

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 4934 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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RENUKABEN DWARKADAS PATEL MOTHER & ANR.

Versus

SHWETANG NARESHKUMAR PATEL & ORS.

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Appearance:

TIRTH NAYAK(8563) for the Appellant(s) No. 1,2

MR TANMAY B KARIA(6833) for the Defendant(s) No. 3

RULE SERVED for the Defendant(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR****Date : 02/03/2026****ORAL JUDGMENT**

- 1) Feeling aggrieved and dissatisfied with the judgment and award dated 09.10.2023 passed by learned Motor Accident Claims Tribunal (Auxi.), Ahmedabad (which shall hereinafter be referred to as "**the Tribunal**" for short), in Motor Accident Claim Petition No.253 of 2019, 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 learned Advocate Mr. Tirth Nayak, for the appellants – original Claimants and learned Advocate Mr. T. B. Karia, for respondent – Insurance Company. The respondent nos.1 and 2 are duly served but remained absent. Perused the original record and proceedings.
- 3) It is the case of the appellants that on 12.05.2019, the deceased Chirag Dwarkadas Patel (who shall hereinafter be referred to as “**deceased**”) was traveling in the car bearing Reg. No.GJ-01-RZ-1243, possessed and driven by the opponent no.1 and were going to Water Park, Mehsana from Ahmedabad. The opponent no.1 was driving the car in rash and negligent manner due to which the tyre of the car burst. As a result the deceased sustained severe injuries and succumbed during the treatment to his injuries on 14.05.2019. 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 – claimants has submitted that the learned Tribunal has committed error in considering the income of the deceased despite producing income proof at Exhibit 32, 31 and 42. He has further submitted that the deceased was earning Rs.15,000/- by way of doing job at L&T Financial Services but the Tribunal has assessed income of the

deceased only as Rs.8,500/- per month. Hence, he has requested to allow the present appeal.

- 5) Learned Advocate for the respondent – Insurance Company has opposed the present appeal on the ground that the learned Tribunal has rightly assessed the income of the deceased as he had left his job from the company and documentary evidence produced on record was prior to the date of accident and no any actual proof of income is produced and therefore the Tribunal has considered his income as per the minimum wages. Hence, he has requested to dismiss the present appeal.
- 6) As challenge is given only qua income hence the appeal is required to be decided in narrow compass. Having heard the learned Advocates for the respective parties and going through the record it appears that the appellants have stated in the claim petition that the deceased was doing job in L&T Financial Services and he was the sole breadwinner of their family. The appellants have produced affidavit of claimant no.1 at Exhibit 17, examination – in chief of witness Prakashsinh Chhelsinh Kabavat at Exhibit 43, complaint at Exhibit 19, panchnama at Exhibit 20, PM Report at Exhibit 21, chargesheet at Exhibit 22, Salary Slip at Exhibit 32, Work experience certificate at Exhibit 31, appointment letter at Exhibit 42 and Divorce Deed at Exhibit 39. The witness Prakash Chhelsinh Kabavat has produced

documents at Exhibit 31 and 32, which shows that the deceased was working with the company from 10.09.2018 to 22.04.2019, whereas, the accident was occurred on 12.05.2019. Considering the time gap the learned Tribunal come to the conclusion that the accident took place in May 2019 and salary slip at Exhibit 31 is of October 2018 and the learned Tribunal has discarded the said evidence and considered the minimum wages in absence of any evidence. However, this Court is of the view that perusing the record it seems that the degree and potentiality to all the documents produced at Exhibits, 30 to 32 and 42 are sufficient for considering proper income based on guesswork to award just and proper compensation. The witness Prakash Chhelsinh Kabavat examined at Exhibit 43, wherein, he has clearly stated that as per the salary slip at Exhibit 32, the gross salary of the deceased was Rs.20,194/- and after deduction of admissbile tax and other permissible deduction his net pay was Rs.18,338/-, hence, this Court is of the view that considering the potentiality and evidence produced on record, the learned Tribunal ought to have considered income of the deceased as Rs.12,500/- per month. Therefore, in view of 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)**, and **Meena Pawaia and Others Vs. Ashraf Ali and Others**, reported in **(2021) 17 Supreme Court Cases 148**, this Court

is of the view that the income of the deceased is reassessed as **Rs.12,500/- per month.**

- 7) Further, as the deceased was aged 29 years at the time of accident on the basis of which the learned Tribunal has considered future prospective income as 40%. Moreover, the claimants have produced Divorce Deed of the deceased at Exhibit 39, dated 21.04.2018 on the basis of which it proved that the claimant no.1 i.e. mother of the deceased is the sole dependent, whereas, the claimant no.2 i.e. brother of the deceased is major and earning person and hence the learned Tribunal has rightly considered $\frac{1}{2}$ (50%) deduction towards personal and living expenses of the deceased. Further, considering the age of the deceased, multiplier of 17 is 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.
- 8) Therefore, recalculating the income of the deceased as Rs.12,500/- and future prospect of 40% = Rs.5,000/- which comes to Rs.17,500/- and $\frac{1}{2}$ amount is required to be deducted towards personal living expenses of the deceased which comes to Rs.8,750/- and the net amount comes to

Rs.8,750/-. In view of above the amount under the head of loss of future dependency income is required to be reassessed as $\text{Rs.8,750/-} \times 12 \times 17 = \text{Rs.17,85,000/-}$. Therefore, the appellants are entitled to get additional amount of **Rs.5,61,000/-** under the head of loss of future income.

- 9) So far as the amount of of Rs.1,10,000/- towards medical expenses, the claimants have produced medical bills at Exhibits 38, 44 and 53 and considering the fact that the deceased was treated as indoor patient and died on 14.05.2019, the Tribunal has properly awarded the amount towards medical expenses.
- 10) 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.77,000/- 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 are entitled for additional amount of **Rs.3,300/-** (i.e. $\text{Rs.18,150/-} - \text{Rs.16,500/-} = \text{Rs.1,650/-}$ towards loss of estate and $\text{Rs.18,150/-} - \text{Rs.16,500/-} = \text{Rs.1,650/-}$ towards funeral expenses).
- 11) 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.44,000/- towards loss of consortium, however, in view of above judgments the appellant no.1 – original claimant no.1 is entitled for Rs.48,400/- towards the head of loss of consortium. Whereas, the appellant no.2 – brother of the deceased is not entitled for loss of consortium. Therefore, the amount towards loss of consortium is reassessed as Rs.48,400/- (i.e. Rs.48,400/- X 1). Therefore, the appellant no.1 is entitled for additional amount of **Rs.4,400/-** under the head of loss of consortium.

- 12) 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 future income	Rs.12,24,000/-	Rs.17,85,000/- including additional amount of Rs.5,61,000/-
Loss of estate	Rs.16,500/-	Rs.18,150/- including additional amount of Rs.1,650/-
Funeral expenses	Rs.16,500/-	Rs.18,150/- including additional amount of Rs.1,650/-
Loss of consortium	Rs.44,000/-	Rs.48,400/- including additional amount of Rs.4,400/- (Rs.48,400/- X 1)

Medical Expenses	Rs.1,10,000/-	Rs.1,10,000/-
Total compensation	Rs.14,11,000/-	Rs.19,79,700/- including total additional amount of Rs.5,68,700/-

- 13) In view of above, as the Tribunal has awarded total compensation of Rs.14,11,000/-, however, as discussed above the appellants are entitled to get additional amount of **Rs.5,68,700/-** (Rs.19,79,700/- - Rs.14,11,000/-) with proportionate costs and interest as awarded by the learned Tribunal.
- 14) Hence, present appeal is **partly allowed**. The judgment and award dated 09.10.2023 passed by learned Motor Accident Claims Tribunal (Aux.), Ahmedabad, in MAC Petition No.253 of 2019 stands modified to the aforesaid extent. Rest of the judgment and award remains unaltered. The respondent no.3 - Insurance Company shall deposit the said additional amount of **Rs.5,68,700/-** 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.
- 15) The learned Tribunal is directed to recover or deduct the deficit court fees on enhanced amount and thereafter disburse the amount accordingly.

- 16) Interim application, if any, also stands disposed of.
- 17) 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 03/03/2026 11:49:34