

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 1731 of 2016****With
R/FIRST APPEAL NO. 1058 of 2016****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

Approved for Reporting	Yes	No

ANITABEN WD/O. PANKAJBHAI DINESHCHANDRA NAYAK & ORS.
Versus
PRADIPKUMAR FULCHAND JAIN [DISMISSED] & ORS.

Appearance:

MR VAIBHAV N SHETH(5337) for the Appellant(s) No. 1,2,3,4
ARUNKUMAR R DAVE(8949) for the Defendant(s) No. 2
DISMISSED FOR NON PROSECUTION for the Defendant(s) No. 1,3
MS DIMPLE A THAKER(6838) for the Defendant(s) No. 4
SHARMISHTA A DAVE(8735) for the Defendant(s) No. 2

CORAM:HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**Date : 07/04/2026****JUDGMENT**

1. Both the captioned appeals are preferred against the impugned judgment and award dated 30.11.2015 passed by the learned Motor Accident Claims Tribunal (Aux.) & 10th [AD-HOC] Additional District & Sessions Court, Ahmedabad Rural at Mirzapur, in M.A.C.P. No. 838 of 2000, whereby the learned Tribunal had partly allowed the Claim Petition and awarded a sum of Rs.5,85,000/- (Rupees Five Lakhs Eighty Five Thousand Only) along with interest at the rate of 9% per annum, from the date of filing of the Claim Petition till its realization, as compensation.

2. First Appeal No.1058 of 2016 has been preferred by the original opponent No.5 – Oriental Insurance Company Limited, thereby challenging the impugned judgment and award on the ground of negligence as well as quantum, while First Appeal No. 1731 of 2016 has been preferred by the original claimants seeking enhancement of the compensation awarded by the learned Tribunal.

3. The succinct facts, which led to the filing of the captioned appeals, as narrated in the Claim Petition are summarized as under:-

- i. On 20.11.2000, Mr. Pankajbhai Nayak (hereinafter referred to as the "**deceased**") was travelling from Valsad to Ahmedabad by driving a Marshal jeep-car bearing registration No.GJ-2K-2920. The said jeep-car was being driven by the deceased at a very moderate speed and on the correct side of the road, by observing traffic rules. When he reached near the place of the accident, original opponent No.1, came by driving a Truck bearing registration No.GJ-1V-3007 from the wrong side in a rash and negligent manner and at an excessive speed, thereby lost control over the steering of his truck, and dashed with the jeep-car driven by the deceased, thereby causing the vehicular accident. As a result of the said vehicular accident, the deceased sustained grievous injuries and he succumbed to the said injuries. The said Marshal Jeep- car driven by the deceased was owned by original opponent No.4 and was insured with Original opponent No.5/ appellant in First Appeal No. 1058 of

2016 - Oriental Insurance Company Limited. In connection with this incident, a complaint being I.CR.No. 12 of 2000 was registered before the Chaklasi Police Station.

- ii. It is also the case of the original claimants before the learned Tribunal that at the time of the vehicular accident, the deceased was aged about 35 years, and he was earning Rs.5,000/- per month by working as a Selling Commission Agent. Therefore, the Original Claimants preferred the Claim Petition before the learned Tribunal seeking compensation to the tune of Rs.10,00,000/-.
- iii. Having been served with the notices/summons of the Claim Petition, original opponent No.3 – Insurer of the Truck and original opponent No.5/appellant in First Appeal No.1058 of 2016 filed their respective Written Statements, thereby denying the averments made in the Claim Petition, and in brief, prayed for dismissal of the Claim Petition.
- iv. Having considered the pleadings of the parties and the material available on record, the learned Tribunal framed the following issues at Exh.41, for determination:-
 - i. Whether the petitioners prove that the deceased had died because of rash and negligent driving of the driver of the vehicle

involved in the accident ?

ii. Whether the petitioners are entitled to compensation ? If yes, what amount ? And who is liable to pay the compensation ?

iii. What order and award ?

v. Having considered the pleadings, evidence on record and the submissions advanced by the learned counsels for the respective parties, the learned Tribunal had partly allowed the Claim Petition and awarded a sum of Rs.5,85,000/- (Rupees Five Lakhs Eighty Five Thousand Only) along with interest at the rate of 9% per annum, from the date of filing of the Claim Petition till its realization, as compensation..

vi. Being aggrieved and dissatisfied with the impugned judgment and award, First Appeal No.1058 of 2016 has been preferred by the original opponent No.5 – Oriental Insurance Company Limited, thereby challenging the impugned judgment and award on the ground of negligence as well as quantum, while First Appeal No. 1731 of 2016 has been preferred by the original claimants seeking enhancement of the compensation awarded by the learned Tribunal.

4. Heard learned counsels for the parties.

5. Mr. Vaibhav N. Sheth, learned counsel appearing on behalf of the original claimants/appellants in First Appeal No.1731 of 2016 vehemently submitted that the learned Tribunal had considered the income of the deceased at a very lower side. He contended that though the deceased was survived by four legal representatives, the learned Tribunal ought to have deducted 1/4th instead of 1/3rd of the monthly notional income on account of the personal expenses of the deceased. He further contended that the learned Tribunal had awarded meagre amounts of compensation under the conventional heads. He further submitted that the learned Tribunal had awarded a meagre amount of Rs.5,000/- under the head of Funeral expenses and had not awarded any amount of compensation under the head of Loss of estate. He further contended that the learned Tribunal had awarded meagre amount of 20,000/- under the head of Loss of consortium and had also awarded a sum of Rs.20,000/- under the head of Loss of love & affection. Therefore, he prayed for enhancement of compensation and prayed that just compensation be awarded under these heads. In support of his contentions, learned counsel for the original claimants placed reliance upon the judgments rendered by the Hon'ble Apex Court in the case of **Sarla Verma and Ors. Vs. Delhi Transport Corporation** reported in **2009 AIR (SC) 3104**, **National Insurance Company Ltd. Vs. Pranay Sethi** reported in **2017 (16) SCC 680** and **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Ors.**, reported in **(2018) 18 SCC 130** and prayed that the impugned judgment and award be modified accordingly.

6. Per contra, Ms. Dimple A Thaker, learned counsel appearing on behalf of the Original opponent No.5/appellant in First Appeal No. 1058 of 2016 - Oriental Insurance Company Limited vehemently submitted that the learned Tribunal had not considered the issue of negligence in the right perspective, had ignored the material available on record and held the driver of the jeep-car negligent to the extent of 25% in causing the vehicular accident. She further submitted that the accident in question had occurred owing to the sole negligence of the driver of the offending truck, therefore, contended that the findings returned by the learned Tribunal on this aspect is required to be modified.

7. Learned counsel appearing on behalf of the Original opponent No.5/appellant in First Appeal No. 1058 of 2016 - Oriental Insurance Company Limited further submitted that at the time of the vehicular accident, the deceased was working as a Selling Commission agent and his income was not proved on record by leading any cogent evidence, therefore, in the absence of cogent evidence on income, the learned Tribunal ought to have considered the minimum wages prevalent at the time of the vehicular accident. She further submitted that at the time of the vehicular accident, the monthly minimum wages notified by the State Government of Gujarat for such a skilled worker was Rs.1,900/- per month, however, the learned Tribunal had assessed the income of the deceased at Rs.3,000/- per month, which is at a very higher side and therefore contended that the said income is required to be reduced. She further submitted that the original opponent No.5 – Oriental Insurance Company Limited - Insurer of the jeep-car is not liable to satisfy the impugned judgment and award as the Insurance Policy in question is an Act Only Policy. She submitted that in an Act

Only Policy, only the risk of the paid driver is covered and it is the case of the original claimants that the deceased was not a paid driver, therefore, she contended that the original opponent No.5 – Insurer of the jeep-car is not liable to satisfy the impugned judgment and award, as such, the impugned judgment and award is liable to be modified to that extent.

8. Mr. Sharmishta A Dave, learned advocate appearing on behalf of the Original opponent No.3 – United India Insurance Company Limited – Insurer of the offending Truck submitted that at the time of the vehicular accident, the deceased was aged about 35 years and working as a Selling Commission Agent, therefore, the notional monthly income of the deceased is required to be enhanced by 40% on account of the future prospects of the deceased, however, the learned Tribunal had enhanced the notional monthly income of the deceased by 50%. He further submitted that during the pendency of these appeals, original claimant No.4 had expired, therefore, only original claimant Nos.1 to 3 are entitled to get any amount of compensation under the head of Loss of consortium and no amount of compensation can be awarded to original claimant No.4, as she has already expired. Therefore, he prayed that the impugned judgment and award be modified accordingly.

9. Having considered the submissions of the learned counsels for the parties and having perused the material available on record, it is to be noted that First Appeal No.1058 of 2016 has been preferred by the original opponent No.5 – Oriental Insurance Company Limited, thereby challenging the impugned judgment and award on the ground of

negligence as well as quantum, while First Appeal No. 1731 of 2016 has been preferred by the original claimants seeking enhancement of the compensation awarded by the learned Tribunal.

ISSUE OF NEGLIGENCE

10. The learned Tribunal had decided the issue of negligence on the basis of the findings returned by the learned Tribunal in M.A.C.P. No. 465 of 2002. The said findings returned by the learned Tribunal in M.A.C.P. No. 465 of 2002 has not been challenged by the either of the parties, therefore, the issue of negligence has attained finality and hence, the same cannot be re-agitated again in the instant appeals. Thus, the contentions raised by the learned counsel for the original opponent No.5/appellant in First Appeal No.1058 of 2016 – Oriental Insurance Company Limited in this regard is not sustainable and is accordingly rejected.

QUANTUM

11. It is on record that at the time of the vehicular accident, the deceased was aged about 35 years and he was working as a Selling Commission Agent. Perusal of the records transpires that the income of the deceased was not proved on record by leading any cogent evidence, hence the learned Tribunal had assessed the income of the deceased at Rs.3,000/- per month. Considering the nature of occupation of the deceased and having regard to the year of the accident, I am of the considered view that the learned Tribunal had not committed any error in assessing the income of the deceased at

Rs.3,000/- per month. Therefore, the income assessed by the learned Tribunal is upheld.

12. It is evident from the records that the deceased was aged about 35 years at the time of the vehicular accident. Thus, in view of the ratio laid down by the Hon'ble Apex Court in the case of **Sarla Verma** (supra) and **Pranay Sethi** (supra), the notional monthly income of the deceased is required to be enhanced by 40% on account of the future prospects of the deceased, however, the learned Tribunal had added 50% instead of 40% on account of the future prospects of the deceased. The learned Tribunal had committed illegality in adding 50% instead of 40% on account of the future prospects of the deceased. Thus, after adding 40% of the notional income to the monthly income of the deceased, the monthly income of the deceased would come to Rs.4,200/- (i.e, Rs.3,000/- plus 40% of Rs.3,000/-).

13. It is on record that at the time of the accident, the deceased was survived by four legal representatives. During the pendency of these appeals, original claimant No.4 had expired, therefore, it has been argued by Mr. Dave, learned advocate appearing on behalf of original opponent No.3 – Insurance Company that the dependency of only three persons are required to be considered. Now it is settled that dependency has to be seen as at the time of the accident in view of the ratio of the judgment rendered by the Hon'ble Apex Court in the case of **Kirti & Anr. v. Oriental Insurance Company Limited** reported in **(2021) 1 SCR 989**. Thus, in view of the aforesaid judgment, the contention raised by the learned counsel for the original opponent No.3 – Insurance Company is rejected. At the time of the accident and filing

of the Claim Petition, the deceased was survived by four legal representatives, therefore, in view of the ratio laid down by the Hon'ble Apex Court in the case of **Sarla Verma** (supra) and **Pranay Sethi** (supra), 1/4th of the monthly notional income is required to be deducted on account of the personal expenses of the deceased. Therefore, after deducting 1/4th of the monthly income on account of the personal expenses of the deceased, the monthly income for calculating the future loss of dependency would come to Rs.3,150/- (i.e., Rs.4,200/- minus 1/4th of Rs.4,200/-).

14. Considering the age of the deceased at the time of accident, the multiplier of "16" is required to be applied. Therefore, after applying the multiplier of "16", the original claimants herein shall be entitled for a sum of Rs.6,04,800/- (i.e, Rs.3,150/- X 12 months X multiplier of "16") under the head of Future Loss of Dependency.

15. The learned Tribunal vide its impugned judgment and award had awarded a meagre amount of Rs.20,000/- under the head of Loss of consortium and had also awarded Rs.20,000/- under the head of Loss of love & affection. It is on record that the deceased was survived by four legal representatives. Therefore, all the legal representatives are entitled to get the compensation under the head of Loss of consortium. Thus, in view of the ratio of judgment rendered in the case of **Nanu Ram alias Chuhru Ram & Ors.**, (supra), a sum of Rs.1,93,600/- (i.e., Rs.48,400/- X 4) is awarded under the head of Loss of Consortium. Further, in view of the ratio of the judgments rendered by the Hon'ble Apex Court in the case of **Pranay Sethi** (supra) and **Nanu Ram alias**

Chuhru Ram & Ors., no separate amount of compensation is required to be awarded under the head of Loss of love & affection.

16. It is on record that the learned Tribunal has not awarded any amount of compensation under the head of Loss of estate. Further, the learned Tribunal had awarded a sum of Rs.5,000/- under the head of Funeral expenses. Thus, in view of the ratio of the judgment rendered by the Hon'ble Apex Court in the case of **Pranay Sethi** (supra), a sum of Rs.18,150/- is awarded under the head of Loss of estate, and a sum of Rs. 18,150/- is awarded under the head of Funeral expenses.

17. Therefore, in view of the above discussion, the original claimants/appellants in First Appeal No.1731 of 2016 shall be entitled for the following amount of compensation:-

Sr. No.	Head	Amount in rupees.
1	Future Loss of dependency.	6,04,800/-
2	Loss of consortium	(+) 1,93,600/-
3	Loss of estate.	(+) 18,150/-
4	Funeral expenses.	(+) 18,150/-
6	Total Compensation	8,34,700/-
7	Less: Compensation awarded by the learned Tribunal vide the impugned judgment and award.	5,85,000/-
8	Enhanced amount of Compensation	2,49,700/-

18. Thus, in view of the above discussion, the original claimants herein shall be entitled for an additional compensation to the tune of Rs.2,49,700/- (Rupees Two Lakhs Forty Nine Thousand Seven Hundred only). The learned Tribunal had awarded interest at the rate of 9% per annum from the date of filing of the Claim Petition till realization. The said rate of interest is maintained; accordingly, the original claimants/appellants herein shall be entitled to 9% of interest per annum on the additional amount of compensation from the date of filing of the Claim Petition till its realization.

19. The learned Tribunal had apportioned the liability between the Insurance companies of the truck and the jeep-car in the ratio 75:25. Ms. Dimple A Thakkar, learned counsel appearing on behalf of the Original opponent No.5 - Oriental Insurance Company Limited has argued that the Insurance Policy in question is an Act Only Policy, therefore, the risk of the deceased is not covered under the said Insurance Policy as he was not a paid driver. Perusal of the said Insurance Policy further transpires that it was valid with effect from 01.01.2000 till midnight of 31.12.2000. The vehicular accident in question had occurred on 20.01.2000. Hence, on the date of the vehicular accident, the Insurance Policy was in effect. Perusal of the policy further transpires that the Original opponent No.5 – Oriental Insurance Company has also charged the following premium under the following heads :-

Head	AMOUNT IN RUPEES .
Liability to Public - Basic	509.00
ADD: PA TSI	450.00
CSI = Rs.1,00,000/- For 9 ADD: Liability for paid driver .	15.00
ADD: TPPD Cover For Unlimited Amount	50.00

20. Perusal of the Insurance Policy further transpires that the sitting capacity of the jeep-car was nine persons. The policy further transpires that the Insurance Company has charged premium for nine persons in addition to the paid driver. It is an undisputed fact that the deceased was not a paid driver, but at the same time, the original opponent No.5 - Insurance Company has charged premium for nine persons and the total capacity of the jeep-car in question is nine persons, therefore, it cannot be held by any stretch of imagination that the risk of the unpaid driver was not covered, more particularly when the Insurance Company has charged premium for nine persons. But it is further evident from the policy that the liability of the original opponent No.5 - Insurance Company is only to the extent of Rs.1,00,000/-. Thus, in view of the fact that the liability of the Insurance Company to satisfy the award is limited to the extent of Rs.1,00,000/-, and considering the fact that the accident in question took place in the year 2000, it would be in the larger interest of justice if the original opponent No.5 - Insurance company at the first instance is directed to satisfy the award in proportion of its liability as determined by the learned Tribunal, and thereafter recover the amount in excess of Rs.1,00,000/- from the owner of the jeep-car by way of preferring execution Petition before the learned Tribunal concerned.

21. Thus, in view of the above discussion, both the captioned appeals stands partly allowed and the impugned judgment and award stands modified to the aforesaid extent.

22. Both the Insurance Companies are directed to deposit the additional amount of compensation along with interest, in the ratio as decided by the learned Tribunal, within a period of six weeks from today. Thereafter, original opponent No.5 – Oriental Insurance Company shall be at liberty to recover the amount in excess of Rs.1,00,000/- from the owner of the jeep-car by way of preferring execution Petition before the learned Tribunal concerned.

23. Upon depositing the awarded amount, the learned Tribunal shall disburse the entire awarded amount to the original claimants (deducting deficit Court fee, if any), after due verification.

24. Statutory amount, if any or any amount of compensation lying deposited with the Registry of this Court shall be transmitted to the learned Tribunal concerned forthwith. Records & Proceedings, if any be sent to the learned Tribunal concerned. No order as to costs.

25. Pending application, if any, stands disposed of, accordingly.

(MOOL CHAND TYAGI, J)

ARUN...

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: ARUN B(HC02368), ENGLISH STENO GRADE-II, at High Court of Gujarat on 15/04/2026 10:06:19