IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1326 of 2022

With
R/CROSS OBJECTION NO. 314 of 2023
In
R/FIRST APPEAL NO. 1326 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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DIVISIONAL CONTROLLER
Versus
RAMESHBHAI VALJIBHAI PARMAR

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Appearance:
MR DEEPAK G ALORIA(6580) for the Appellant(s) No. 1
NISHIT A BHALODI(9597) for the Defendant(s) No. 1

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

Date : 17/12/2025

COMMON ORAL JUDGMENT

1) This appeal has been preferred by the appellant – Gujarat State Road Transport Corporation against the impugned judgment and award dated 18.11.2021 passed by the learned Motor Accident Claims Tribunal (Main), Morbi, (for short referred to as “learned Tribunal”) in Motor Accident Claim Petition No.50 of 2018 under Section 166 of the Motor Vehicles Act, 1988 (for short referred to as “MV Act”) wherein the Tribunal has partly allowed the claim petition filed by the claimant.

2) The original claimant – respondent herein has objected the present appeal by filing cross objections being Cross Objection No.314 of 2023. Therefore, the First Appeal and Cross-Objections both are hereby taken up for final hearing and decided by this common judgment.

3) Heard Mr. Deepak Aloria, learned counsel for the appellant and Mr. Nishit Bhalodi, learned counsel for the respondent claimant.

4) The brief facts of the present claim petition are that the accident took place on 18.01.2018, when the claimant was going from his village Jetpar to his working place Sorento Granite Pvt. Ltd situated at Ghuntu on his motorcycle bearing No.GJ-03-FL-1490 with proper care and caution. Due to fog on that day and on seeing ST Bus bearing No.GJ-18-Y-6440 coming from opposite side, he stopped his motorcycle outside the road, however, the driver of ST bus dashed with the motorcycle of the claimant, as a result, the claimant got serious fracture injuries in right leg and left hand and for that, he had to undergo surgical operation. In this regard, a complaint was lodged with Morbi Taluka Police Station bearing I-CR No.12/2018.

5) Learned counsel for the appellant – S.T Corporation has submitted that the Tribunal has awarded exorbitantly high compensation, which is required to be sliced down. The Tribunal has committed error in holding 100 % negligent on the part of the ST bus driver without any cogent reason though the claimant himself was negligent. Further, without considering the proof of income, the Tribunal has considered monthly income at Rs.8,300/- which is very exorbitant. Hence, he has requested to allow present appeal as prayed for.

6) Mr. Nishit Bhalodi, learned counsel for the claimant opposing present appeal and supporting his cross-objection, submitted that, the Tribunal has not committed any error in considering negligence on the part of offending

ST bus. The Tribunal has rightly determined the monthly income of the claimant at Rs.8,300/- as he was working as Electrician in Granito Pvt Ltd company and in fact, he was earning Rs.25,000/- p.m. To prove the same, the claimant has also produced ledger account at Exh:34 from which it reveals that the company has paid an amount of Rs.25,000/- every month to the claimant. Further, very meagre amount is awarded under the head of pain, shock and suffering and actual loss of income is not properly considered. Hence, he has requested to allow the cross-objection and dismiss the appeal and thereby, requested to enhance the compensation under the other heads.

7) Having heard learned counsel for the respective parties and perusing the record and proceedings, it appears that the Tribunal has relied on the decisions of the Apex Court in cases of **Bimla Devi Vs. HRTC, reported in AIR 2009 SC 2819 and Parmeshwari Devi Vs. Amit Chand, reported in 2011 (11) SCC 635.** In order to prove the claim, the claimant has tendered an evidence at Exh:19, wherein, he has reiterated the fact that the claimant is cross-examined by the learned advocate appearing for the GSRTC, but nothing has come out on record which helps the case of the opponent. Accident occurred between the ST bus and motorcycle at around 07:45 in cold morning of winter season and there was dense fog. Road was double line but not good in condition. Complaint has been filed against the driver of ST Bus and chargesheet has also been filed. Claimant was going on his motorcycle wearing helmet and his headlight and indicator were on and when he reached near Radhe Krishna Eracle Factory on Jasmatgadh – Pavadivari road, at that time, ST Bus came from wrong side and though he slowed down the speed of his motorcycle and switched the headlight, ST bus dashed with his motorcycle. Considering the said evidence and panchnama at Exh:23, the Tribunal rightly came to the conclusion that the driver of offending vehicle was sole negligent. To rebut the said evidence of the claimant, who was eye-witness, no any evidence is produced by the ST Corporation and driver of ST bus was not examined. Driver of ST bus has to take care and being a bigger and heavy vehicle, he should not drive the

vehicle in rash and negligent manner with an excessive speed and that too in dense fog weather. Degree and standard of care is expected to a quick running vehicle commensurate with the situation and conditions of the road, which was not maintained by the driver of ST bus and always driver of the bigger vehicle must drive the vehicle with reasonable care, strictly observing the traffic rules and regulations of the road. The driver always be conscious of the motto 'except the unexpected" and should be apprehensive of the vehicle from the opposite direction. Driver failed to observe the said aspects and incident occurred and for which, he is found sole negligent.

8) So far contributory negligence on the part of motorcycle is concerned, in absence of any evidence and merely based on the fact that motorcycle was lying on the road, no such contributory negligence is required to be considered. To prove the same, S.T corporation has to tender evidence. Negligence was on the ST Bus driver as discernible from the evidence recorded before the Tribunal. Standard of proof required being preponderance of probability as has been reiterated in **Mangla Ram v. Oriental Insurance Company Limited**. In this regard, reliance is also placed on the decision of the Hon'ble Apex Court in case of **Srikrishna Kanta Singh Vs. The Oriental Insurance Company Ltd. & Ors. Reported in 2025 INSC 394.** Therefore, the Tribunal has not committed any error in not considering the contributory negligence on the part of motorcycle. Hence, argument canvassed by learned counsel for the appellant is not sustainable.

9) So far quantum part is concerned, case of the claimant is that, at the time of accident, he was working as an electrician in a company and drawing monthly salary of Rs.25,000/-. In support of the same, he has produced Savings Bank Account Statement of Dena Bank for the period of 01.04.2016 to 31.03.2018 and on perusal of the same, it appears that every month Rs.25,000/- has been deposited in the bank account of the claimant by

Sorento Granito Pvt. Ltd. However, the Tribunal came to the conclusion that though salary of Rs.25,000/- has been deposited every month, the same does not inspire any confidence and no any income tax return is produced on record and therefore, the tribunal has considered his monthly income considering notional income as Rs.8,300/-. Hence, this Court is of the opinion that, once the said aspect of depositing salary of Rs.25,000/- every month is accepted by the Tribunal, question does not arise to discard the said evidence.

10) As contended by learned counsel for the appellant that the Tribunal has erred in considering notional income of Rs.8,300/- without any documentary evidence, it is required to be noted that, the claimant was serving as an electrician in private company at the time of accident and to award just compensation, the Tribunal has considered the notional income of Rs.8,300/-, which is just and proper and there is no embargo to consider the guage work and Tribunal has not considered other head and properly awarded the just compensation. Mr.Bhalodi has relied on the decision of the Hon'ble Supreme Court in the case of **Chandra @ Chanda @ Chandraram vs. Mukesh Kumar Yadav** reported in **(2022)1 SCC 198** and submitted that though the claimant was able to produce the documentary evidence to show monthly income of the deceased, the same was not considered. Hence, he has requested to dismiss the present appeal.

11) So far disability is concerned, the claimant has produced disability certificate at Exh:27, from which it appears that the doctor has assessed permanent disability to the extent of 32 % as determined by the Tribunal is just and proper. Similarly, considering the age of the claimant, multiplier of 14 is rightly applied as per the judgment of the Apex Court in the case of ***Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation & Anr. [2009 (6) SCC 121]*** which are just and proper.

12) For the foregoing observations and reasons, present appeal fails and is hereby **dismissed**.

13) As per the law laid down by the Hon'ble Supreme Court in the case of ***Govind Yadav Vs. National Insurance Co. Ltd.,*** *reported in* ***2012(1) TAC 1 (SC)***, that if no proof of income is produced on the record then Tribunal has to consider prevalent minimum wages. In the present case, the accident occurred on 18.01.2018 and during that time, the claimant – injured was serving as an electrician and earning Rs.25,000/- p.m and for that, he has also tendered evidence, whereas, the Tribunal has assessed the income of the claimant as Rs.8,300/- per month which is required to be enhanced and hence, the income of the injured is reassessed as **Rs.25,000/-** per month. Further, the Tribunal has considered disability of the injured as 32%, which is consented by both the parties and multiplier of 14 were considered by the learned Tribunal as per the judgment of the Apex Court in the case of ***Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation & Anr. [2009 (6) SCC 121]*** which are just and proper. Therefore, for calculating future loss of income, monthly salary of claimant is considered as Rs.25,000/- + Rs.6,250/- (25 % future prospective) = Rs.31,250/-. Now total income under the head of future loss of income is required to be considered as Rs.31,250/- x 12 months x 14 multiplier x 32 % = Rs.16,80,000/-. The Tribunal has awarded Rs.4,46,208/- towards future loss of income, however, this Court is of the view that the claimant is entitled to get additional amount of **Rs.12,33,792/-** under the head of future loss of income.

14) Further, the Tribunal has awarded Rs.8,000/- under the head of pain, shock and sufferings, which needs to be reassessed at **Rs.20,000/-**. However, as discussed above, the actual loss of income is required to be reassessed as Rs.25,000/- for three months which comes to **Rs.75,000/-**. Therefore, the claimants is entitled for additional amount of **Rs.41,800/-** under the head of actual loss as the income of the claimant is reassessed.

15) As discussed above, the appellant is entitled to get compensation computed as under:

Heads	Awarded by Tribunal	Reassessed by this Court
Future loss of income	Rs.4,46,208/-	**Rs.12,33,792/-**
Pain, shock and sufferings	Rs.8,000/-	Rs.20,000/-
Special diet, attendant and transportation	Rs.10,000/-	Rs.10,000/-
Actual loss of income for 3 months	Rs.33,200/-	**Rs.75,000/-**
Medical expense	Rs.3,87,219/-	Rs.3,87,219/-
Total compensation	Rs.8,84,700/-	**Rs.17,26,011/-**

16) In view of above, as the Tribunal has awarded total compensation of Rs.8,84,700/-, however, as discussed above, the claimant would be entitled to get additional amount of **Rs.8,41,311/-** with proportionate costs and interest as awarded by the learned Tribunal.

17) Hence, Cross Objection filed by the claimant is **allowed**. The judgment and award dated 18.11.2021 passed by the learned Motor Accident Claims Tribunal (Main), Morbi, in Motor Accident Claim Petition No.50 of 2018 stands modified to the aforesaid extent. Rest of the judgment and award remains unaltered. The respondent – Gujarat State Road Transport Corporation shall deposit said additional amount of **Rs.8,41,311/**- along with interest as awarded by the Tribunal, before the Tribunal within a period of **four weeks** from the date of receipt of this order. Record and proceedings be remitted back to the concerned Tribunal forthwith.

18) The Tribunal is directed to recover or deduct the deficit court fees on enhanced amount and thereafter disburse the amount accordingly. Award to be drawn accordingly.

(HASMUKH D. SUTHAR,J)

SUCHIT

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: PATEL SUCHIT JAYESHBHAI(HC01083), Private Secretary, at High Court of Gujarat on 19/12/2025 11:19:36