**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**
**R/FIRST APPEAL NO. 4107 of 2023**

**FOR APPROVAL AND SIGNATURE:**

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

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| Approved for Reporting | Yes | No |
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ASHABA PRAVINSINH RATHOD & ORS.
Versus
JOGRAJIYA DEVRAJBHAI MEGANBHAI & ANR.

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Appearance:
MR DHAWAN M JAYSWAL(5878) for the Appellant(s) No. 1,2,3,4,5
MS KIRTI S PATHAK(9966) for the Defendant(s) No. 2
RULE SERVED for the Defendant(s) No. 1

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

**Date : 18/12/2025**
**ORAL JUDGMENT**

1. This appeal has been preferred by the appellant against the judgment and award dated 21.04.2023 passed by the Motor Accident Claims Tribunal (Main.) Surendranagar in Motor Accident Claim Petition being MACP No.29 of 2016.

2. Heard learned advocates for the respective parties.

3. The brief facts of the claim petition are that on 28.06.2015, the deceased, Pravinsinh Bavalbhai Rathod, was travelling as a pillion rider on Motorcycle No. GJ-13-DD-4470, which was being driven by opponent No.1 in a rash and negligent manner and at an excessive speed. At about 7:00 p.m., near the dispensary of Dr. Satapara at Thangadh, opponent No.1 suddenly applied brakes, as a result of which the deceased fell from the motorcycle, sustained grievous injuries, and succumbed thereto. The applicants contend that the accident occurred solely due to

the rash and negligent driving of opponent No.1. They further claim that, due to the untimely death of the deceased, they have suffered severe financial loss on account of dependency, incurred funeral expenses, and sustained loss of estate and loss of expectation of life. Accordingly, the applicants have claimed compensation of Rs.45,00,000/- from all the opponents jointly and severally.

4. The learned advocate for the appellant submitted that the learned Tribunal has committed a grave error in appreciating the evidence on record. The deceased was travelling as a pillion rider, and the motorcycle was being driven by opponent No.1 in a rash and negligent manner. Due to sudden application of brakes, the deceased fell from the motorcycle, sustained grievous injuries, and ultimately succumbed thereto. The appellants incurred substantial expenses towards medical treatment and funeral rites. The deceased was 36 years of age at the time of the accident and was serving as a Police Constable in the Police Department. Despite the fact that the death occurred due to the accident, the learned Tribunal erroneously concluded that the deceased died of a heart attack by relying upon oral evidence, while completely ignoring the medical papers, post-mortem report, and other documentary evidence on record. The post-mortem report clearly records the cause of death as intracerebral haemorrhage and cardio-respiratory arrest due to head injury. Even the medical witnesses, namely Dr. Ashit Rampati and Dr. . Binduben Mukdal, who examined the deceased, have categorically stated that the cause of death was haemorrhage resulting from head injury. It was further submitted that when

the appellants approached the Life Insurance Company for insurance benefits, the claim was repudiated on the ground that the death was accidental. Thus, the Tribunal failed to consider this crucial aspect as well. In view of the aforesaid facts and evidence, it was prayed that the appeal be allowed.

5. On the other hand, the learned advocate appearing for the respondent–insurance company opposed the appeal and filed written submissions on behalf of the respondent company. It was submitted that the learned Tribunal has not committed any error and that the claim petition itself is not maintainable under Section 166 of the Motor Vehicles Act, as no element of rash or negligent driving has been established. The learned advocate relied upon the accidental death entry produced at Exhibit 53, wherein it is stated that the deceased suddenly became unconscious due to a heart attack, as a result of which the motorcycle tilted and the deceased fell on the road.

5.1 It is further submitted that while the deceased was being taken to the hospital, he succumbed to the heart attack. According to the police papers, it is clear that the deceased fell from the motorcycle due to a heart attack and not on account of any vehicular accident. It was further submitted that the insurance company is not liable to pay compensation, particularly when the wife of the deceased herself admitted that her husband was sitting behind the motorcycle and fell down due to a heart attack. Reliance was placed upon the judgments of the Hon'ble Apex Court in ***Smt. Alka Shukla v. Life Insurance Corporation*** (SLP No. 32335 of 2016), and also on

the decisions in ***Shanta Devi v. State of Uttar Pradesh*** (Allahabad High Court) and ***Surendra Arora v. Manoj Bisla*** (Delhi High Court). It was contended that death due to a heart attack amounts to a natural death and, therefore, the insurance company is not liable to pay any compensation, as no accident occurred due to rash or negligent driving of opponent No.1. Since the deceased succumbed to a heart attack and merely fell from the motorcycle, the insurance company cannot be fastened with liability. Hence, it was prayed that the appeal be dismissed.

6. Having heard the learned advocates appearing for the respective parties and upon perusal of the documents on record, it appears that, in order to substantiate the claim petition, the claimant has produced her affidavit at Exhibit 52. The accident death registration entry No. 53 is produced at Exhibit 53, the panchnama at Exhibit 54, and the post-mortem note at Exhibit 59. Opponent No.1's driving licence is produced below Exhibit 56 and ownership of offending vehicle is also not in dispute. In her affidavit, the claimant has deposed on oath that the deceased, Pravinsinh Bavalbhai Rathod, was travelling as a pillion rider on Motorcycle No. GJ-13-DD-4470, which was being driven by opponent No.1 in a rash and negligent manner and at an excessive speed. At about 7:00 p.m., near the dispensary of Dr. Satapara at Thangadh, opponent No.1 suddenly applied brakes, as a result of which the deceased fell from the motorcycle, sustained grievous injuries, and succumbed thereto.

7. It appears that in cross-examination by the appellant–insurance company, the claimant stated that she is an illiterate

and uneducated lady. She further admitted that her husband died due to a heart attack after falling from the motorcycle. Relying upon this admission, the learned advocate for the insurance company contended that the deceased died due to a heart attack and not on account of any vehicular accident. In support of this contention, reliance was placed upon the accident death registration entry at Exhibit 53, wherein it is stated that the deceased, while travelling as a pillion rider, suffered a severe heart attack, fell down, and became unconscious.

8. The learned Tribunal has relied upon the said evidence and arrived at the conclusion that the deceased died due to a heart attack. However, upon close scrutiny of the accident death registration entry, it emerges that the said information was furnished by opponent No.1, the driver of the motorcycle, who has neither been examined nor stepped into the witness box, despite having been duly served with notice. Therefore, the possibility cannot be ruled out that such information may have been furnished to the police authority by him to avoid liability or further legal consequences. Significantly, no independent or corroborative evidence has been produced before the Tribunal to establish the veracity of the said entry.

9. Merely on the basis of the admission made by an illiterate lady, who admittedly had no personal knowledge of the occurrence and was not present at the time of the accident, the Tribunal has relied upon the accident death entry in isolation. It

is pertinent to note that in her affidavit, particularly in paragraph 10 of the claim petition, the claimant has clearly narrated the manner in which the accident occurred and has specifically attributed negligence to opponent No.1. The said aspect of rash and negligent driving has not been challenged by the insurance company in cross-examination. Despite this, the learned Tribunal, solely relying upon the admission in paragraph 11 and without properly appreciating the contents of the affidavit and the evidence on record, concluded that the death occurred due to a heart attack. On the contrary, the post-mortem report at Exhibit 59, particularly Column No. 23, records the cause of death as "**intracerebral haemorrhage and cardio-respiratory arrest due to head injury**." Thus, the medical evidence clearly establishes that the cardio-respiratory arrest was a consequence of the head injury sustained in the accident.

10. This Court is of the considered view that the insurance company, without raising any proper defence or disproving the fact that the claimant sustained a head injury and that the cardio-respiratory arrest occurred as a consequence of such injury, has failed to discharge its burden of proof and has relied merely, with a view to avoid liability, upon a stray answer given by the uneducated claimant lady. The learned Tribunal, in isolation and without any corroborative evidence or supporting material, has relied upon the said admission. In the present case, although the death of the deceased has been described as cardiac arrest, the medical evidence clearly establishes that the cardio-respiratory arrest was a consequence of the head injury

sustained in the accident. In such circumstances, the question put to the illiterate claimant during cross-examination was mixed and ambiguous. It was the duty of the learned Tribunal to clarify the question and ensure that the witness understood it correctly before recording her answer. However, the learned Tribunal failed to consider this aspect. Moreover, the learned advocate appearing for the claimant also did not re-examine the witness on this point to remove the ambiguity and place the correct facts on record. A Presiding Officer is not a mute or silent spectator. Judges are not mere recording machines; rather, they are active participants who must elicit relevant material and apply judicial intelligence to discover the truth.

11. It appears from the record that no evidence has been produced on record, nor has any medical expert been examined, to prove that the deceased first suffered a heart attack or cardio-respiratory arrest and thereafter fell down, resulting in head injury. Such a hypothesis remains unproved and unsubstantiated. Merely relying upon the accident at death entry, the learned Tribunal erred in concluding that the death was natural and not attributable to rash and negligent driving. It is also pertinent to note that opponent No.1 has not entered the witness box, and therefore, the evidence led by the claimant regarding rash and negligent driving remains uncontroverted. The accident, therefore, occurred due to the rash and negligent driving of opponent No.1.

12. In view of the aforesaid discussion, this Court is of the

considered view that the learned Tribunal has committed a serious error in concluding that the deceased died a natural death due to a heart attack or cardio-respiratory arrest.

13. It is needless to state that while deciding a motor accident claim, the Tribunal is required to apply the standard of proof based on the preponderance of probabilities and not the strict standard of proof beyond reasonable doubt as applicable in criminal trials. The approach and role of the courts while examining evidence in motor accident claim cases should not be to find fault with the non-examination of the best eyewitness, as may be done in a criminal trial, but rather to analyse the material placed on record by the parties to ascertain whether the version of the claimants is probable and acceptable. In this regard, this Court deems it proper to refer to the the judgments of the Hon'ble Supreme Court in ***Bimla Devi v. H.R.T.C.*, reported in AIR 2009 SC 2819, and *Parmeshwari Devi v. Amir Chand*, reported in (2011) 11 SCC 635.** However, while appreciating the evidence in the present case, the learned Tribunal has relied heavily upon a stray answer given by the illeterate-uneducated claimant during her cross-examination. The claimant being an illiterate lady, the Tribunal, solely on the basis of such admission, in isolation accepted the version that the deceased fell from the motorcycle due to a heart attack without any evidence. Significantly, opponent No.1, who was driving the motorcycle and though he was impleaded as a respondent, has neither been examined as a witness nor stepped into the witness box or rebutted the evidence tendered by claimant.

14. The evidence led by the claimant attributing rash and negligent driving to opponent No.1 has thus remained uncontroverted and ought to have been duly considered by the learned Tribunal. Prima facie, the said evidence establishes negligence on the part of opponent No.1, which is sufficient to discharge the burden of proof required in a motor accident claim. Significantly, this version has not been rebutted by the best possible witness, namely opponent No.1 himself.

15. It appears for the record that instead of appreciating the evidence in light of the aforesaid settled principles of law, the learned Tribunal relied upon the AD Entry, which was admittedly furnished by opponent No.1. It is well settled that the question of negligence, which is essential for passing an award in a motor accident claim, must be determined on the basis of the evidence available before the Tribunal. Though police records may be looked into keeping in view the benevolent object of the Act, mere production of such documents cannot, by itself, form the sole basis for recording findings, particularly when the contents thereof are disputed and not proved in accordance with law.

16. As discussed hereinabove, the possibility cannot be ruled out that opponent No.1 furnished such information to the police to avoid his liability and further legal consequences. The contents of the accident death entry, therefore, cannot be accepted as gospel truth. Mere production of such a document is insufficient to presume that the deceased died solely due to a heart attack, especially when the post-mortem report clearly

attributes the cause of death to intracerebral haemorrhage and cardio-respiratory arrest due to head injury. It is also relevant to note that in the present case, the Life Insurance Corporation has repudiated the claim on the ground that the death of the deceased was accidental, which further fortifies the case of the claimants.

17. Considering the post-mortem note and the cause of death recorded therein, this Court is of the considered view that the learned Tribunal has committed a serious error in appreciation of evidence. The insurance coverage is not in dispute. The involvement of the vehicle is duly proved, and the policy was valid on the date of the accident, as evidenced by the insurance policy produced at Exhibit 58. Therefore, the insurance company is liable to satisfy and indemnify the award on behalf of opponent No.1, the owner of the motorcycle.

18. So far as the Janvajog Entry produced at Exhibit 53 is concerned, an objection was raised at the time of marking the document as an exhibit, whereupon the learned Tribunal passed an order below Exhibit 52. However, such a document is not admissible in evidence per se under Sections 160 and 161 of the Code of Criminal Procedure, and yet the learned Tribunal has relied upon the same.

19. The learned advocate for the appellant has relied upon the judgments of the Hon'ble Apex Court in ***Smt. Alka Shukla*** **(supra),** ***Shanta Devi*** **(supra)** and ***Surendra Arora*** **(supra)**; however, the said judgments do not render any assistance in the facts of the present case in light of the law laid down by the

**Hon'ble Apex Court in *Sushil Suri v. Central Bureau of Investigation and Another*, reported in (2011) 5 SCC 708**, wherein paragraph 32 reads as under:

> *"32. It needs little emphasis that even one additional or different fact may make a world of difference between the conclusions in two cases and blindly placing reliance on a decision is never proper. It is trite that while applying ratio, the Court may not pick out a word or sentence from the judgment divorced from the context in which the said question arose for consideration. (See Zee Telefilms Ltd. V. Union of India, reported in (2005) 4 SCC 659.) In this regard, the following words of Lord Denning, quoted in Haryana Financial Corpn. V. Jagdamba Oil Mills, reported in (2002) 3 SCC 496, are also quite apt: (SCC p.509, para 22)*
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> > *"22. …. 'Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.'"*

20. As this Court has come to the conclusion that the learned Tribunal has committed an error in not holding opponent No.1 negligent and that the claimants have successfully proved their case, the claimants are entitled to compensation. The accident occurred in the year 2015, and nearly ten years have elapsed since then. In such circumstances, this Court deems it appropriate to avoid an unnecessary remand of the case, which would only result in a futile and prolonged exercise, particularly when sufficient evidence is already available on record. The deceased was in government service, and his pay slip as well as date of birth are duly proved on record. Therefore, applying the settled principles of law, this Court considers it appropriate to

itself compute the quantum of compensation rather than remanding the matter to the learned Tribunal, in view of the judgment of the Hon'ble Supreme Court in ***Suvej Singh v. Ram Naresh*, Neutral Citation: 2025 INSC 1405**.

21. Now coming to the quantum of compensation, it is undisputed that the deceased was serving as a Police Constable. His date of birth was 03.05.1979, and the accident occurred on 28.06.2015; therefore, the deceased was 36 years old at the time of the accident. As per the affidavit at Exhibit 60, the deceased was drawing a gross salary of Rs.17,587/-. After deducting professional tax of Rs.200/-, cycle allowance of Rs.20/-, and washing allowance of Rs.45/-, the net monthly income comes to Rs.17,322/-. For the purpose of calculating just and reasonable compensation, the monthly income is rounded off and taken as Rs.17,300/-. As held by the Hon'ble Supreme Court in Sarla **Verma v. Delhi Transport Corporation, reported in (2009) 6 SCC 121**, the appropriate multiplier applicable for the age group of 36–40 years is "15". Hence, the multiplier required to be applied is '15'.

22. Further, as per the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi, reported in (2017) 16 SCC 680**, an addition of 50% towards future prospects is required to be made, as the deceased was a permanent government employee. Accordingly, 50% of Rs.17,300/-, i.e. Rs.8,650/-, is added, and thus the total monthly income comes to Rs.25,950/-.

23. As the claimants are five in number, in view of the

principles laid down in Sarla Verma (supra), one-fourth (1/4th) of the income, i.e. Rs.6,487.50/-, is required to be deducted towards personal and living expenses of the deceased. After such deduction, the monthly loss of dependency comes to **Rs.19,462.50/-**. Accordingly, the annual loss of dependency is Rs.2,33,550/- (Rs.19,462.50 × 12). Applying the multiplier of "15", the total loss of dependency works out to **Rs.35,03,250/-** (Rs.2,33,550 × 15).

24. Thus, the total compensation payable to the claimants would be as under:

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| Future loss of income | **Rs.35,03,250/-** |
| Loss of consortium | Rs.48,400/-x 5= Rs.2,42,000/- |
| Loss of estate | Rs.18,150/- |
| Funeral Expenses | Rs.18,150/- |
| **Total** | **Rs.37,81,550/-** |

25. Therefore, the claimants are entitled to compensation of **Rs. 37,81,550/-** with interest at the rate of 9% per annum from the date of the claim petition till its realization.

26. For the reasons recorded above, the present **appeal is allowed**. The impugned judgment and award passed by the learned Tribunal is quashed and set aside. The claimants are herein entitle to get **Rs.37,81,550/- towards compensation** from the date of the claim petition till its realization. Respondent – Insurance Company shall deposit the said compensation along with interest at the rate of 9% per annum, 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.

27. Out of the awarded amount of compensation, 70% shall be invested in fixed deposits in any nationalised bank in the names of the respective claimants for an initial period of five years. The remaining 30% shall be paid to the claimants, after due verification, by transferring the said amount to their respective bank accounts through RTGS/NEFT forthwith. The claimants shall not be entitled to avail any loan or advance against, withdraw from, or create any encumbrance upon the aforesaid fixed deposits without prior permission of this Tribunal. However, the periodical interest accrued on the said fixed deposits shall be paid to the claimants from time to time.

28. The learned Tribunal is directed to recover or deduct the deficit court fees on amount of compensation and thereafter disburse the amount accordingly.

29. Award to be drawn accordingly.

Sd/-

**(HASMUKH D. SUTHAR,J)**

ALI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: ISTAYAK ALI(HC01093), PRIVATE SECRETARY, at High Court of Gujarat on 22/12/2025 14:00:41