

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 4184 of 2025
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/FIRST APPEAL NO. 4184 of 2025

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

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Approved for Reporting	Yes	No
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THE NEW INDIA INSURANCE CO.LTD.
 Versus
 RAMESHBHAI JAYSUKHLAL VORA & ORS.

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Appearance:

MS E.SHAILAJA(2671) for the Appellant(s) No. 1
 MR HEMAL SHAH(6960) for the Defendant(s) No. 1,2
 NOTICE NOT RECD BACK for the Defendant(s) No. 3
 ORTIS LAW OFFICES(12342) for the Defendant(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 09/01/2026
ORAL JUDGMENT

Admit. Learned advocate Mr. Hemal Shah waives service of notice of Admission on behalf of respondent Nos.1 and 2. With the consent of learned advocates appearing for 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 appellant – insurance company challenging the impugned judgment and award dated 08.09.2025 passed by the learned Motor Accident Claims Tribunal (Main), Rajkot (for short "learned Tribunal") in Motor Accident Claim Petition No.821 of 2022, whereby the learned Tribunal was pleased

to partly allow the claim petition and awarded compensation of Rs.3,61,000/- to the original claimants.

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

[2.1] On 30.06.2021, Maheshbhai Jaysukhlal Vora (hereinafter referred to as "deceased") was going as a pedestrian near Rajkruti Apartment, near Airport Railway Crossing and at that time, driver of Car No.GJ-03-LR-6262 came there by driving his car with full speed in rash and negligent manner and hit the deceased due to which the deceased sustained fatal injuries and died during the treatment. Therefore, the legal heirs and representatives of the deceased filed MACP No.821/2022 seeking compensation of Rs.10,00,000/-.

[2.2] After considering the evidence produced and adduced, the learned Tribunal held the driver of offending Car solely negligent for the accident and was pleased to award Rs.3,61,000/- to the original claimants. Being aggrieved with the quantum of compensation, the appellant – insurance company has filed the present First Appeal.

[3.0] Learned advocate Ms. E. Shailaja appearing for the appellant – insurance company has submitted that the learned Tribunal has committed an error in considering the loss of dependency as the deceased was aged more than 70 years and even the claimants were not entitled to any compensation under the head of loss of consortium as the claimants who are brother and niece respectively of the deceased were not dependents of the deceased and admittedly no proof of income of the deceased was produced on the record. Further, claimant No.1 is brother of deceased, who is a retired government employee and pensioner and claimant No.2 is

daughter of claimant No.1 i.e. niece of deceased, who is working as Accountant and having independent income. Hence, the claimants are not entitled to get any compensation under the head of loss of dependency. Hence, she has requested to allow the present appeal.

[4.0] Learned advocate Mr. Hemal Shah appearing for the original claimants has opposed the present appeal by submitting that the learned Tribunal has not committed any error. The deceased was a bachelor aged 74 years and residing with the claimants and therefore, the claimants are rightly considered as dependents of the deceased and even otherwise, legal representatives are entitled to file the claim petition. Learned Tribunal has not committed any error and even otherwise, on the ground of smallness of amount, present appeal deserves to be dismissed as a meager compensation of Rs.3,61,000/- is awarded to the claimants.

[5.0] Present appeal is filed on limited ground of quantum of compensation and therefore, same is considered in narrow compass.

[6.0] Having heard learned advocate for the appellant – insurance company and learned advocate for the original claimants and perusing the record, it appears that the learned Tribunal has considered the evidence produced and adduced by both the parties including the affidavit of the claimant No.2 (Exh.18) and complaint (Exh.22) and panchnama of scene of accident (Exh.23) and in view of the decisions of the Hon'ble Supreme Court in the case of **Bimla Devi vs. H.R.S.T.C.** reported in **AIR 2009 SC 2819** and **Parmeshwari Devi vs. Amir Chand** reported in **(2011) 11 SCC 635**, wherein it is held that it is settled law that negligence is required to be proved in

claim petition under section 166 of the MV Act only on the touchstone of the preponderance of probability and not beyond doubt and even as per the complaint, it emerges that the driver of the offending Car came driving his vehicle in rash and negligent manner with full speed and coming on wrong side hit the deceased pedestrian and therefore, the learned Tribunal has rightly considered 100% negligence on the part of the offending Car.

[6.1] Perusing the evidence, it appears that before the learned Tribunal, the insurance company has raised the defence that the deceased was mentally upset and retarded but in absence of any evidence, said bare submission on behalf of the insurance company is not accepted by the learned Tribunal and notional income of the deceased is considered to award just compensation. The deceased was more than 70 years of age and hence, multiplier of 5 is applied in view of decision of Hon'ble Supreme Court in the case of **Sarla Verma vs. Delhi Transport Corporation** reported in **AIR 2009 SC 3104** and deceased was doing accounting work and earning Rs.15,000/- per month but as the alleged accident took place in the year 2021, his annual income is assessed at Rs.96,000/- however, considering the age of deceased to be more than 70 years at the time of accident, in view of decision of Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Shethi** reported in **(2017) 16 SCC 680**, future prospective income of the deceased is not considered by the learned Tribunal. As the deceased was bachelor, $\frac{1}{2}$ deduction i.e. Rs.48,000/- was made towards his personal expenses and accordingly, compensation of Rs.2,40,000/- [Rs.48,000 x 5(multiplier)] was awarded under the head of future loss of dependency.

[6.2] The claimants herein happen to be brother and niece respectively of the deceased. So far as locus of claimants to file the claim petition under Section 166 of the MV Act is concerned, legal representatives are entitled to file the claim petition under Section 166 of the MV Act. Learned advocate has mainly challenged the impugned judgment and award on the ground that the claimants are not entitled to get any compensation under the head of future loss of dependency but keeping in mind the law laid down by the Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Birender and Others** reported in **AIR 2020 SC 434** wherein the Hon'ble Supreme Court has considered provision of section 166 of the MV Act and interpreted the word "legal representative" and held that even major married and earning sons of deceased are also covered under the definition of "legal representative" and held that is bounden duty of the Tribunal to consider application irrespective of fact that whether they are fully dependant on the deceased or not. The claim is not limited towards conventional heads. Further, in the case of **Sadhana Tomar vs. Ashok Kushwaha** reported in **2025 ACJ 484** as well as in the case of **Seema Rani & Ors. vs. The Oriental Insurance Co. Ltd. & Ors.** reported in **2025 SCC OnLine (SC) 283**, once again the Hon'ble Supreme Court has interpreted the word "legal representative" and held that "legal representative" is one who suffers on account of death of a person due to motor vehicular accident and need not necessarily be a wife, husband, parent or child and the word "legal representative" under the MV Act should not be given narrow interpretation excluding those persons as claimants who were dependant on the deceased's income. The legal representative under the MV Act are entitled to get the compensation. Learned Tribunal has not committed any error in awarding compensation to

the claimants under the head of future loss of dependancy. In view of above, the argument canvassed by the learned advocate for the appellant that claimants are not entitled to get the compensation is not accepted.

[6.3] So far as compensation under the head of loss of consortium is concerned, the learned Tribunal has awarded Rs.88,000/- which is a meager amount and even otherwise considering the smallness of amount also i.e. Rs.3,61,000/-, no case is made out to interfere with the impugned judgment and award passed by the learned Tribunal.

[7.0] In wake of aforesaid conspectus, **First Appeal is dismissed.**

[8.0] The Tribunal shall disburse the entire amount of compensation (lying in the FDR and/or with the Tribunal including the enhanced amount of compensation), with accrued interest thereon, if any, to the claimants, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.

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

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

[11.0] Pending applications, if any, also stands dismissed.

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