

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 5159 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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JANABEN JORSINGBHAI DAMOR & ORS.

Versus

KESARSINH RUPSINH SOLANKI & ORS.

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Appearance:

MR A R DWIVEDI(11319) for the Appellant(s) No. 1,2,3,4,5

KAMALKUMAR R SHARMA(9502) for the Defendant(s) No. 1

MR DHAIRYAWAN D BHATT(11817) for the Defendant(s) No. 4

MR TANMAY B KARIA(6833) for the Defendant(s) No. 2

O I PATHAN(7684) for the Defendant(s) No. 1

RULE SERVED for the Defendant(s) No. 3

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CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**Date : 20/01/2026****ORAL JUDGMENT**

- 1) Feeling aggrieved and dissatisfied with the judgment and award dated 17.05.2023 passed by learned Motor Accident Claims Tribunal (Auxi.), Dahod at Limkheda (which shall hereinafter be referred to as "**the Tribunal**" for short), in Motor Accident Claim Petition No.1904 of 2017, the appellants – original claimants have preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (which shall hereinafter be referred to as "**the Act**" for short).

- 2) Heard Mr. A. R. Dwivedi, learned Advocate for the appellants – original Claimants, Mr. T. B. Karia, learned Advocate for the respondent no.2 – Insurance Company and Mr. D. D. Bhatt, learned Advocate for the respondent no.4 – Insurance Company. Perused the original record and proceedings.
- 3) It is the case of the appellants that on 15.10.2016, the deceased Jorsingbhai Harsingbhai Damor (who shall hereinafter be referred to as "**deceased**") along with Jaydip were travelling in the rickshaw bearing Reg. No.GJ-31-X-0280, and in the evening while they were passing from Borvato Village, at that time the opponent no.1 came with the Tanker bearing Reg. No.GJ-09-Z-9295 in rash and negligent manner and dashed with the rickshaw in which both the deceased were travelling. As a result of which the deceased sustained serious injuries and succumbed to it. Therefore, the appellants had filed MAC Petition seeking compensation, wherein, the learned Tribunal after appreciating the evidence produced on record has partly allowed the claim petition.
- 4) Learned Advocate for the appellants – original claimants has submitted that the learned Tribunal has committed error in assessing income of the deceased by not considering minimum wages of prevalent time. He has further submitted that the learned Tribunal has grossly erred in not awarding loss of consortium to each appellants. Hence, he has requested to allow the present appeal.
- 5) Learned Advocates for the Insurance Companies have submitted that the learned Tribunal has properly appreciated the evidence produced on record and assessed the income of the deceased and awarded just and proper compensation to the appellants. Hence,

they have requested to dismiss the present appeal.

- 6) As challenge is given only qua income and consortium hence the appeal is required to be decided in narrow compass. 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 absence of ample evidence of monthly income of the deceased. In the present case the accident occurred on 15.10.2016 and during that time the deceased was doing masonry work, whereas, the Tribunal has assessed the income of the deceased as Rs.4,000/- per month which is required to be enhanced considering the rate of minimum wages and hence, the income of the deceased is reassessed as **Rs.8,158/- per month**. Further, as the deceased was aged 22 years at the time of accident on the basis of which the learned Tribunal has considered future prospective income as 40% and as the deceased was having 4 dependents 1/4 deduction towards personal and living expenses of the deceased and multiplier of 18 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.
- 7) Therefore, recalculating the income of the deceased as Rs.8,158/- and future prospect of 40% = Rs.3,263/- which comes to Rs.11,421/- and 1/4 amount is required to be deducted as personal expenditure and living of the deceased which comes to Rs.2,855/- and the net amount comes to **Rs.8,566/-**. In view of above the amount under the head of loss of dependency is required to be

reassessed as $\text{Rs.}8,566/- \times 12 \times 18 = \text{Rs.}18,50,256/-$. Therefore, the appellants are entitled to get additional amount of **Rs.9,43,056/-** under the head of loss of dependency.

- 8) Further, the learned Tribunal by relying on the judgment of ***National Insurance Company Ltd. Vs. Pranay Sethi***, reported in **2017 ACJ 2700**, has awarded total Rs.70,000/- under the three conventional heads, however, this Court is of the view that amount is required to be reassessed as Rs.18,150/- towards loss of estate, Rs.18,150/- towards funeral expenses. Therefore, the appellants – original claimants are entitled for additional amount of **Rs.6,300/-** (i.e. $\text{Rs.}18,150/- - \text{Rs.}15,000/- = \text{Rs.}3,150/-$ towards loss of estate and $\text{Rs.}18,150/- - \text{Rs.}15,000/- = \text{Rs.}3,150/-$ towards funeral expenses).
- 9) Further, in view of ratio laid down by the Hon'ble Supreme Court in the case of ***Magma General Insurance Co. Ltd., Vs. Nanu Ram***, reported in **(2018) 18 SCC 130** and ***Janabai Wd/o Dinkarrao Ghorpade & Ors., Vs M/s ICICI Lambord Insurance Company Ltd.***, reported in **2022 LiveLaw (SC) 666**, the learned Tribunal has committed error in awarding only Rs.40,000/- towards loss of consortium, however, in view of above judgments the appellants – original claimants being legal heirs of the deceased they are entitled for Rs.48,400/- each towards the head of loss of consortium. Therefore, the amount towards loss of consortium is reassessed as Rs.2,42,000/- (i.e. $\text{Rs.}48,400/- \times 5$). Therefore, the appellants are entitled for additional amount of **Rs.2,02,000/-** under the head of loss of consortium.
- 10) As discussed above, the appellants – original claimants are entitled to get compensation computed as under:

Heads	Awarded by Tribunal	Reassessed by this Court
Loss of dependency	Rs.9,07,200/-	Rs.18,50,256/- including additional amount of Rs.9,43,056/-
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/-
Loss of consortium	Rs.40,000/-	Rs.2,42,000/- including additional amount of Rs.2,02,000/- (Rs.48,400/- X 5)
Total compensation	Rs.9,77,200/-	Rs.21,28,556/- including total additional amount of Rs.11,51,356/-

- 11) In view of above, as the Tribunal has awarded total compensation of Rs.9,77,200/-, however, as discussed above the appellants are entitled to get additional amount of **Rs.11,51,356/-** (Rs.21,28,556/- - Rs.9,77,200/-) with proportionate costs and interest as awarded by the learned Tribunal.
- 12) The Hon'ble Supreme Court in case of ***Nagappa Vs Gurudayal Singh and others***, reported in **(2003) 2 Supreme Court Cases 274**, has observed that there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, it appears from the evidence brought on record then the Tribunal / Court can award more compensation than claimed.
- 13) Hence, present appeal is **allowed**. The judgment and award dated 17.05.2023 passed by learned Motor Accident Claims Tribunal (Aux.), Dahod at Limkheda, in MAC Petition No.1904 of 2017

stands modified to the aforesaid extent. Rest of the judgment and award remains unaltered. The respondent nos.2 and 4 - Insurance Companies shall deposit the said additional amount of **Rs.11,51,356/-** along with interest as awarded by the Tribunal, as per respective ratio decided 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.

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

(HASMUKH D. SUTHAR,J)

ANKIT JANSARI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: ANKIT YOGESHBHAI JANSARI(HCW0109), ENGLISH STENOGRAPHER GRADE I, at High Court of Gujarat on 21/01/2026 11:22:24