IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 2035 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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GITABA PATHUBHA JADEJA & ORS.
Versus
BHUPATBHAI N.SOLANKI & ORS.

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Appearance:
MR ARVIND K THAKUR(2322) for the Appellant(s) No. 3
MR DV BHAVSAR(5575) for the Appellant(s) No. 1,2,4,5
MS HETABEN H SHAH(1797) for the Appellant(s) No. 3
DELETED for the Defendant(s) No. 1
MR SUNIL B PARIKH(582) for the Defendant(s) No. 3,6
RULE SERVED for the Defendant(s) No. 2,4,5

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CORAM:**HONOURABLE MS. JUSTICE NISHA M. THAKORE**
Date : 25/03/2026
ORAL JUDGMENT

1. Heard Ms. Hetaben Shah, learned advocate appearing for the appellants. Mr. Sunil B. Parikh learned advocate has appeared on behalf of respondent Nos.3 and 6. The notice of admission of rule is reported to have been duly served upon respondent Nos.2, 4, and 5, however, no appearance has been entered. The respondent No.1 has been deleted from the array of parties. With the able assistance of learned advocates on record, the appeal is finally heard.

2. The present appeal is filed under section 173 of the Motor Vehicle Act, 1988 (hereinafter referred to as the “Act, 1988”), at the instance of the original claimants, being aggrieved and dissatisfied with the judgment and award dated 29th November 2013, passed by the learned Motor Accident Claim Tribunal (Auxiliary) at Bhavnagar in Motor Accident Claim Petition No.721 of 1999. 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, thereby holding them entitled to seek recovery of compensation of Rs.5,23,600/- with interest at the rate of 7.5% per annum from the date of filing of claim petition till its actual realization with proportionate cost, from the original opponent Nos.1, 2, 4, and 5, jointly and severally. The Tribunal has further held the original opponent No. 4- driver of the Max Metador responsible for causing the accident and has thereby held liable to satisfy the award. At the same time, the Tribunal has exonerated the original opponent Nos.1, 5 and 6 i.e. the driver, owner, and insurer of the truck from the liability to make any payment of compensation. In the process, the Tribunal has not entirely accepted the claim of the original claimants praying for compensation of Rs. 7 lakhs. Hence, the

present appeal seeking enhancement of the amount of compensation.

3. Learned advocate Ms. Shah appearing for the appellants has assailed the impugned judgment and award mainly on the issue of quantum of compensation. She has invited my attention to the findings and reasons assigned by the Tribunal and has submitted that despite cogent material in the nature of evidence of the claimant, who is the widow of the deceased being examined and having deposed categorically before the Tribunal about the income of Rs.6,000/- being earned by the deceased by way of masonry work and despite the income certificate issued by the Sarpanch of the village Vavdi Gram Panchayat, Taluka Jamkandorna at Exhibit 63 as well as the income certificate issued by labour contractor at Exhibit 64 being produced on record. Referring to aforesaid documents as well as the deposition of the claimant, learned advocate had submitted that the Tribunal committed grave error in not fixing the income of the deceased as Rs.6,000/- per month. It was further submitted that the deceased was aged 32 years at the time of the accident. The aforesaid fact has been corroborated by producing on record the school leaving

certificate issued by Vavdi Taluka School of Jam Kandorna at Exhibit 61 acknowledging the date of birth of the deceased as 19th July, 1967 whereas the date of accident is 25th June, 1999. She has further submitted that considering the fact that the deceased had expired at young age, the Tribunal ought to have considered fair increase in the prospective income of the deceased. It was further submitted that the Tribunal has committed error in adopting multiplier of 16 instead of 18. Learned advocate has therfore, urged to reconsider the amount of compensation towards dependency benefit. Learned advocate had also urged to reconsider the amount of compensation awarded under the conventional heads. By relying upon the landmark decision of Hon’ble Supreme Court in the case of **National Insurance Company Limited versus Pranay Sethi** reported in **(2017) 16 SCC 680**. It was pointed out that the deceased was survived by the widow, two children and the aged mother and therefore, appropriate rise in the amount of compensation under the head of loss of consortium be considered. Similarly, appropriate rise may also be considered towards loss of estate and funeral expenses in light of the well-settled principles laid down by the Hon’ble Supreme Court in this regard. Lastly, learned advocate has urged this Court to award interest at the rate of 15% on the enhanced amount of compensation as well. In support of her submission, learned advocate had placed reliance upon the unreported decision of this court in the case of **Oriental Insurance Company Limited versus Chetnaben Mahendrabhai Thacker and others**, rendered in First Appeal No.4397 of 2007 judgment dated 3rd of November 2014 as well as in the case of **Manoj Rambhai Gadhvi versus Vaghasiya Balubhai Khodabhai** reported in **2000 (3) GLR 1985.** The attention of this court was invited to the facts of the case. It was submitted that in the case of **Chetnaben Mahendrabhai Thacker (supra)**, the accident had taken place on 1st of September 1996. The Tribunal had upon appreciation of the evidence on record awarded amount of compensation with interest at the rate of 15% per annum from the date of filing of claim petition till 30th of June 1997, by keeping in mind the rate of interest prevailing in the market. Thereafter, the Tribunal had considered rate of 12% interest per annum from 1st July, 1997 to 31st December, 2000 and at the rate of 9% per annum from 1st November, 2011 onwards. It was further submitted that the Hon’ble Division Bench while passing the aforesaid order had placed reliance upon the earlier view taken by the Hon’ble Division Bench in the case of **Manoj Rambhai Gadhvi (supra)**. The attention of this Court was invited to the only question which had appealed to the Hon’ble Division Bench that was with regard to the rate of interest awarded by the Tribunal at the rate of 15% per annum from the date of filing of claim petition till the payment. The challenge was made by the Insurance Company together with the owner and driver being joined as appellant mainly disputing the rate of interest of 15% per annum being excessive. The Court in detail had examined the aforesaid contention as well as also culled out the principles on which the discretion is to be exercised by the Tribunal while awarding rate of interest on the amount of compensation. Relying upon the decision rendered in the case of **GSRTC versus Prabhatsinh Rupsinh Parmar** rendered in First Appeal No.98/1999 decided on 23rd September 1999 dealing with the principles on which such discretion is to be exercised, the Hon’ble Division Bench concluded that the interest awardable by Tribunals and Courts though discretionary, must have some relationship to the interest rate generally prevailing in the economy, in the interest of uniformity, consistency and stability, in the awards/decrees on which interest is to be awarded. Having noted the aforesaid principle, the Court has further considered the fact that though the accident had taken place in July 1994, the claim petition being filed in the same year, the interest prevailing at the relevant point of time up to 30th June 1997 was 15% and 12% thereafter. Referring to aforesaid principles, learned advocate has therefore urged that following the same principle and considering the fact that the accident had taken place on 25th June 1999, this Court may reconsider and enhance the rate of interest from 7.5% to at least 12% on the amount of compensation. She has therefore prayed to allow the present appeal.

4. Per contra, learned advocate Mr. Sunil B. Parikh appearing for the respondent Nos.3 and 6 has vehemently objected to the aforesaid submissions made by learned advocate for the appellant. Learned advocate had placed heavy reliance upon the findings and reasons assigned by the Tribunal while answering the issue of quantum of compensation. According to learned advocate, in absence of any cogent material being brought on record, the Tribunal has rightly followed the yardstick of minimum wages in the facts

of the case, considering the avocation of the deceased. The attention of this Court was invited to the findings and reasons assigned by the Tribunal in not considering the income certificate produced on record at Exhibit 63 and 64. It was submitted that in absence of any corroborative material being brought on record, the Tribunal has rightly discarded the aforesaid material to be treated as a direct proof of income for the purpose of determination of the dependency benefit. It was further submitted that considering the judgment of the Hon'ble Supreme Court in the case of **Rajesh versus Rajbir Singh** reported in **JT 2013 (8) SC 288**, the Tribunal has considered accordingly the future rise at the rate of 50% of the income determined of Rs.2100/-. However, learned advocate had submitted that in view of the settled principles laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi (supra)**, though the appeal has not been preferred by the respondent Insurance Company, the aforesaid future rise in the income is required to be reconsider so as to determine just and reasonable amount of compensation. He has therefore submitted that in fact, considering that the deceased was self-employed and his age determined being 32 years which is below 40 years, at the most 40% future rise can be considered for the purpose of determination of dependency benefit. As regards the multiplier adopted by the Tribunal, learned advocate had drawn my attention to the schedule considered by the Hon'ble Supreme Court in the case of **Sarla Verma versus Delhi Transport Corporation** reported in **(2009) 6 SCC 121**. According to learned advocate, the selection of multiplier as indicated in the table in the aforesaid judgment read with para 42 of the judgment, the Tribunal has rightly considered multiplier of 16 by considering the age of the deceased in the age group of 31 to 35 years. As regards the deduction applied towards the personal and living expenses of the deceased, learned advocate had submitted that noticing the fact that the deceased was survived by four members in the family, the Tribunal has rightly considered 1/4th deduction, which calls for no interference. By making aforesaid submissions, learned advocate has submitted that in fact the dependency loss is required to be reduced as against the awarded amount of Rs.4,53,600/-. As regards the submission made by learned advocate for reconsidering the amount of compensation under the conventional heads are concerned, learned advocate had submitted that appropriate amount may be awarded in light of the well-settled principles laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi (supra)**. He has however objected to the grant of interest at the rate of 12% to 15% as prayed for on the aforesaid amount of compensation mainly on the ground that the aforesaid law was settled pursuant to the pronouncement made by the Constitutional Bench in the year 2017. He had fairly pointed out that the Court has expressed to extend 10% rise on the amount fixed under the conventional heads at the end of every three years from the date of such judgment. However, awarding interest at the rate of 12% to 15% which has been considered by the Hon'ble Division Bench in the judgments relied upon by the learned advocate for the appellant, would amount to unjust enrichment. According to learned advocate, this would amount to awarding penal interest. The Supreme Court has cautioned the Courts and the Tribunals to exercise the discretion to award interest in judicial manner and not at mere whims or caprice of the Courts. In support of his argument, reliance was placed on the decision of Hon'ble Supreme Court in the case of **National Insurance Company Limited versus Keshav Bahadur** reported in **(2004) 2 SCC 370**. Learned advocate has therefore urged this Court to not to entertain the appeal, as according to him, the amount awarded by the Tribunal is just and reasonable in the facts of the case and the evidence brought on record.

5. I have heard learned advocates appearing for the respective parties and I have also perused the findings and reasons assigned by the Tribunal while answering the issue of quantum of compensation. I have also re-appreciated the evidence on record in order to appreciate the arguments advanced. The only question which arises for consideration of this Court in the present appeal is as to whether the Tribunal committed any error in awarding the amount of compensation of sum of Rs.5,23,600/- with interest at the rate of 7.5% from the date of filing of claim petition i.e. 7.8.1999 till its actual realization in the facts of the case and the evidence brought on record, while examining the claim petition preferred by the original claimants under Section 166 of the Motor Vehicle Act, 1988?

6. Before adverting to the merits of the case, it would be appropriate to note that the findings and reasons assigned by the Tribunal as regards the involvement of the vehicle, the

negligence of the offending vehicle, the liability of the Insurance Company i.e. the issue of negligence and liability has remained unchallenged, in absence of any appeal being filed by either of the respondents and has therefore attained finality.

7. Having noted so, as regards the quantum of compensation is concerned, the core contention which has been raised by learned advocate for the appellants for enhancement is the income of the deceased being determined on lower side. As evident from the bare appreciation of the pleadings made by the claimants in the original claim petition as well as her deposition at Exhibit 47, it is categorically pleaded that the deceased was earning income of Rs.6,000/- by doing masonry work. It is also pleaded that the deceased was aged 32 years at the time of accident and he was hale and hearty and was also a skill laborer. It was therefore pleaded that the deceased had better prospects to earn higher income in the future. In support of their aforesaid pleadings, the claimants have produced on record the income certificate at Exhibit 63 and 64. On bare appreciation of the aforesaid two documents, it transpires that the income certificate

acknowledges the fact that deceased was earning Rs.6,000/- per month by doing masonry work. The certificate at Exhibit 63 has been issued by the Sarpanch of the Village Panchayat whereas the document i.e. the income certificate at Exhibit 64 has been produced by one Mr. S.G. Gohil, who claims to be the contractor of one Jay Mataji Labour Firm based at Jamkandorana, District: Rajkot. It is required to be noted that except for the aforesaid income certificates being produced on record, the claimant have chosen not to examine the author of such certificates as witness. In absence of any witness being examined, though the aforesaid documents have been admitted as evidence and have been marked as Exhibit 63 and 64, however, in my view, the contents of the aforesaid documents has not been proved by the claimant for the purpose of being read as an evidence. This Court is conscious of the fact that the evidence to be led by the parties in the claim proceedings are to be considered on the touchstone of preponderance. However, as regards the claim of income is concerned, in absence of any corroborative material or any direct proof of income being produced on record, no error can be found with the Tribunal in following the rates of minimum wages notified by the State of Gujarat during the time of accident. I have closely considered the minimum wages notified by the State of Gujarat as prevailing during the time of accident which is Rs.2,000/- per month in case of skill worker between period 1st April 1999 to 30th of September 1999 whereas admittedly the accident has taken place on 25th June 1999. The Tribunal has considered awarding income of Rs.2,100/- considering the nature of the work of the deceased. Considering overall material on record, this Court is of the view that the Tribunal has rightly determined the income of the deceased as Rs.2,100/- at the time of accident.

8. This brings me to the quantum of compensation to be considered under the head of loss of dependency. The birth certificate of deceased has been produced on record at Exhibit 61 which is issued by the Principal of Vavdi Taluka School Jamkandorana, Dist. Rajkot wherein the date of birth of the deceased is indicated as 19th July 1967, whereas the accident has taken place on 25th June 1999. Thus, on the date of the accident, the age of the deceased was 32 years. Accordingly, the Tribunal has followed the table provided in the judgment of Hon’ble Supreme Court in the case of **Sarla Verma (supra)** and has adopted multiplier of 16 which has

rightly been applied in the facts of the case. Having noted so, as regards the future rise of income is concerned, as can be gathered from the findings and reasons assigned by the Tribunal, the Tribunal has followed the legal principles governing the issue in light of the decision of Hon’ble Supreme Court in the case of **Rajesh** (**supra**) and has considered addition of 50% in the facts of the case. In absence of any appeal being filed, this Court is not inclined to interfere with the same despite the fact that in view of the subsequent decision of Hon’ble Supreme Court in the case of **Pranay Sethi (supra)**, the same is required to be reconsidered as 40%. As regards the deduction to be made towards personal and living expenses of the deceased is concerned, since the deceased was survived by four members in the family, the Tribunal has rightly applied 1/4th deduction following the well-settled principles laid down by the Hon’ble Supreme Court in the case of **Sarla Verma (supra)**. Accordingly, the loss towards dependency has rightly been determined as Rs.4,53,600/- by the tribunal which calls for no interference.

9. As regards the amount of compensation under conventional heads are concerned, in view of the fact that the

claimants have all throughout pursued the matter right from filing of claim petition seeking amount of compensation under the conventional heads and thereafter in the present appeal praying for enhancement, this Court is inclined to apply the principles laid down by the Hon'ble Supreme Court in the subsequent decision in the case of **Pranay Sethi (supra).** Considering the fact that the deceased was survived by the widow, who has lost love, affection, care, and companionship of her husband at young age, shall be entitled to the loss of spousal consortium which is determined as Rs.48,400/-. Similarly, the amount of compensation towards loss of parental consortium in case of two children is redetermined as Rs.96,800/-. The amount of compensation towards loss of filial consortium in case of aged mother is also redetermined as Rs.48,400/-. Thus, the amount of loss of consortium is redetermined as Rs.48,400 multiply by 4 which comes to Rs.1,93,600/- instead of Rs.50,000/- as determined by the Tribunal. Applying the same principles as regards the amount towards loss of estate and funeral expenses are concerned, the same are redetermined as Rs.18,150/- each.

10. This brings me to the rate of interest to be considered on

the aforesaid total amount of compensation. As rightly pointed out by learned advocate for the claimants, the Hon'ble Division Bench of this Court in the case of **Manoj Rambhai Gadhvi (supra)** had an occasion to deal with similar issue as regards the rate of interest awarded by the Tribunal. However, fortunately in the aforesaid case, the Tribunal had fixed the rate of interest as 15% per annum on the amount of compensation awarded from the date of filing of claim petition till its actual payment. The aforesaid rate of interest determined was in reference to the fact that the accident had occurred in July 1994 and the petitions were filed in the same year. The Hon'ble Division Bench noted that as per the economy prevailing in the country, no fault can be found with the approach of the Tribunal in fixing the rate of interest as 15% per annum, which was considered from the date of filing of claim petition i.e. in the year 1994 till 30th June 1997, and thereafter the rate of interest being reduced, the interest at the rate of 12% per annum was awarded for the subsequent period up to realization. It is required to be noted that the aforesaid decision was pronounced by the Hon'ble Division Bench on 2nd of December 1999. Thus, the Hon'ble Division Bench had confirmed the rate of interest as 12% between period 30th of June 1997 to 2nd of December 1999 to be reasonable interest to be awarded in claim petitions arising out of motor accidents. The aforesaid view taken by the Hon’ble Division Bench has been subsequently reiterated by the Division Bench in the case of **Chetnaben Mahendrabhai Thackar (supra)**. It is required to be noted that the facts of the case suggest that the accident had taken place on 1st September 1996. The Tribunal had pronounced the judgment and award on 20th February 2007 in a claim petition preferred in the year 1997, thereby awarding 15% rate of interest per annum on the total amount of compensation from the date of filing of claim petition till 30th of June 1997, and thereafter at the rate of 12% per annum from 1st July 1997 to 31st December 2000, and at the rate of 9% per annum from 1st of January 2011 till the actual payment. It is also required to be noted that the appeal was preferred by the Insurance Company mainly on the quantum of compensation being determined on the higher side. The core contention which was raised before the Hon’ble Division Bench was with regard to the income of the deceased being determined excessively. At the same time, the judgment and award of the Tribunal was also assailed on the question of graded interest awarded by the Tribunal by adopting three different periods of awarding interest by relying upon the prevailing rates. The Hon’ble Division Bench, however, refused to interfere with the aforesaid methodology adopted by the Tribunal by relying upon the decision of Hon’ble Division Bench in the case of **Manojbhai Ram Bhai Gadhvi (supra)**. Thus, the Hon’ble Division Bench while dismissing the aforesaid appeal vide order dated 3rd November 2014 has approved the methodology adopted by the Tribunal of awarding graded interest i.e. 15% per annum for the period from date of filign of claim petiton (1997 till 30th June 1997), thereafter at the rate of 12% per annum from 1st July 1997 to 31st December 2000 and at the rate of 9% per annum from 1st November 2011 till the actual payment (at least upto 3.11.2014). Considering the aforesaid principle in the facts of the case, as regards the amount of compensation is concerned, which also includes the component of the amount of compensation awarded under the conventional heads, this Court is inclined to accept the argument put forward by the claimants as regards the rate of interest. It is required to be noted that the core object of the Motor Vehicle Act is to award just and reasonable amount of compensation so as to put back the victims of the motor vehicle accident to the same position as they would have been in absence of any loss of their dear ones in the motor vehicle accident. Considering the fact that the accident had taken place on 25th June 1999 and the claim petition being filed on 7th August 1999, the Tribunal was not justified in confining the rate of interest as 7.5% on the total amount of compensation from the date of the filing of claim petition till its actual realization. Considering the overall circumstances on record, the claimants are held entitled to interest at the rate of 9% per annum from the date of filing claim petition till its actual realization.

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

Particulars	Awarded by Tribunal (Rs.)	Awarded by this Court (Rs.)
Dependency benefit	4,53,600/-	4,53,600/-
Loss of estate	10,000/-	18,150/-
Funeral Expenses	10,000/-	18,150/-
Loss of consortium	50,000/-	1,93,600/-
Total Amount of compensation	**5,23,600/-**	**6,83,500/-**
Enhanced amount of compensation		**1,59,900/-**

Thus, the original claimants are hereby held entitled to total amount of compensation of **Rs.6,83,500/-**.

12. For the foregoing reasons, the appeal is partly allowed. The impugned judgment and award dated 29th November 2013 passed by the learned Motor Accident Claim Tribunal (Auxiliary) at Bhavnagar in Motor Accident Claim Petition No.721 of 199 is hereby modified by holding original claimants to seek recovery of sum of **Rs.6,83,500/-** with interest at the rate of 9% pa from the date of filing of claim petition till its actual realization with proportionate costs. In absence of any appeal being filed by either of the respondents and any dispute with regard to issue of negligence vis-a-vis liability being raised, the enhanced amount of compensation to the tune of **Rs.1,59,900/-** with proportionate costs and the interest as awarded by this Court is directed to recovered from the original opponent No.3- Insurance Company. The respondent No.3 -Insurance Company is therefore directed to deposit the aforesaid enhanced amount of compensation with proportionate cost and interest within a period of six weeks from the date of the certified copy of this order. On deposit of the aforesaid amount, the Tribunal shall be at liberty to proceed with the release and disbursement of the entire

amount of compensation in favour of the original claimants as per the apportionment order passed by the Tribunal, after due verification and strictly adhering to the guidelines issued by the Hon’ble Supreme Court in this regard. Let, the aforesaid exercise be undertaken by the Tribunal within a period of two weeks from the date of the deposit of the amount of compensation as directed.

13. 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.

sd/-

(NISHA M. THAKORE,J)

RATHOD KAUSHIKSINH