IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1267 of 2022
With
R/CROSS OBJECTION NO. 230 of 2022
In
R/FIRST APPEAL NO. 1267 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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THE MAGMA HDI GENERAL INSURANCE COMPANY CALCUTTA
Versus
BACHUBHAI KALUBHAI ALIAS BHALABHAI BHARVAD & ORS.

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Appearance:
MR RATHIN P RAVAL(5013) for the Appellant(s) No. 1
MR H M SHAH(3997) for the Defendant(s) No. 1,2,3,4
RULE SERVED for the Defendant(s) No. 6,7

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

Date : 04/12/2025
ORAL JUDGMENT

[1.0] By way of present First Appeal under Section 173 of the Motor Vehicles Act, 1988, the appellant – insurance company has assailed the impugned judgment and award dated 18.11.2021 passed by the learned 6th Motor Accident Claims Tribunal, at Cambay, District Anand (for short "learned Tribunal") in Motor Accident Claim Petition No.130/2020 (Old MACP No.147/2017), whereby the learned Tribunal has partly allowed the claim petition in favor of the original claimants by directing the appellant herein – original opponent No.3 – insurance company to pay compensation of Rs.20,69,807/- to the original claimants with interest at the rate of 9% per annum from the date of claim petition. Cross Objection No.230/2022 in First Appeal No.1267

of 2022 is filed by the original claimants seeking enhancement of compensation.

[2.0] The brief facts leading to filing of present appeals and cross-objections are as follows:

[2.1] On 17.10.2016 at about 5.00 hours on Tarapur to Vataman road, near Dargah, when the deceased was going on his motorcycle, the original opponent No.1 – driver of opponent Truck bearing No.GJ-14-W-3259 drove the offending Truck in rash and negligent manner and collided with the motorcycle of the deceased. As a result, deceased died due to the accidental injuries and original claimants – legal heirs and representatives of the deceased filed the claim petition seeking compensation of Rs.54 lakh.

[2.2] After considering the evidence produced on record by the respective parties, learned Tribunal has been pleased to hold the original opponent No.1 solely negligent for the accident and awarded compensation of Rs.20,69,807/- to the original claimants with 9% interest per annum. Hence, present First Appeal is filed by the appellant – insurance company challenging the impugned judgment and award on the ground of quantum and cross-objections are filed by the original claimants seeking enhancement of compensation.

[3.0] Learned advocate for the appellant has submitted that the learned Tribunal has committed an error in awarding the extra high compensation without considering the evidence produced on record and erred in considering the income of Rs.8000/- of the deceased and 40% prospective income of the deceased without considering the material on record. Even, future loss of dependency is wrongly considered which is required to be sliced down and that loss of

consortium is awarded to grandfather of the deceased which is not permissible. He has further submitted that the deposition of employer of deceased is produced at Exh.37 which ought not to have been considered as it is not believable and no any documentary evidence in form of salary voucher is produced and therefore, in absence of any material, learned Tribunal ought to have considered notional income of the deceased. Hence, he has requested to allow the present appeal and reduce the compensation accordingly.

[4.0] Learned advocate Mr. H.M. Shah appearing for the original claimants has opposed the First Appeal and in support of the Cross Objections, he has submitted that the learned Tribunal has committed an error in not considering the income of the deceased at the time of accident as the deceased was a skilled person working as driver and though the claimants had examined employer of the deceased at Exh.37 and produced the salary certificate at Exh.38 which demonstrates that monthly salary of the deceased at the time of accident was Rs.12,000/-, the learned Tribunal has committed an error in considering monthly income of the deceased only at Rs.8000/-. He has further submitted that the learned Tribunal ought to have considered future prospects of the deceased as he was a skilled person. To buttress his argument, learned advocate for the original claimants has relied on the decision of the Hon'ble Supreme Court in the case of **Parminder Singh vs. New India Assurance Co. Ltd. & Ors.** reported in **(2019)7 SCC 217** and in the case of **Gabhubhai Sevabhai Koli vs. Gujarat State Road Transport Corporation** reported in **1999 ACJ 1364** and has requested to consider monthly income at Rs.12,000/- of the deceased and to allow the cross-objection and dismiss the First Appeal.

[5.0] Having heard learned advocate for the appellant and learned advocate for the original claimants and perusing the record, it appears that in order to prove the income of the deceased, the claimants have produced documentary evidence at Exhs.41 to 48 and considering the the evidence of claimant produced at Exh.34, it transpires that the driver of the offending vehicle has not led any evidence or stepped into the witness box. It appears from the evidence of the claimant No.1 that the deceased was riding his motorcycle and offending truck came from opposite side and collided with the motorcycle of deceased and therefore, the learned Tribunal hold the driver of the offending truck to be sole negligent for the accident and issue No.1 was answered in affirmative in favor of the original claimants and against the original opponent No.1 – driver of offending truck. Even otherwise, the said fact is not seriously disputed by either of the parties.

[6.0] It is apposite to mention that in the claim petition, both, the claimants as well as the insurance company have challenged the quantum. At the time of accident, it is stated that the deceased was aged 24 years and was earning Rs.22,000 to Rs.27,000 by serving as a driver of school van and to prove the said fact, the claimants have examined employer of the deceased at Exh.37 and produced salary certificate at Exh.38 and claimants have produced school leaving certificate of the deceased at Exh.39 to prove the age of the deceased. Perusing the said documentary evidences, it appears that the deceased was earning Rs.12,000/- per month but the learned Tribunal has not relied on the said documents on the ground that in the cross-examination of the employer of the deceased, it was found that there was no any documentary evidence or proof of said payment and witness having no any evidence to show that the deceased was

working and was being paid Rs.12,000/- per month. Hence, the learned Tribunal has considered the monthly income of Rs.8000/- considering the prevailing minimum wages. The authorities relied on by the learned advocate for the original claimants in the case of ***Parminder Singh (Supra)*** and in the case of ***Gabhubhai Sevabhai Koli (Supra)*** are also considered and perusing the said decisions, income of the deceased is required to be considered at Rs.10,000/- as the alleged accident took place on 01.07.2019**.** Further, considering the age of the deceased at 24 years at the time of accident, 40% addition towards future prospects is required to be made and therefore, monthly loss of dependency would come to Rs.14,000/- and deducting 1/4th towards personal expenses, the claimants would be entitled to get Rs.10,500/- [Rs.14,000 – Rs.3500 (1/4th of Rs.10,000)]. Hence, applying multiplier of 18, as the deceased at the time of accident was aged 24 years, compensation under the head of future loss of dependency would come to **Rs.22,68,000/- (Rs.10,500 x 12 x 18)**. To that extent the impugned judgment and award is required to be modified and cross objection is required to be allowed.

[6.1] So far as loss of consortium is concerned, as per 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**, claimants are entitled to get an amount of Rs.48,000 x 4 = **Rs.1,93,600/- towards filial consortium** and **Rs.18,1500/- towards loss of estate** and **Rs.18,150/- towards funeral expenses**. Further, **medical bills** for an amount of **Rs.25,407/-** were produced before the learned Tribunal and therefore, the original claimants are entitled to get the said amount as has been rightly awarded by the learned Tribunal. Hence, the claimants are entitled to get the compensation as under:

Heads	Awarded by Tribunal	Reassessed by this Court
Future loss of dependency	Rs.18,14,400/-	**Rs.22,68,000/- including additional amount of Rs.4,53,600/-**
Loss of consortium	Rs.2,00,000/-	Rs.1,93,600/-
Funeral Expenses	Rs.15,000/-	Rs.18,150/-
Loss of Estate	Rs.15,000/-	Rs.18,150/-
Medical Expenses	Rs.25,407/-	Rs.25,407/-
Total Compensation	**Rs.20,69,807/-**	**Rs.25,23,370/-** including **additional amount of Rs.4,53,500/-**

[7.0] In wake of aforesaid conspectus, **First Appeal No.1267 of 2022** is **partly allowed** to the extent it challenges the consortium awarded to the grandfather of the deceased towards loss of consortium. **Cross Objection No.230/2022** in First Appeal No.1267/2022 is **partly allowed** and impugned judgment and award dated 18.11.2021 passed by the learned 6th Motor Accident Claims Tribunal, at Cambay, District Anand in Motor Accident Claim Petition No.130/2020 (Old MACP No.147/2017) is modified and amount of compensation to be awarded to the original claimants is enhanced to **Rs.25,23,370/-** as discussed hereinabove.

[8.0] The Insurance Company is directed to deposit the **enhanced amount i.e. Rs.4,53,500/-** alongwith accrued interest at the rate of 9% per annum within a period of six weeks from the date of receipt of this order.

[9.0] 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.

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

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

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

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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 05/12/2025 16:53:38