IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 337 of 2022

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

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Approved for Reporting	Yes	No
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SHARDABEN MONJIBHAI JANI W/O MONJIBHAI NARSHIBHAI JANI & ORS.

Versus

JAMALUDIN ABDULGAFUR & ORS.

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Appearance:
MR GAURANG K CHAUHAN(9858) for the Appellant(s) No. 1,2,3,4
MR ALKESH N SHAH(3749) for the Defendant(s) No. 4
RULE NOT RECD BACK for the Defendant(s) No. 1
RULE SERVED for the Defendant(s) No. 2,3

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Date : 10/12/2025
ORAL JUDGMENT

[1.0] This appeal has been preferred by the appellants – original claimants against the impugned judgment and award dated 06.12.2021 passed by the learned Motor Accident Claims Tribunal (Auxi.), Bhavnagar (for short referred to as “learned Tribunal”) in Motor Accident Claim Petition No.249 of 2015 under Section 166 of the Motor Vehicles Act, 1988 (for short referred to as “MV Act”) wherein the learned Tribunal has partly allowed the claim petition of present appellants – original claimants however, has not granted just and proper compensation.

[2.0] Though served, none appears for respondent Nos.2 and 3.

[3.0] The brief facts of the present claim petition are that the

deceased Monjibhai was serving as cleaner in DCM Toyota No.GJ-4T-5055 of the ownership of original opponent No.3 who alongwith its driver, after loading the goods in the said vehicle were proceeding towards Bhavnagar from Piparla and at the place of accident, original opponent No.1 – driver of Truck No.MP-09-HG-9043 came with full speed in rash and negligent manner and went on the wrong side of the road and dashed with DCM Toyota pursuant to which the accident occurred and the deceased having sustained serious injuries died. In this regard, a complaint was lodged with Ghogha Police Station bearing I-CR No.44/2015.

[3.1] Thereafter, the legal heirs and representatives of the deceased filed MACP No.249/2015 claiming compensation of Rs.10 lakh and after recording the evidence, the learned Tribunal held the driver of DCM Toyota to be sole negligent for the accident and directed the insurance company of DCM Toyota to make the payment of compensation of Rs.5,25,100/- to the claimants and thereafter to recover the same from opponent No.3 i.e. the owner of DCM Toyota. Being aggrieved with the amount of compensation, the original claimants have filed the present First Appeal for enhancement.

[4.0] Learned advocate Mr. G.K. Chauhan appearing for the appellants – original claimants has submitted that the learned Tribunal has committed serious error in not granting the just compensation as meager amount of compensation is awarded. He has further submitted that the learned Tribunal has not considered the nature of services being rendered by the deceased as he was serving as a cleaner though his income is not appropriately considered. He has submitted that the learned Tribunal ought to have atleast considered

the minimum wages prevailing at the time of accident. Further, he has urged that the deceased was having a promising and bright career ahead as he was serving as a cleaner and rendering services of loading and unloading the goods though the learned Tribunal has considered meager amount of Rs.3500/- as his monthly income. Hence, he has requested to allow the present appeal and enhance the amount of compensation appropriately.

[5.0] Learned advocate Mr. Alkesh Shah appearing for respondent No.4 – original opponent No.4 has opposed the present appeal by submitting that the learned Tribunal has properly passed an award in absence of any proof of the income of the deceased and therefore, no error has been committed by the learned Tribunal and insurance company has rightly been exonerated from the liability by passing an order of pay and recover from the original owner of the offending vehicle DCM Toyota and therefore, no interference is required. Hence, he has requested to dismiss the appeal.

[6.0] Having heard learned advocate appearing for the respective parties and going through the record and the impugned judgment and award, it appears that the learned Tribunal after appreciating the affidavit of chief-examination (Exh.56) of the appellant No.1 i.e. the widow of deceased, FIR (Exh.58), charge-sheet (Exh.76), which is filed against the driver of DCM Toyota has held that the vehicle being DCM Toyota went on the wrong side of the road and due to negligence on the part of the offending vehicle i.e. DCM Toyota bearing No.GJ-4T-5055, alleged accident took place with another vehicle i.e. Truck No.MP-09-HG-9043. Therefore, the learned Tribunal has not committed any error in holding the driver of the offending DCM

Toyota to be solely negligent for the accident.

[7.0] Now, so far as issue of quantum of compensation is concerned, the learned Tribunal has to consider or determine the compensation on the foundation of fairness, reasonableness and equitability on acceptable legal standard. The concept of 'just compensation' has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. It is true that in the case of death, legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though discretion vested in the Tribunal is quite wide yet it is obligatory on the part of the Tribunal to be guided by the expression, that is, "just compensation" and determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and even after applying the apposite multiplier, the Tribunal has to award the just compensation. To award the just compensation, the Tribunal has to maintain uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the Tribunal and the Courts is difficult and hence, an endeavour has been made by the Hon'ble Supreme Court for standardization which in its ambit includes addition of future prospects on the proven income and keeping in mind the principles of certainty, stability and consistency to determine the compensation in absence of cogent evidence and proof of income, Tribunal and/or Court has to consider the minimum wages of the prevalent time keeping in mind the work and profession of deceased or injured.

[7.1] Perusing the record, it appears that at the time of accident, the deceased was aged 48 years and therefore, as per the decision of the Hon'ble Supreme Court in the case of **Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation & Anr.** reported in **(2009) 6 SCC 121,** multiplier of 13 is rightly applied by the learned Tribunal. As per the evidence on record, the learned Tribunal has considered the monthly income of the deceased at Rs.3500/- but if the evidence adduced before the learned Tribunal is perused, it appears that the alleged accident took place in June, 2015 and therefore, the learned Tribunal ought to have considered atleast minimum wages prevailing at that time considering the decision of the Hon'ble Supreme Court in the case of **Govind Yadav v. New India Insurance Company Ltd.** reported in **(2011)10 SCC 683]** and **Chandra @ Chanda @ Chandraram vs. Mukesh Kumar Yadav** reported in **(2022)1 SCC 198**, considering the guess work and minimum wages prevailing in the year 2015 and hence, monthly income as per the prevailing minimum wage of the deceased at the time of accident is required to be considered at Rs.7239/-. Further, as per the decision of the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Shethi** reported in **(2017) 16 SCC 680**, additional future prospect at the rate of 25% (Rs.1809) is required to be considered which would come to Rs.9048/-. It appears from the record that the deceased was having three dependents and therefore, deducting 1/3rd towards personal expenses, monthly future loss of dependency would come to Rs.6032/- (Rs.9048 – Rs.3016) and yearly loss of dependency would be Rs.72,384/- (Rs.6032 x 12) and applying multiplier of 13, future loss of dependency would come to Rs.9,40,992/- (Rs.72,384 x 13) which is rounded off to Rs.9,41,000/-. So far as compensation under the head of loss of consortium is concerned, as the deceased was having three

dependents, the same is enhanced to Rs.1,45,200/- (Rs.48,400 x 3) and under the heads of loss of estate and funeral expenses, the learned Tribunal has awarded Rs.15,000/- each which is enhanced to Rs.18,150/- each. Hence, the original claimants are entitled to get the compensation as under:

Heads	**Amount awarded by the Tribunal**	**Reassessed by this Court**
Future loss of dependency	Rs.4,55,100/-	**Rs.9,41,000/-** including additional amount of Rs.4,85,900/-
Loss of Consortium	Rs.40,000/-	**Rs.1,05,200/-** including additional amount of Rs.65,200/-
Loss of Estate	Rs.15,000/-	**Rs.18,150/-** including additional amount of Rs.3,150/-
Funeral Expenses	Rs.15,000/-	**Rs.18,150/-** including additional amount of Rs.3,150/-
Total…	Rs.5,25,100/-	**Rs.11,22,500/-** including additional amount of Rs.5,97,400/-

The learned Tribunal has awarded total compensation of **Rs.5,25,100/-** which is on lower side, for the reasons recorded hereinabove, and therefore, same is required to be enhanced to the aforesaid extent i.e. **Rs.11,22,500/-** and hence, the impugned judgment and award of compensation passed by the learned Tribunal is modified to the aforesaid extent and hence, the appellants – original claimants are entitled to get enhanced amount of

Rs.5,97,400/- (Rs.11,22,500 – Rs.5,25,100/-).

[8.0] So far as liability part is concerned, driver of Truck No.MP-09-HG-9043 has produced the driving license at Exh.63 and it is on record that he was holding valid and effective driving license. The original opponent No.3 – owner of DCM Toyota has produced insurance policy of DCM Toyota at Exh.74 which was effective for the period from 18.04.2015 to 17.04.2016 which covers the date of accident i.e. 13.06.2015. Herein, defence raised by learned advocate for respondent No.4 – insurance company is that the driver of offending vehicle i.e. DCM Toyota was not having valid and effective license and therefore, insurance company is not liable to indemnify the owner and further it is submitted that opponent No.4 had issued the Act Only Policy which does not cover the risk of driver and cleaner who were travelling in the vehicle in question. If we peruse the policy produced at Exh.74, it appears that additional premium of Rs.200/- is accepted for legal liability of the employee and it appears that the deceased was not travelling in the offending vehicle as unauthorized occupant but as an employee i.e. cleaner for loading and unloading goods in the said vehicle and while performing his duty, alleged accident took place. Hence, the fact that deceased was unauthorized passenger is not proved on the record and only for breach of policy condition i.e. driver not holding valid and effective license as the owner of the offending vehicle handed over the vehicle to his son for driving the said vehicle though fully aware that his son was not having valid and effective driving license, the learned Tribunal has been pleased to exonerate the opponent No.4 – insurance company and passed an order in light of the decision of the Hon'ble Apex Court in the case of **Shamanna vs. Oriental Insurance Co. Ltd.** reported in **(2018) 9 SCC 650** wherein, considering sections 147 and 149 of the MV Act, third

party victim of the motor vehicle accident is passed and it is the duty of the insurer to satisfy the award and principle of "pay and recover" is summarized and wherein it is held that if the driver had no valid driving license and there was breach of policy condition, the High Court ought not to have interfered with the order passed by the Tribunal of 'pay and recover'. If the insurance company has paid any amount then mode of recovery is also provided and insurance company has a liberty to initiate proceeding before the executing Court concerned, if dispute is between the insurer and the owner. Herein, the claimant is a third party and he has nothing to do with the said terms and conditions of the insurance policy. Hence, in view of the decision of the 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'.

[9.0] In wake of aforesaid conspectus, present First Appeal is allowed. The impugned judgment and award dated 06.12.2021 passed by the learned Motor Accident Claims Tribunal (Auxi.), Bhavnagar in Motor Accident Claim Petition No.249 of 2015 stands modified to the extent that the respondent No.4 – insurance company is liable to pay **Rs.11,22,500/-** to the appellants – original claimants alongwith accrued interest at the rate of 9% per annum on the said amount, which shall be deposited with the learned Tribunal, within a period of six weeks from the date of receipt of this judgment, and thereafter, the learned Tribunal to disburse the same, **strictly as per the apportionment made by the learned Tribunal in the impugned**

judgment and award, to the original claimants by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.

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

[11.0] The respondent No. 4 – insurance company, after depositing the aforesaid reassessed amount of compensation with the learned Tribunal, for the reasons recorded hereinabove, is entitled to recover the aforesaid amount of compensation from the owner of DCM Toyota bearing No.GJ-4T-5055 i.e. respondent No.3 herein by filing appropriate proceedings before the learned Tribunal.

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 11/12/2025 13:32:43