IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 1904 of 2015
With
R/FIRST APPEAL NO. 1902 of 2015
With
R/FIRST APPEAL NO. 1903 of 2015

FOR APPROVAL AND SIGNATURE:
HONOURABLE MS. JUSTICE NISHA M. THAKORE

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Approved for Reporting	Yes	No
		No

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HARSHABEN MUKESHBHAI DOBARIYA
Versus
MAHESHBHAI GOKALBHAI LODHARI & ORS.

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Appearance:
MR VISHAL C MEHTA(6152) for the Appellant(s) No. 1
MR PALAK H THAKKAR(3455) for the Defendant(s) No. 4
MR SUNIL B PARIKH(582) for the Defendant(s) No. 2
RULE SERVED for the Defendant(s) No. 1,3

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CORAM:**HONOURABLE MS. JUSTICE NISHA M. THAKORE**
Date : 02/04/2026

COMMON ORAL JUDGMENT

1. All these captioned appeals are arising out of common judgment and award dated 24th April 2015 passed by the learned Motor Accident Claim Tribunal & 2nd Additional District Judge, Jamnagar in Motor Accident Claim Petition Nos.58 of 2009, 786 of 2008, and 57 of 2009 respectively. Since the facts involved and the claim petitions being decided by common judgment and award, all these captioned appeals are heard together and decided by this common judgment.

2. **First Appeal No.1902 of 2015** is filed at the instance of the original claimants under Section 173 of the Motor Vehicle Act, 1988, praying for enhancement of the amount of compensation to the tune of Rs.2 lakhs as against the compensation awarded of Rs.5 lakhs with interest at the rate of 7.5% and proportionate cost to be realized from the original opponents jointly and severally.

2.1. **First Appeal No.1903 of 2015** is preferred at the instance of the original claimants under Section 173 of the Motor Vehicle Act, 1988, praying for enhancement of the amount of compensation to the extent of Rs.2 lakhs as against the awarded compensation of Rs. 4,03,081/- with interest at the rate of 7.5% from the original opponents jointly and severally.

2.2. **First Appeal No.1904 of 2015** is preferred at the instance of the original claimants under Section 173 of the Motor Vehicle Act, 1988, praying for enhancement of the amount of compensation to the extent of Rs.1,42,890/- as against the awarded compensation of Rs.57,110/- with interest at the rate of 7.5%.

3. In order to appreciate the merits of the appeals, considering the limited challenge involved in the captioned appeals, since the issue of negligence of the offending vehicles vis-a-vis the liability of the respective opponents, in absence of any appeal being filed by the original opponents, having attained finality, this Court is not entering into the facts of the occurrence of accident and the findings and reasons assigned by the Tribunal on the issue of negligence and liability hereby stands confirmed.

4. As regards the quantum of compensation is concerned, learned advocate for the appellant has invited my attention to the findings and reasons assigned by the tribunal and has submitted that considering the fact that in First Appeal Nos.1902 and 1903 of 2015, deals with case of minor deceased and minor injured claimant involved, the amount of compensation under the head of loss of dependency is required to be revisited in light of the recent judgment of the **Hon'ble** Supreme Court in the case of **Hitesh Nagjibhai Patel Vs. Bababhai Nagjibhai Rabari** reported in **2025(4) GLH 470.** Learned advocate has submitted that it is well-settled principle that even in case of minor victim of the

accident, the Courts are at liberty to follow the minimum wages as prescribed for skilled workmen considering the year of accident for the purpose of determination of the loss of dependency/future loss of income. It was submitted that admittedly the accident had taken place on 12th November 2008 and the minimum wages prevailing of a skilled workman as on the date of accident was Rs.3000/-. Learned advocate had further urged this Court to reconsider the quantum of compensation under the conventional heads in case of minor deceased of First Appeal No.1902 of 2015 in terms of the well-settled principles laid down by the honorable Supreme Court in the case of **National Insurance Company Limited versus Pranay Sethi** reported in **2017 (16) SCC 680**. It was therefore submitted that the appeal may be allowed by enhancing the total amount of compensation from Rs.2,66,000/- to Rs.7,23,076/-.

4.1. It was further submitted that as regards the future loss of income in case of minor injured of First Appeal No. 1903 of 2015, considering the disability of 25% of body as a whole and yearly income of the minor as Rs.15,000/- per annum by applying multiplier of 15, the future loss of income may be determined as Rs.56,250/-. Under the head of pain, shock, and suffering, the attention of this Court was invited to the multiple injuries sustained by the minor at the age of 5 years due to accident. Considering the extended medical treatments and hospitalization, learned advocate had prayed for sum of Rs.3 lakhs under the head of pain, shock, and suffering instead of Rs.25,000/- as awarded by the Tribunal. The enhancement was also sought for under the head of attendant charges and special diet to the extent of Rs.10,000/- instead of Rs.7,500/- as awarded by the Tribunal. As regards the amount of compensation awarded under the head of medical expenses and transportation expenses are concerned, the same is not disputed. The First Appeal No. 1903 of 2015, the appellant has therefore prayed for enhancement of total amount of compensation to the tune of Rs.6,26,831/- instead of Rs.4,03,081 with interest and proportionate cost.

5. As regards First Appeal No.1904 of 2015 is concerned, learned advocate had invited my attention to the findings and reasons assigned by the Tribunal while determining the future loss of income. It was submitted that the income tax returns produced on record at Exhibit 62 to 64 were considered by

the Tribunal; however, while assessing the income of the claimants, the Tribunal has committed grave error in ignoring the other sources of income being included in the gross income as reflected in the ITR. According to learned advocate, considering the aforesaid incomes other than the salary as reflected in the ITR of Assessment Year 2005-06 (Exhibit 62), Assessment Year 2006-07 (Exhibit 63), and Assessment Year 2007-08 (Exhibit 64), the average income of the deceased comes to Rs.92,820/- per annum instead of Rs.20,933/- as determined by the Tribunal. Considering the aforesaid average income of the claimant as Rs.92,820/- per annum, the monthly income of the claimant which is required to be considered as Rs.7,735/- instead of Rs.1,750/-. Considering the age of the claimant and her vocation, in view of the settled principles, the addition of future rise of income to the extent of 40% is required to be considered of the established income which comes to Rs.3,094/-. Accordingly, the prospective income of the deceased is required to be redetermined as Rs.10,829/- instead of Rs.1,750/-. Applying disability of 5% and multiplier of 17, the future loss of income is required to be computed as Rs.1,10,360/- instead of Rs. 18,360/- as determined by the Tribunal. Learned advocate had fairly submitted that the amounts awarded under the remaining heads which is pain, shock, and suffering, medical expenses, special diet and transportation expenses are not disputed and the same may be considered while determining the total amount of compensation. He has lastly submitted that the actual loss of income may also be appropriately reconsidered as Rs.7,735/- for one month instead of Rs.1,750/- being the income determined by the Tribunal. Learned advocate had therefore urged this Court to allow the appeal by holding the original claimant entitled to seek recovery of total amount of compensation of Rs.1,55,095/- instead of Rs.57,110/- as awarded by the Tribunal, with interest and proportionate cost.

6. The aforesaid submissions made by learned advocate appearing for the appellants- original claimants has been vehemently objected by the learned advocates appearing for the respective respondents Insurance Company. The learned advocates have at the outset fairly submitted that the Insurance Company has not preferred any appeal against the impugned judgment and award. However, considering the findings and reasons assigned by the Tribunal, the amount of compensation determined is just and reasonable in light of the

facts of the case and the evidence brought on record, which calls for no interference by this Court in the present set of appeals. It was submitted that considering the fact that the deceased minor was one month, the Court has awarded fair and just amount of lump sum compensation and the minimum wages prescribed and the principles with regard to the minimum wages to be applied in case of minor may not be strictly followed in case of infant in the peculiar facts of the case where the deceased was aged one month old. Learned advocates have also disputed the multiplier of 18 to be applied in the case of injured minor of First Appeal No.1903 of 2015 as according to them the schedule considered in the case of **Sarla Verma versus Delhi Transport Corporation** reported in **2009 (6) SCC 121**, the multiplier scale starts from the age group of 15 to 20 years. According to learned advocate at the most, it would be appropriate to adopt multiplier of 15 in the facts of the case where admittedly the minor victim of the accident of First Appeal No.1903 of 2015 was 5 years old at the time of accident. Learned advocates have further submitted that the Tribunal is guided by the evidence in the nature of ITRs produced on record for the purpose of determining income of the injured claimant of First

Appeal No.1904 of 2015. Learned advocates have therefore urged this Court not to allow the present appeals.

7. I have heard learned advocates appearing for the respective parties and have also perused the findings and reasons assigned by the Tribunal while reconsidering the issue of quantum of compensation in the respective claim petitions. The core contention which is raised for consideration of this Court as regards the quantum of compensation is the income of the deceased injured claimant of the motor vehicle accident to be considered in case of minor. The aforesaid issue is no more res integra in view of the recent decision of the Hon'ble Supreme Court in the case of **Hitesh Nagjibhai Patel (supra)** as relied upon by the learned advocate for the appellan*t.* In the aforesaid decision the facts of the case suggest that the deceased was aged 8 years and while he was standing on the road side, he had met with an accident and had sustained severe injuries which had resulted into permanent disability. The claim petition was preferred under Section 166 of the Act 1988 praying for compensation to the tune of Rs.10 lakhs before the Tribunal. As can be noted from the facts of the case, the accident took

place way back in the year 2012. The Tribunal while adjudicating the claim petition held the original respondents jointly and severally liable to pay compensation and bearing in mind 30% permanent disability has awarded compensation mainly under the head of pain, shock and suffering, loss of earning of parents, medical expenses and future medical expenses. In absence of any future loss of income being considered, the claimants being aggrieved have approached in appeal before the High Court praying for enhancement. The High Court was guided by the decision rendered by the Hon'ble Supreme Court in the case of **Mallikarjun vs. Divisional Manager, National Insurance Company Limited and another** reported in (**2014) 14 SCC 396** and had thereby awarded lump sum amount of compensation of Rs.8,65,00*0*- considering the disability of 30%. The claimants being dissatisfied with the same have approached in appeal before the Hon'ble Supreme Court. The Court while examining the quantum of compensation noted that a minor child who suffers death or permanent disability in a motor accident, cannot be placed in the same category as a non-earning individual for the purpose of assessing the amount of compensation because the child was not engaged in gainful employment at the time of accident. The Court was thus of the view that even in cases involving minor child who suffers death or permanent disability in a motor vehicle accident, the head of loss of income ought to be adopted by considering the minimum wages payable to a skilled workman as notified for the relevant period in the respective States where the cause of action arose. The Hon'ble Supreme Court had referred to its earlier decision in the case of **Kajal vs. Jagdish Chand and another** reported in **(2020) 4 SCC 413** and **Baby Sakshi Griola vs. Manju Ahmed Simon and another** reported on **2024 SCC online SC 3692**. Thus, the Court has applied minimum wages for the purpose of determination of loss of income / future earning due to disability considering the fact that in year 2012 the minimum wages prevailing in the case of skilled workman. It would be also required to be noted that while undertaking such exercise the Court has applied multiplier of 18 which is the minimum multiplier provided in the multiplier scale in the schedule considered in the case of **Sarla Verma** (**supra**).

8. Considering the aforesaid principles laid down by the Hon'ble Supreme Court in the facts of the case, noticing the

fact that in **First Appeal No.1902 of 2015** the victim of the accident was an infant aged 1 month, and considering the social background of the family, this Court is inclined to consider the loss of dependency as lump sum amount of Rs.4 lakhs instead of Rs.1 lakh as awarded by the Tribunal. As regards the amount of compensation prayed for under the conventional heads are concerned, noticing the fact that the amount of Rs.25,000/- has been awarded towards loss of love and affection, the same is adjusted and reconsidered under the head of loss of consortium. Since the claimants are the parents of the minor victim of the accident, the loss of filial consortium is determined as Rs.96,800/- in view of the settled principles laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi (supra)**. The amount of compensation under the head of funeral expenses is redetermined as Rs.18,150/- instead of Rs.5,000/- as awarded by the Tribunal. The amount of compensation of loss of estate is additionally considered and fixed as Rs.18,150/-. In absence of any challenge being made with regard to the amount of compensation awarded under medical expenses are concerned, the same is reaffirmed as Rs.1,36,376/-. Considering the fact that the deceased infant had struggled for 4 days while undergoing medical treatment in the hospital and had unfortunately succumbed to the fatal injuries on 16th November 2008, the amount under the head of pain, shock and suffering is determined as Rs.25,000/-.

9. As regards First Appeal No.1903 of 2015 is concerned, considering the undisputed facts that the injured claimant was a minor aged 5 years, following the principles laid down by the Hon'ble Supreme Court in the case of **Hitesh Nagjibhai Patel (supra)**, and noticing the date of accident as 12th November 2008, the monthly income of the injured minor is redetermined as Rs.3,000/- instead of Rs.1,250/- as appreciated by the Tribunal. The disability of the deceased is accepted as 25% of body as a whole. Following the principles laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi (supra),** the addition of future rise at the rate of 40% can be considered for the purpose of assessment of the future earnings due to disability. Applying the multiplier of 18 as considered in the case of **Hitesh Nagjibhai Patel (supra)**, the loss of future earnings of the injured claimant due to disability is assessed as Rs.3,000/- X 40% = Rs.4,200/- X 25% disability = Rs.1,050/- X 18 X 12 = Rs.2,26,800/-.

Considering the nature of injuries sustained by the minor and the period of hospitalization undergone, the same is determined as Rs.30,000/- instead of Rs.25,000/-. In absence of any challenge being made with regard to the medical expenses, the same are hereby confirmed as Rs.3,01,831/-. The expenses incurred towards attendant charges, special diet are enhanced from Rs.7,500/- to Rs.10,000/- each. In absence of any dispute being raised with regard to transportation expenses, the same are hereby confirmed as Rs.5,000/-.

10. So far as First Appeal No.1904 of 2015 is concerned, on re- appreciation of the contents of ITR’s produced on record at Exh.62 to 64, it transpires that the Tribunal committed grave error in ignoring the income reflected under the other sources. The details of the profit and loss account has been appended with the ITR, as rightly pointed out by the learned advocate for the appellant- original claimant. Considering the income from other sources, the average income for the aforesaid three assessment year of the original claimant comes to Rs. 92820/- which comes to Rs.7735/- per month. Considering the aforesaid established income for the purpose

of loss suffered towards future earning is concerned, following the well settled principle laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi (supra),** noticing avocation of the injured claimant, the case of the claimant would fall in the category of self employee. Bearing in mind the age of the claimant as 30 years four months as evident from the Pan Card produced on record, wherein the date of birth reflected as 1.7.1978 i.e. below the age of 40 years, the addition of future rise to the extent of 40% is required to be considered for the purpose of determination of just and reasonable amount of compensation. The Tribunal has rightly applied multiplier of 17 in the facts of the case. Considering the aforesaid components and bearing in mind the 5% permanent disability sustained by the injured claimant, the future loss of income is determined as Rs.1,10,360/-. Similarly, the actual loss of income for the period of one month is enhanced from Rs.1750/- to Rs.7735/-. In absence of any challenge being made of the amount of compensation awarded under the other heads, the same are hereby confirmed.

11. For the reasons recorded above, the total amount of compensation is redetermined as under:

First Appeal No.1902 of 2015

Particulars	Awarded by Tribunal (Rs.)	Awarded by this Court (Rs.)
Dependency benefit	1,00,000/-	4,00,000/-
Loss of filial consortium / love of children	25,000/-	96,800/-
Medical Expenses	1,36,376/-/-	1,36,376/-
Funeral expenses	5,000/-	18,150/-
Loss of estate	**-**	18,150
Pain, shock and suffering		25,000/-
Total Amount of compensation	**2,66,000/-**	**6,94,476/-**
Enhanced amount of compensation		**4,28,476/-**

First Appeal No.1903 of 2015

Particulars	Awarded by Tribunal (Rs.)	Awarded by this Court (Rs.)
Dependency benefit	56,250/-	2,26,800/-
Medical Expenses	3,01,831/-	3,01,831/-
Transportation expenses	5,000/-	5,000/-
Healthy food and diet	7500/-	10,000/-
Attendance Expenses	7500/-	10,000/-
Pain, shock and suffering	25,000/-	30,000/-
Total Amount of compensation	**4,03,081/-**	**5,83,631/-**

Enhanced amount of compensation		**1,80,550/-**

First Appeal No.1904 of 2015

Particulars	Awarded by Tribunal (Rs.)	Awarded by this Court (Rs.)
Loss of future income	18,360/-/-	1,10,360/-
Actual loss of income	1750/-	7735/-
Pain, shock and suffering	25,000/-	25,000/-
Medical expenses	9,000/-	9,000/-
Healthy Food	1500/-	1500/-
Transportation expenses	1500/-	1500/-
Total Amount of compensation	**57,110/-**	**1,55,095**
Enhanced amount of compensation		**97,985/-**

12. For the foregoing reasons the captioned appeals are allowed. The impugned judgment and award dated 24th April 2015 passed by the learned Motor Accident Claim Tribunal (Auxiliary) at Jamnagar in MACP No.58 of 2009 (First Appeal No.1902 of 2015), MACP No.786 of 2008 (First Appeal No.1903 of 2015) and MACP Number 57 of 2009 (First Appeal No.1904 of 2015) are hereby modified by holding the original claimants of respective claim petition entitled to seek

recovery of sum of **Rs.4,28,476/-** (**First Appeal No.1902 of 2015), Rs.1,80,550/- (First Appeal No.1903 of 2015)** and **Rs.97,985/-** (**First Appeal No.1904 of 2015)** with interest at the rate of 7.5% from the date of filing of claim petition till its actual realization from the original opponents, jointly and severally. Since the First Appeals are allowed, the respective respondent- Insurance Companies in the respective appeals are directed to deposit the enhanced amount of compensation with interest and proportionate cost as awarded by this judgment, within a period of six weeks from the date of receipt of certified copy of this order. On deposit of the aforesaid amount of compensation, the Tribunal shall proceed with the release and disbursement of the entire amount of compensation in favor of the respective claimants subject to due verification and strictly adhering to the guidelines of the Hon'ble Supreme Court in this regard. The Tribunal shall also examine the issue of court fees, if any, to be realized before parting with the amount of compensation in favour of the claimants.

12. With these observations, the captioned appeals are allowed in the aforesaid terms. The record and proceedings

are directed to be sent back to the concerned Tribunal forthwith with the writ of this judgment.

sd/-
(NISHA M. THAKORE,J)

RATHOD KAUSHIKSINH