

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 3351 of 2011****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

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Approved for Reporting	Yes	No

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RAMESHBHAI PUNAMCHAND SHAH & ORS.

Versus

SHRINATHJI INDUSTRIES & ORS.

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Appearance:

DECEASED LITIGANT THROUGH LEGAL HEIRS/

REPRESENTATIVES for the Appellant(s) No. 1

MR. CR BUDDHADEV(6707) for the Appellant(s) No.

1.1,1.2,1.3,1.4,1.5,1.6,1.7

MR.KARNA H DHOMSE(6684) for the Appellant(s) No.

1.1,1.2,1.3,1.4,1.5,1.6,1.7

MR NAGESH C SOOD(1928) for the Defendant(s) No. 2

RULE SERVED for the Defendant(s) No. 1,3,4

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CORAM:HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**Date : 01/04/2026****JUDGMENT**

1. Captioned appeal is filed against the impugned judgment and award dated 07.07.2011 passed by the Motor Accident Claims Tribunal (Aux), Court No.12, City Civil Court, Bhadra Ahmedabad in Motor Accident Claim Petition No.1222 of 2005, whereby the learned Tribunal had partly allowed the claim

petition and awarded a sum of Rs.5,83,000/- as a compensation along with the interest at the rate of 9% per annum from the date of filing of the claim petition till its realization.

2. The succinct facts leading to file the captioned appeal are that on 11.06.2005, Rameshbhai Punamchand Shah was travelling as a pillion rider on the motorcycle bearing registration No.GJ-1-DH-648. When the said motorcycle reached at Metnal Bari, in the meantime, the opponent No.1 came by driving the swaraj mazda bearing registration No.GJ-1-AT-2637 in a rash and negligent manner at very excessive speed and dashed with the front portion of the said motorcycle. As a result of the accident, Rameshbhai Punamchand Shah sustained grievous injuries.

2.1. Having been served with the notice of claim petition, the opponent No.2 & 4-Insurance Companies appeared through its advocate and filed Written Statement at Exhibit-21, thereby denying the contents of the claim petition and prayed for dismissal of the claim petition. The opponent No.1 & 3 did not appear before the learned Tribunal.

2.2. Having considered the pleadings of the parties, the learned

Tribunal framed the following issues at Exhibit-23, for determination.

- “1. Whether the applicant prove that he sustained injuries due to rash and negligent driving of the driver of the vehicle, Swaraj Mazda bearing registration No.GJ-1-AT-2637?*
- 2. Whether the opponents Nos.2 and 4 prove that due to negligence of driver of motorcycle No.GJ-1-DH-648, accident had occurred and the applicant sustained injuries?*
- 3. Whether the applicant is entitled to claim the compensation as prayed for? If yes, what amount and from whom?*
- 4. What order and award?”*

2.3. Having considered the oral as well as documentary evidence on record and the submissions canvassed by learned advocates for the parties, the learned Tribunal had awarded a sum of Rs.5,83,000/- as a compensation along with the interest at the rate of 9% per annum from the date of filing of the claim petition till realization.

2.4. Being aggrieved and dissatisfied with the impugned judgment and award, the appellants-herein preferred the captioned appeal on the ground of quantum.

3. Heard learned advocates for the parties.

4. Mr. C. R. Buddhadev, learned advocate with Mr. Karna H. Dhomse, learned advocate for the appellants, submitted that the

learned tribunal has assessed the monthly income of the claimant as Rs.10,000/- which is not under challenge. However, the learned Tribunal had not considered the future prospects of the original claimant. At the time of accident, the appellant was aged about 53 years, therefore, the learned Tribunal ought to have added 10% of the income on account of future prospects of the appellant in view of the ratio laid down by the Hon'ble Supreme Court rendered in the case of **Sarla Verma & Ors Vs. Delhi Transport Corp. & Anr.**, reported in **2009 (06) SCC 121** and **National Insurance Company Ltd. Vs. Pranay Sethi and Ors.**, reported in **(2017) 16 SCC 680**. He further submitted that as per the age of the original claimant, the learned Tribunal ought to have applied the multiplier of 11 instead of 8. Therefore, the learned Tribunal has committed manifest illegality in applying the multiplier of 8. He further submitted that the original claimant remained hospitalized as an indoor patient for a period of 166 days and thereafter he remained under medical treatment as an outdoor patient. Therefore, the learned Tribunal ought to have awarded the actual loss of income for the period of 1 year. However, the learned Tribunal had awarded the compensation under the head of actual loss of income for a period of 6 months.

4.1. Learned advocate for the appellants further submitted that the right leg of the appellant was amputated below the knee. However, the learned Tribunal has ascertained the functional disability at 30%. He further submitted that at the time of accident, the appellant was working as a salesman, therefore, his capability to do the job of salesman has been reduced to larger extent. However, the learned Tribunal has assessed the functional disability at 30% which is at a lower side. He further submitted that right leg of the appellant was amputated, however, the learned Tribunal had awarded a meagre amount of compensation under the head of pain, shock and suffering. He further submitted that a sum of Rs.2,00,000/- ought to have been awarded under the head of pain, shock and suffering.

4.2. Learned advocate for the appellants submitted that the appellant had proved the medical bills to the tune of Rs.4,01,391.45/- at Exhibit-40. However, the learned Tribunal had awarded a meagre amount of Rs.2,00,000/- under the head of medical expenses. He further submitted that the learned Tribunal had awarded a meagre amount of compensation of Rs.15,000/- under the head of special diet, attendant charges and transportation charges. He further submitted that the right

leg of the original claimant has been amputated below the knee, however, the learned Tribunal has not awarded any amount of compensation under the head of loss of amenities of life. Therefore, he prayed for enhancement of compensation under all these heads.

5. The captioned appeal has been pending since 2005 but nobody is appearing on behalf of the Insurance Company, therefore, the matter is kept on Board on every Wednesday in the critically old matter. On 25.03.2026, this Court has passed the following order:-

“In view of the sick-note filed by the Mr. Nagesh C. Sood, learned advocate for the respondent No.2, matter is adjourned to 01.04.2026.

Under any circumstances, no leave-note or sick-note will be entertained on the next date of hearing.”

6. Despite the aforesaid order, even today, nobody has appeared before this Court when the matter was called out, therefore, in absence of any representative from the Insurance Company, the captioned appeal is being decided on the basis of the materials available on record i.e. memo of appeal as well as Trial Court record.

7. The appellant has challenged the impugned judgment and

award on the ground of quantum. So far as the quantum is concerned, the learned Tribunal has assessed the monthly income of the appellant on the basis of the income tax-return proved on record at Exhibit-42 & 43, as Rs.10,000/-. The said monthly income is not under challenge. At the time of accident, the appellant was aged about 53 years, therefore, in view of the ratio laid down by the Hon'ble Supreme Court rendered in the case of **Sarla Verma & Ors Vs. Delhi Transport Corp. & Anr.**, reported in **2009 (06) SCC 121** and **National Insurance Company Ltd. Vs. Pranay Sethi and Ors.**, reported in **(2017) 16 SCC 680**, 10% of the monthly income is to added on account of the future prospects of the appellant. Thus, after adding 10% to the monthly income, it would come to Rs.11,000/- (10,000 + 10% of 10,000) for calculating the future loss of income.

8. The learned Tribunal has assessed the disability at 30% body as a whole. Perusal of the record transpires that the appellant has sustained the multiple fractures. On perusal of Exhibit-34, it transpires that the appellant has sustained the fracture of tibia and fibula with bone loss. On perusal of Exhibit-35, it transpires that a skin grafting surgery was conducted, and thereafter he was advised to undergo bone grafting after 2 to 3

months. The certificate issued by Dr. Nalin M. Shah M.S.(Ortho), Maninagar Orthopedic Hospital, transpires that the lower right leg of the original claimant was amputated below the knee. He further certified that the appellant has sustained the permanent functional impairment of 75% considering the right lower limb i.e. 37.5% body as a whole. The learned Tribunal had considered the functional disability at 40%. The learned Tribunal had ignored the factum of amputation of his right leg and translated the bodily disability into functional disability in mechanical manner. There is a wide difference between the bodily disability and functional disability. The Hon'ble Supreme Court in the case of **Raj Kumar Versus Ajay Kumar and Anr**, reported in **(2011) 1 SCC 343**, the Hon'ble Supreme Court has observed in paragraph-8 as under:-

"8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability

to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('Disabilities Act' for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation."

9. Thus, considering the nature of working and having regard to the amputation of right leg below knee, I am of the considered view that the amputation might have substantially reduced the working capacity of the appellant and restricted his working capacity. Thus, in my considered view, the functional disability would not be less than 50%. Accordingly, this Court reassess the functional disability of the appellant at 50%. The learned Tribunal had applied the multiplier of 8 instead of 11, however, at the time of accident, the appellant was aged about 53 years. Thus, after applying the multiplier of 11 as per age of the appellant, the future loss of income would come to Rs.7,26,000/- (11,000 x 50% x 12 x 11).

10. The learned Tribunal had awarded a sum of Rs.60,000/- under the head of actual loss of income for a period of 6 months. It is evident from the record that the appellant has sustained the

fracture of tibia and fibula and thereafter he was surgically operated for several times and resutantly his right leg below the knee was amputated. Perusal of the record further transpires that he remained as an indoor patient for a period of 166 days and thereafter he also received the medical treatment as an outdoor patient for a long time. Thus, having regard to the medical evidence on record, I am of the considered view that the actual loss of income ought to have been awarded for a period of 12 months. Thus, considering the nature of injuries and period of hospitalization, the actual loss of income is enhanced from Rs.60,000/- to Rs.1,20,000/- (10,000 x 12).

11. The learned Tribunal had awarded a meagre amount of compensation under the head of pain, shock and suffering. It is evident from the record that the appellant remained hospitalized as an indoor patient for a period of 166 days and thereafter he received the treatment as an outdoor patient for a long time. During the treatment, he underwent 4 to 5 surgical operations and resutantly his right leg below the knee was amputated. Thus, considering the injuries sustained by the appellant and having regard to the period of hospitalization, the compensation awarded under this head is enhanced from Rs.20,000/- to

Rs.1,00,000/-.

12. The appellant had proved the medical bills to the tune of Rs.4,01,391.45/- at Exhibit-40. The appellant had also stated all these facts about examination-in-chief in his affidavit. The medical bills were not challenged in the cross-examination, however, the learned Tribunal without any rhyme and reason awarded only a sum of Rs.2,00,000/-. Thus, the compensation awarded under this head is enhanced to Rs.4,02,000/-.

13. The learned Tribunal had awarded a meagre amount of compensation under the head of special diet, attendant charges and transportation charges. Having regard to the medical evidence produced on record, the compensation awarded under this head is enhanced from Rs.15,000/- to Rs.50,000/-.

14. It is evident from the record that the right leg below the knee was amputated, therefore, the appellant was deprived of from leading the normal life. However, the learned Tribunal had not awarded any amount of compensation under the head of loss of amenities of life. Thus, having regard to the totality of the facts and circumstances of the present case, a sum of Rs.1,00,000/- is awarded under the head of loss of amenities of life.

15. Thus, in view of the above discussions, the original claimant/appellants-herein shall be entitled for the following amount of compensation under the following heads:-

Particulars	Amount (Rs.)
Future Loss of Income	7,26,000/-
Actual Loss of Income	1,20,000/-
Medical Expenses	4,02,000/-
Special Diet, Attendant Charges and Transportation Charges	50,000/-
Pain, Shock and Suffering	1,00,000/-
Loss of Amenities of Life	1,00,000/-
Total Compensation	14,98,000/-
Less: compensation already awarded by the learned Tribunal	5,83,000/-
Additional amount of Compensation	9,15,000/-

16. In view of the above discussions, the appellants shall be entitled for the total compensation of Rs.14,98,000/-. The learned Tribunal had already awarded a sum of Rs.5,83,000/-. Therefore, the appellants shall be entitled for the additional compensation of Rs.**9,15,000/-** i.e. (Rs.14,98,000/- -(less) Rs.5,83,000 /-). The learned Tribunal has awarded the interest at the rate of 9% per annum, therefore, the appellants shall also be entitled for the interest at the rate of 9% on the additional amount of compensation.

17. In view of the above discussions, the captioned appeal stands allowed partly. The impugned judgment and award is modified to the aforesaid extent.

18. The respondent No.2-Insurance Company is directed to deposit the additional amount of compensation along with the interest at the rate of 9% per annum from the date of filing of the claim petition till its realization, within a period of 6 weeks from today.

19. Upon depositing of the said amount, the learned Tribunal shall disburse the amount to the original claimants, after deducting the deficit court fees, if any, and after due verification.

20. Statutory amount, if any, lying/deposited with the Registry of this Court, the same be transmitted to the concerned learned Tribunal forthwith.

21. R & P, if any, be sent back to the concerned learned Tribunal forthwith. No order as to costs.

(MOOL CHAND TYAGI, J)

CDP