

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 3685 of 2024

**FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Approved for Reporting	Yes	No
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JASMINABEN W/O MAYURBHAI DHADIYA & ORS.

Versus

**BHARATBHAI ARJANBHAI SARVAIYA SINCE DECD THROUGH HARDIK
BHARATBHAI SARVAIYA & ANR.**

Appearance:

MR HEMAL SHAH(6960) for the Appellant(s) No. 1,2,3,4

MR KRUNAL R SAKSENA(5915) for the Defendant(s) No. 2

NOTICE SERVED for the Defendant(s) No. 1

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 22/12/2025

ORAL JUDGMENT

Admit. With the consent of learned advocates for the respective parties, present appeal is taken up for final hearing.

[1.0] Present First Appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "MV Act") is filed by the appellants – original claimants challenging the impugned judgment and award dated 23.08.2024 by the learned Motor Accident Claims Tribunal (Special), Rajkot (for short "learned Tribunal") in Motor Accident Claim Petition No.257 of 2016, whereby the learned Tribunal was pleased to partly allow the claim petition by holding the deceased 40% contributory negligence for the accident and awarded compensation of Rs.34,96,886/-.

[2.0] The brief facts leading to filing of present appeal is as follows:

[2.1] On 24.01.2016 at about 1.00 p.m., Mayurbhai Rameshbhai Dhadhiya (hereinafter referred to as "deceased") was riding his Activa Scooter No.GJ-3-CD-2891 in a moderate speed on the correct side of road at Chandreshnagar Main Road, Opp. Backbone Shopping Complex and at that time, driver of Motorcycle came driving his motorcycle in rash and negligent manner with an excessive speed and collided head on with the Activa Scooter being driven by the deceased pursuant to which the deceased sustained serious injuries over his body and died. Therefore, the legal heirs and representatives of the deceased filed MACP No.257/2016 seeking compensation.

[2.2] After considering the evidence produced and adduced, the learned Tribunal held the driver of Motorcycle to be 60% and deceased i.e. driver of Activa Scooter to be 40% contributory negligent for the accident and was pleased to award Rs.34,96,886/- to the original claimants. Hence, the appellants herein – original claimants have filed the present appeal challenging the impugned judgment and award to the extent it holds the deceased – driver of Activa Scooter to be 40% negligent and also for enhancement of the compensation.

[3.0] Though served, respondent No.1 has chosen not to appear before this Court.

[4.0] Learned advocate Mr. Hemal Shah appearing for the appellants – original claimants has submitted that the learned Tribunal has committed an error in holding the deceased – driver of Activa to be 40% contributory negligent though oral evidence tendered by one of the claimants remained unrebutted and merely based on presumption

contributory negligence of the deceased is considered. Learned Tribunal has failed to consider the fact that driver of offending motorcycle was minor and driving the vehicle without license and hence, sole negligence on the part of motorcycle driver ought to have been held by the learned Tribunal. He has further submitted that learned Tribunal has committed an error in not considering the income tax returns for the years 2015 and 2016 which are produced at Exhs.47 and 49 which shows income of the deceased as Rs.4,74,070/- after deducting income tax of Rs.25,720/-. But the learned Tribunal has ignored the said fact and has considered income tax returns of previous years. He has further submitted that learned Tribunal has committed an error in considering the income of the deceased and even future prospects on the said amount is not awarded. He has further submitted that the learned Tribunal has not awarded appropriate amount under the head of loss of consortium and hence, just and proper compensation is not awarded. He has therefore requested to allow the present appeal.

[5.0] Learned advocate Mr. Krunal Saxena appearing for the respondent – insurance company has submitted that the learned Tribunal has not committed any error while holding the driver of Activa Scooter to be 40% negligent as both the vehicles dashed with each other head on and that too in market area and hence, the learned Tribunal has rightly held that driver of motorcycle was not solely negligent for the accident as the road where the accident took place was wide enough and if the deceased – driver of Activa would have taken proper care and caution, accident could have been avoided. Insofar as quantum of compensation is concerned, learned Tribunal has properly considered the income tax returns and no interference by this Court is required as agricultural income of the deceased even

after his demise has not stopped and even other income remained as it is and there was no any actual loss of income to the claimants. He has further submitted that the learned Tribunal has properly considered the future prospective income of the deceased. He has further submitted that learned Tribunal has committed an error in passing the order of 'pay and recover' and further submitted that considering deduction of 1/4th towards dependency as claimant No.4, who happens to be the sister of deceased, was major and married and even otherwise she was dependent on her parents and not the deceased and claimant No.1 – widow of deceased has remarried and hence, learned Tribunal ought to have deducted 1/3rd towards dependency and even otherwise claimant No.4 is not entitled for any compensation under the head of loss of consortium. Hence, he has requested to dismiss the present appeal.

[6.0] Having heard learned advocate for the appellants – original claimants and learned advocate for the respondent – insurance company and perusing the record, it appears that factum of accident, age of deceased and multiplier applied are not in dispute. So far as contributory negligence on the part of deceased is concerned, the learned Tribunal has considered the FIR (Exh.29), which is filed by cousin brother of the deceased. The learned Tribunal has relied on the panchnama (Exh.30) of the place of accident from which it transpires that the the road upon which accident took place is a main road and is sufficiently wide on which two 2-wheelers can easily pass by however, as the driver of respective involved vehicles were not cautious enough, alleged accident has taken place and as the claimant No.2 who deposed before the learned Tribunal is not having personal knowledge of accident, learned Tribunal taking into consideration whatever material or evidence on record, has come to conclusion that

there was head on collision between two vehicles however, if the offending vehicles would have been extra cautious then the accident could have been avoided and therefore, the learned Tribunal has rightly come to conclusion that driver of motorcycle was 60% contributory negligent and deceased – driver of Acura was 40% contributory negligent. Hence, in absence of any material qua the claim of appellants that deceased – driver of Acura was not at all negligent for the accident is not accepted and no interference is called for.

[6.1] Now, so far as quantum of compensation is concerned, claimant No.2 has tendered her evidence (Exh.27) wherein she has stated that deceased was aged 25 years and was holding degree of mechanical engineering and was doing job work of Kankai Plastic and had also started factory in the name and style as ABC Polyplastic in partnership and was having 20% share in the same and was earning very good income. The witness has further stated that had the accident not occurred, the deceased could have earned upto Rs.7 lakh per annum in future. Claimant No.2 has produced birth certificate (Ex.36) and degree certificate (Exh.37) of the deceased and has examined Mr. Naimish Vallabhbbhai Rupareliya (Tax Advocate) at Ex.46 who has supported the case of claimants and produced copy of income tax returns for AYs 2013-14, 2014-15 and 2015-16 at Exhs.47 to 49. Perusing the income tax returns so produced it appears that deceased was earning Rs.1,96,680/-, Rs.2,44,810/- and Rs.4,99,790/- respectively during the said AYs and had paid Rs.25,720/- towards income tax. Learned Tribunal has considered mean and average income of the deceased at Rs.3,04,293/- without assigning any reason for the same. Herein, the accident took place in the year 2016 and though the returns were filed prior to accident, the learned Tribunal has taken the

mean and average of three income tax returns and not considered the income of the deceased appropriately. At this stage, it is apposite to refer to the decision of the Hon'ble Supreme Court in the case of **Nidhi Bhargava v. National Insurance Co. Ltd.** reported in **2025 SCC OnLine 872**, wherein the Hon'ble Supreme Court in **paragraph 12** has observed and held as under:

"12. Just because on the date of the accident i.e., 12.08.2008, the Return for the Assessment Year 2008-2009 had not been filed, cannot disadvantage the appellants, for the reason that the period for which the Return is to be submitted covers the period starting 1 st of April, 2007 and ending 31st March, 2008. Thus, for obvious reasons, the Return would be only for the period 01.04.2007 to 31.03.2008, and date of submission would be post-31.03.2008. No income earned beyond 31.03.2008 would reflect in the Income Tax Return for the Assessment Year 2008-2009. To reject the Return on the sole ground of its submission after the date of accident alone, in our considered view, cannot be legally sustained.

13. ... In K Ramya v. National Insurance Co. Ltd., 2022 SCC OnLine SC 1338, after taking note of, inter alia, Ningamma v. United India Insurance Co. Ltd., (2009) 13 SCC 710, the Court held that the '...Motor Vehicles Act of 1988 is a beneficial and welfare legislation that seeks to provide compensation as per the contemporaneous position of an individual which is essentially forward-looking. Unlike tortious liability, which is chiefly concerned with making up for the past and reinstating a claimant to his original position, the compensation under the Act is concerned with providing stability and continuity in peoples' lives in the future. ...'

Relying on the said decision, in the case of **Sayar & Ors. vs. Ram Karan** rendered in **SLP (Civil) No. 24501/2025**, the Hon'ble Supreme Court in paragraph 12 has observed and held as under:

"12. What flows from Nidhi Bhargava (supra) is that the Income Tax Returns filed after the accident/death can also be taken into consideration for calculation of income to award compensation. However, having due regard for the Tribunal's well-placed doubts, in so far as returns filed for the relevant year, we take a different approach. In the instant case, it cannot be simply assumed that there is no profit accruing from the business of the deceased at the time of the accident. To adopt such a presumption would be contrary to the settled principles guiding the assessment of compensation. Rather, the returns for the preceding year or years must be taken as a foundational benchmark, subject to careful judicial examination, recognizing that business profits are seldom static and often exhibit a progressive growth trajectory. The

exercise thus calls for a fair and reasonable assessment, grounded in available evidence, of the financial benefits that the deceased would have justifiably earned but for the untimely accident. In our considered view, in order to award just and fair compensation, the annual income of the deceased is re-assessed at Rs.3,50,000/- per annum."

Hence, in considered view of this Court, in view of the decision of the Hon'ble Supreme Court in the case of **Malarvizhi & Ors vs. United India Insurance Company Limited & Anr.** reported in **2020 ACJ SC 526**, deducting Rs.25,720/- from Rs.4,99,790/- towards income tax, annual income of the deceased is required to be assessed at **Rs.4,74,070/- per annum.**

[6.2] Further, considering the fact that the deceased was aged 25 years at the time of accident and was holding a degree of mechanical engineering, 40% addition towards future prospects is required to be assessed which comes to **Rs.6,63,698/- (Rs.4,74,070 + 40% of Rs.4,74,070)** towards annual loss of dependency. The claimant No.1 i.e. widow of the deceased has remarried is not a ground to refuse her the compensation as after untimely death of husband, remarriage cannot be considered as a taboo to get compensation. In this regard, reference is required to be made to the decision in the case of **Iffco Tokio General Insurance Co. Ltd. vs. Smt. Bhagyashri Ganesh Gaekwad & Ors.** reported in **2023 ACJ 1813** and hence, argument canvassed by learned advocate for the insurance company is not accepted. Further, The deceased was having three dependents and as appellant No.4, who is married sister of deceased and aged 28 years, she cannot be said to be dependent of the deceased and is dependent of her parents. It is true that there is no bar to file claim petition by the legal representatives of the deceased but so far as dependency is concerned, right to file claim petition and to claim dependency are different aspects. Hence, in considered opinion of this Court,

appellant No.4 – original claimant No.4, who is sister aged 28 years of deceased is not entitled to get compensation under the head of future loss of dependency. Therefore, deducting Rs.2,21,233/- (1/3rd of Rs.6,63,698/-) towards personal expenses, net future loss of dependency would come to Rs.4,42,465/- (Rs.6,63,698 – Rs.2,21,233). Hence in view of decision of the Hon'ble Supreme Court in the case of **Smt. Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.** reported in **2009 ACJ 1298**, multiplier of 18 would apply, as rightly adopted by the learned Tribunal. Applying the multiplier of 18, amount under the head of **future loss of dependency** would come to **Rs.79,64,370/- [Rs.4,42,465 x 18 (multiplier)]**. Hence, towards future loss of dependency, the appellants Nos.1 to 3 are entitled to amount of compensation of **Rs.79,64,370/-**.

[6.3] Further, as discussed herein above, appellant No.4 is not entitled to get compensation under the head of loss of consortium and therefore, in view of the law laid down by the Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Pranay Sethi and Ors.** reported in **2017 ACJ 2700**, the appellants are entitled to get **Rs.1,45,200/- (Rs.48,400 x 3)** under the head of loss of consortium. Further, the learned Tribunal has awarded Rs.16,500/- each under the head of loss of estate and funeral expenses respectively which ought to have been awarded as **Rs.18,150/- each under the heads of loss of estate and funeral expenses.**

[7.0] Thus, now the appellants – original claimants are entitled to the compensation as under:

Heads	Awarded by Tribunal	Reassessed by this Court
Future loss of	Rs.57,51,144/-	Rs.79,64,370/-

dependency		including additional amount of Rs.22,13,226/-
Consortium	Rs.44,000/-	Rs.1,45,200/- including additional amount of Rs.1,01,200/-
Loss of Estate	Rs.16,500/-	Rs.18,150/- including additional amount of Rs.1,650/-
Funeral Expenses	Rs.16,500/-	Rs.18,150/- including additional amount of Rs.1,650/-
Total Compensation	Rs.58,28,144/-	Rs.81,45,870/- including additional amount of Rs.23,17,726/-
Final Total after deducting 40% towards negligence of deceased	Rs.34,96,886/-	Rs.48,87,522/-

Thus, final total compensation of **Rs.34,96,886/-** as awarded by **the learned Tribunal** is on lower side, for the reasons recorded hereinabove, and therefore, same is required to be enhanced to the aforesaid extent i.e. **Rs.48,87,522/-**. Hence, appellants – original claimants are entitled to get additional enhanced compensation of **Rs.13,90,636/- (Rs.48,87,522 – Rs.34,96,886)**. Therefore, the impugned judgment and award passed by the learned Tribunal is modified to the aforesaid extent.

[8.0] Insofar as order of 'pay and recover' as passed by the learned Tribunal is concerned, in view of decisions of Hon'ble Supreme Court in the case of **Anu Bhanvara and Others vs. Iffco Tokio General Insurance Company Limited and Others** reported in (2020) 20 SCC 632; **Sunita & Ors. United India Insurance Co. Ltd. & Ors.** as well as in the case of **Rama Bai vs. M/s. Amit Minerals** reported in 2025 INSC

1162, learned Tribunal has not committed any error in passing the order of 'pay and recover'. Hence, no interference is called for in that regard. Further, it is apposite to refer to the decision of the Hon'ble Supreme Court in the case of **K. Nagendra vs. New India Insurance Co. Ltd.** reported in **2025 SCC OnLine SC 2297**, wherein the Hon'ble Supreme Court has re-affirmed the social welfare intent behind the MV Act. The principle or order of "**To Pay and Recover**" embodies judicial empathy ensuring victims are not left uncompensated due to dispute between owner and insurer. At the same time, considering the contractual accountability, owner who breaches the condition of insurance policy cannot escape financial responsibility as insurers retain the right to recover paid sum to claimant. The dual balance of justice for victim and fairness for insurers strengthens integrity of Motor Vehicles Accident Compensation system.

[9.0] In wake of aforesaid conspectus, present **First Appeal is partly allowed**. The respondent No.2 – Iffco Tokio General Insurance Company Limited is directed to deposit reassessed enhanced compensation of **Rs.48,87,522/-** alongwith accrued interest at the rate of 9% per annum, with the learned Tribunal within a period of **FOUR WEEKS** from the date of receipt of the present judgment. The Impugned judgment and award dated 23.08.2024 by the learned Motor Accident Claims Tribunal (Special), Rajkot in Motor Accident Claim Petition No.257 of 2016 is modified to the aforesaid extent and rest of the impugned judgment and award remains unaltered.

[9.1] After the aforesaid amount of enhanced compensation is deposited by the insurance company, learned Tribunal is directed to **disburse the entire amount (as awarded by the learned Tribunal) alongwith the enhanced amount of compensation as well as earlier**

deposited amount, if any, with accrued interest thereon, if any, to the original claimant, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.

[9.2] While making the payment, the Tribunal shall deduct the courts fees, if not paid.

[10.0] It is made clear that the respondent No.2 – insurance company shall be entitled to recover the amount of compensation from the owner of the offending Motorcycle for the reasons recorded hereinabove following the decision of the Hon'ble Supreme Court in the case of **Oriental Insurance Co. Ltd. vs. Nanjappan** reported in **(2004) 13 SCC 224** wherein it has been observed and held that if the insurance company satisfies the award, it will not be required to file a separate suit or independent proceedings for recovery, as it may recover the excess amount from the owner of the vehicle in the same execution proceedings.

[11.0] Record and proceedings, if any, be sent back to the concerned Tribunal, forthwith.

Sd/-
(HASMUKH D. SUTHAR, J.)

Ajay

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: AJAY CHANDRAN MENON(HC00939), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 22/12/2025 18:45:35