicate that the the appellant was admitted for a prolonged period and would have required for attendant charges. However, the fact remains that for the treatment and the nature of injuries as assessed by Tribunal, the Tribunal has awarded attendant charges to the tune of Rs.6,000/-. Therefore, this Court is inclined to sustain the same.

25. Similarly, for an accident which had occurred in the year of 2002, the amount of Pain, Shock and Suffering has been assessed by the Tribunal at Rs.3,000/- which, this Court, in the overall circumstances of the matter, is inclined to award at Rs.10,000/-.

26. Accordingly the total compensation would be as follows:

Sr. No.	Particulars	Amount awarded by the Tribunal (in Rs.)	Amount determined by this Court (in Rs.)
1	Yearly Income	2,80,000/-	2,80,000/-
2	Prospective Income	NIL	40%
3	Multiplier	17	17
4	Disability	8%	8%
5	Future Loss of Income	3,80,800/-	Rs.5,33,120/- (Rs.3,92,000/- X 17 X 8%)
6	Special Diet and Attendant Charges	6,000/-	6,000/-
7	Medical Expenses	2,646/-	2,648/-
8	Pain, Shock and Suffering	3,000/-	10,000/-
	TOTAL	3,92,446/-	5,51,768/-
	Negligence :	50%	10%
	TOTAL	1,96,223/-	4,96,591.2 Rounded of to Rs.4,96,591/-
	Less: Amount already awarded by the Tribunal		1,96,223/-
	Enhanced amount awarded by this Court		3,00,368/- Rounded of to Rs.3,00,370/-

27. Accordingly, the amount would come to **Rs. 3,00,370/-**.

The said enhanced amount would incur interest at the rate of 9% per annum from the date of filing of the claim petition and till its actual realization.

28. The aforesaid compensation, shall be deposited by the Insurance Company within a period of eight weeks from the date of availability of the signed copy of this Judgment.
29. On deposit of the said amount, the Tribunal shall forthwith disburse the said amount to the appellant without any need of further creation of FDRs in view of the fact that the accident is of the Year-2002. Applicable court fees shall be paid by the appellant to the extent that it has not been paid so far.
30. The present appeal stands **disposed of** as allowed to the aforesaid extent.
31. R&P be remitted back to the concerned Tribunal.
32. Consequently, civil application, if any, preferred in the Appeal, shall stand disposed of in view of the disposal of this Appeal.

JIGAR RABARI/SUDHIR

(J. L. ODEDRA, J)