

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 1023 of 2011****With****R/FIRST APPEAL NO. 3262 of 2010****With****R/FIRST APPEAL NO. 1025 of 2011**

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**VAIBHAV VISHNUBHAI PATEL, HEIRS OF DECEASED VISHNUBHAI
PATEL & ANR.**

Versus**SUKHDEVISING BHAJANSINH & ORS.**

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Appearance:

**MS AESHA GANDHI for MR MEHUL SHARAD SHAH(773) for the
Appellant(s) No. 1,2**

DELETED for the Defendant(s) No. 1

MR DAKSHESH MEHTA(2430) for the Defendant(s) No. 3

MR GC MAZMUDAR(1193) for the Defendant(s) No. 5

MR HG MAZMUDAR(1194) for the Defendant(s) No. 5

MR. RUSHANG D MEHTA(6989) for the Defendant(s) No. 3

RULE SERVED for the Defendant(s) No. 4

SERVED BY RPAD (N) for the Defendant(s) No. 2

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CORAM: HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA**and****HONOURABLE MR.JUSTICE J. L. ODEDRA****Date : 02/09/2026****ORAL JUDGMENT****(PER : HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA)**

1. On 29.5.1999, an accident occurred between truck and a Maruti car, as a result of which, the driver of the Maruti car- Vishnubhai Patel, his wife - Kokilaben Patel and out of their two sons Vaibhav & Nikhil, Nikhil were killed at the spot. The surviving son, i.e. Vaibhav, therefore, filed a claim petition seeking compensation for the death of his father, mother and brother.

2. The fact that the accident occurred is not in dispute. It is also not in dispute that a charge-sheet was laid against the driver of the truck. The Tribunal after assessing the evidence came to the conclusion that the driver of the truck was responsible to the extent of 80% and the driver of the car was responsible to the extent of 20%. It, thereafter, assessed the compensation payable for the death of Vishnubhai Patel as Rs.8,63,974/- by taking the annual income as Rs.1,33,371/-. The Tribunal also awarded a sum of Rs.15,98,000/- for the death of Kokilaben by taking the annual income at Rs.1,82,885/-.

3. Being aggrieved by these awards, both the Insurance Company as well as the claimant is in appeal.

4. The Insurance Company is in appeal only in so far as it relates to the award of compensation in respect of Kokilaben and also seeks to contend that the negligence attributed to the owner of the truck to the extent of 80% was incorrect.

5. The claimant, on the other hand, is in appeal contending that the attribution of negligence to the extent of 20% on Vishnubhai Patel, the driver of the Maruti car, was completely wrong and also on the ground that the compensation awarded was inadequate.

6. As far as the aspect of negligence is concerned, the

Tribunal has recorded a finding that the width of the road was wide enough for both the vehicles to pass without any impediments. It has thereafter gone on to observe that both the driver of the truck as well as the driver of the Maruti car were negligent and therefore attributed compensation to the extent of 80% and 20%.

7. In our view, this observation of the Tribunal could not be justified, firstly because the driver of the truck who was an eye witness to the accident and who had obviously a clear sight of the road was not examined in support of the defense of the Insurance Company. Secondly, the occupant of the car who survived, i.e. Vaibhav, was examined and during the course of the cross-examination, a suggestion was made by the Insurance Company itself that the truck driver was responsible for the accident. These two factors by themselves would clearly indicate that the cause of the accident was essentially due to the negligent act of the driver of the truck. It may also be pertinent to notice here that a charge-sheet has also been laid only against the driver of the truck and this only confirms the negligence on his part.

8. In the light of these factors, in our view, the observation of the Tribunal that the driver of the car was negligent to the extent of 20% cannot be sustained and the same is accordingly set aside.

9. As far as the claim for compensation for death of Vishnubhai Patel is concerned, the Tribunal has awarded the following sums.

First Appeal No.1023 of 2011

Income	Rs.1,33,371/-
Deduction (1/3rd)	Rs.44,457/-
Dependency Loss	Rs.88,914/-
Multiplier	X 12
Future Loss of Income	Rs.10,66,968/-
Loss of Estate	Rs.10,000/-
Funeral	Rs.3,000/-
Total	Rs.10,79,968/-
Negligence (20%)	Rs.2,15,994/-
Total Compensation Awarded	Rs.8,63,974/-

10. The income that is ascertained by the Tribunal is on the basis of the IT returns filed by Vishnubhai Patel and therefore, no fault can be attributed to this ascertainment of income. However, it is noticed that future prospects as laid down by the Supreme Court in Pranay Sethi's case has not been added to the income. The multiplier adopted by the Tribunal is 12. Vishnubhai Patel was aged about 38 years as on the date of the accident and, therefore, the applicable multiplier would be 15. The compensation, therefore, payable for the death of Vishnubhai Patel would be as follows:

First Appeal No.1023 of 2011

Income	Rs.1,33,371/-
Prospective Income (40%)	Rs.53,348/-
Total	Rs.1,86,719/-
Deduction (1/3rd)	Rs.62,239/-
Dependency Loss	Rs.1,24,480/-
Multiplier	X 15
Future Loss of Income	Rs.18,67,200/-
Consortium	Rs.52,000/-
Loss of Estate	Rs.19,500/-
Funeral	Rs.19,500/-
Total	Rs.19,58,200/-
Awarded	Rs.8,63,974/-
Additional Compensation	Rs.10,94,226/-

11. As a consequence, the appeal in relation to the compensation payable to Vishnubhai Patel is allowed in part and the compensation is enhanced by a sum of Rs.8,63,974/-. The interest awarded by the Tribunal is 9%.

12. In view of our finding recorded above, the insurer of the truck will alone be liable for payment of the compensation.

13. As far as the claim of compensation of Kokilaben Patel is concerned, the Tribunal has recorded a finding that she was 33 years as on the date of the accident. It has also determined the annual income at Rs.1,82,885/-.

14. Learned counsel for the claimant points out that as per the income tax the returns filed on 4.7.1997 for the

assessment year 1997-1998, the tax return indicated that Kokilaben had an income of Rs.2,10,482/- and she, therefore, submits that the income adopted by the Tribunal would have to be revised.

15. Learned counsel for the Insurance Company does not dispute this assertion but contends that the income tax payable on this amount will have to be deducted.

16. Having regard to the fact that there would be an exemption of payment of income tax upto Rs.2 lakhs and the income declared is only Rs.2,10,482/-, in the peculiar facts of this case, in our view, it will not be necessary to deduct the minor amount of income tax payable on Rs.2,10,482/-. Consequently, the income of Kokilaben is taken as Rs.2,10,482/-.

17. To this future prospects at 40% will have to be added as per the decision rendered in the case of National Insurance Company Ltd. v. Pranay Sethi and others reported in (2017) 16 SCC 680, and a deduction of 1/3rd will have to be made towards personal expenses.

18. A multiplier of 16 will have to be adopted since Kokilaben was 33 years as on the date of the accident.

19. As a consequence, son of Kokilaben, i.e. Vaibhav Vishnubhai Patel, would be entitled to the following sums as compensation:

First Appeal No.1025 of 2011

Income	Rs.2,10,482/-
Prospective Income (40%)	Rs.84,913/-
Total	Rs.2,94,675/-
Deduction (1/3rd)	Rs.98,225/-
Dependency Loss	Rs.1,96,450/-
Multiplier	X 16
Future Loss of Income	Rs.31,43,200/-
Consortium	Rs.52,000/-
Loss of Estate	Rs.19,500/-
Funeral	Rs.19,500/-
Total	Rs.32,34,200/-
Awarded	Rs.15,98,000/-
Additional Compensation	Rs.16,36,200/-

20. As a consequence the appeal of the Insurance Company i.e. First Appeal No.3262 of 2010, stands DISMISSED and the appeals filed by the claimants being First Appeal Nos.1023 of 2011 and 1025 of 2011, are ALLOWED in PART.

21. Ten weeks' time is granted to the Insurance Company to deposit the enhanced amount. The enhanced amount shall be deposited with interest @ 9%, i.e. from the date filing of the claim petition till payment.

22. R & P, if received, to be sent back forthwith.

Sd/-
(N.S.SANJAY GOWDA,J)

Sd/-
(J. L. ODEDRA, J)

OMKAR

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: OMKAR CHHAGANLAL MAHAWAR(HC00201), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 08/09/2026 16:07:48