

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 1014 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Approved for Reporting	Yes	No

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HASMUKHBHAI RATILAL THAKKAR & ORS.

Versus

SWETKUMAR NEPALBHAI BHOI DELETED VIDE EX 35 & ORS.
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Appearance:

MR. JAY M THAKKAR(6677) for the Appellant(s) No. 1,2,3
 DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESENTATIVES for
 the Defendant(s) No. 4
 MR DAKSHESH MEHTA(2430) for the Defendant(s) No. 6
 MR RATHIN P RAVAL(5013) for the Defendant(s) No. 3
 MR. RUSHANG D MEHTA(6989) for the Defendant(s) No. 6
 RULE NOT RECD BACK for the Defendant(s) No. 1,2
 RULE SERVED for the Defendant(s) No. 4.1,4.2,5

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**Date : 28/01/2026****ORAL JUDGMENT**

- 1) Feeling aggrieved and dissatisfied with the judgment and award dated 22.12.2021 passed by learned Motor Accident Claims Tribunal (Auxi.), Anand (which shall hereinafter be referred to as "**the Tribunal**" for short), in Motor Accident Claim Petition No.276 of 2010, 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. J. M. Thakkar, for the appellants – original claimants and learned Advocate Mr. R. P. Raval, for the respondent no.3 – Insurance Company. Perused the original record and proceedings.
- 3) It is the case of the appellants that on 21.02.2010, the deceased Alaybhai (who shall hereinafter be referred to as "**deceased**") was travelling in Verna Car bearing Reg. No.GJ-23-A-7646, along with others being driven by its driver at moderate speed and whey they reached near the place of incident at that time driver of Truck bearing Reg. No.WB-23-B-5956 was coming in rash and negligent manner in wrong side of the road and dashed his Truck with the Verna Car. Due to which the deceased died in the said accident. A complaint being I-CR No.27/2010 came to be registered with Vasad Police Station. 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) The learned Advocate for the appellants has submitted that the learned Tribunal has committed error in not considering the Income Tax Returns produced on record and to pass appropriate compensation though the deceased was pursuing study of Engineer and having income and after getting the job the income would be Rs.30,715/- per month as per 6th pay commission or Rs.63,409/- per month as per 7th pay commission, whereas, the learned

Tribunal has considered only Rs.10,000/- per month. Even in private sector the brilliant students are getting Rs.50,000/- per month. He has further submitted that the Tribunal also erred in assessing future prospect in income of the deceased at 40% instead of 50% or more and also erred in awarding 9% interest instead of at least 12% interest per annum. Hence, he has requested to allow the present appeal.

- 5) The learned Advocate for the respondent no.3 – Insurance Company has opposed the present appeal on the ground that the learned Tribunal has properly awarded the compensation in absence of any evidence and the ITRs are having interest income and no independent income or any engagement in profession or activity by the deceased and after the death the interest income will remain same and hence the learned Tribunal has properly assessed Rs.10,000/- income of the deceased and no question arises to interfere with the findings of the Tribunal. He has further submitted that the amount awarded towards conventional heads are also proper. So far 6th and 7th pay commission calculation is concerned, the same is merely hypothetical calculation which is not permissible as per ***Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation & Anr. [2009 (6) SCC 121]*** as on the date of accident the income of the deceased is required to be considered. He has further submitted that the learned Tribunal has awarded 9% interest is also on higher side and no question arises

to increase the same to 12%. Hence, he has requested to dismiss the appeal.

- 6) Since appeal is filed on the ground of quantum, the involvement of the vehicles, negligence, liability and coverage of insurance policy are not challenged and hence the appeal is required to be decided in narrow compass.
- 7) So far pecuniary loss is concerned, the learned Tribunal has considered the age of the deceased as 21 years at the time of accident and he was pursuing study in B. E. Mechanical Engineering having bright career. As per the ITR of 2007-08 at Exhibit 75 the deceased was having income of interest of Rs.3,50,787/-, and ITR of 2008-09 at Exhibit 77 having Rs.4,37,982/-. In the said ITRs the income from interest is shown and interest income from M/s R.B. Thakker and M/s Haresh Traders is shown and both the firms belong to HUF and copy of acknowledgment is produced at Exhibit 76. Perusing the aforesaid facts, the income remains continuous after his death which reveals from the evidence. In cross-examination the Chartered Accountant has admitted that this income of interest on the Fixed Deposit Receipts and said income received regularly by the legal heirs of the deceased. Hence, question does not arise to consider income towards future loss or to assess the income of the deceased, because regular income will remain continuous and legal heirs will not suffer any kind of loss of above income from interest, hence, the learned Tribunal has not

committed error in not considering the ITRs at Exhibit 75 and 77. So far the deceased was aspirant of Government Job and having bright future after completing study in Engineering is concerned, the income as per 6th and 7th pay commission was in the year 2012 or 2016 and Circulars are produced at Exhibits 97 to 100, are of the Government Servant but the accident took place in the year 2010 and at that time the deceased was studying and not a Government Servant and the income is required to be considered as on the date of accident as per the settled principle of law. In this regard reference is required to be made to the judgment in the case of ***Sarla Verma (supra) and National Insurance Company Ltd. Vs. Pranay Sethi, reported in 2017 ACJ 2700***, wherein, paragraph 57 read as under:

"57. Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence

brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in Sarla Verma (supra) and it has been approved in Reshma Kumari (supra). The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardization which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardization" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age."

- 8) The learned Tribunal has considered the income of the deceased as Rs.10,000/- per month, however, this Court is of the considered view that considering that the deceased was pursuing Degree Engineering, his future prospects as a promising young man and his potential to earn more in the future, in light of **Narender Dev Poonia Vs. Hasan Mohd.** reported in **2025 (0) JX (SC) 1619**, this Court deems it fit to consider the income of the deceased at **Rs.15,000/- per month.**

9) Further, as the deceased was aged 21 years at the time of accident on the basis of which the learned Tribunal has considered future prospective income as 40% is properly considered as the deceased was not having a permanent job. The deceased was unmarried and hence 1/2 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.

10) Therefore, recalculating the income of the deceased as Rs.15,000/- and future prospect of 40% = Rs.6,000/- which comes to Rs.21,000/- and 1/2 amount is required to be deducted towards personal living expenses of the deceased which comes to Rs.10,500/- and the net amount comes to **Rs.10,500/-**. In view of above the amount under the head of loss of dependency is required to be reassessed as $Rs.10,500/- \times 12 \times 18 = \text{Rs.22,68,000/-}$. Therefore, the appellants are entitled to get additional amount of **Rs.7,56,000/-** towards loss of dependency.

11) 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.55,000/- 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. Rs.18,150/- - Rs.15,000/- = Rs.3,150/- towards loss of estate and Rs.18,150/- - Rs.15,000/- = Rs.3,150/- towards funeral expenses).

- 12) 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 Dinkarao Ghorpade & Ors., Vs M/s ICICI Lombard Insurance Company Ltd., reported in 2022 LiveLaw (SC) 666***, the learned Tribunal has committed error in awarding only Rs.25,000/- towards loss of love and affection, however, in view of above judgments the appellant nos.1 and 2 – being parents of the deceased are entitled for Rs.48,400/- each towards filial consortium under the head of loss of consortium, whereas, the appellant no.3 being sister of the deceased is not entitled for any amount towards loss of consortium. Therefore, the amount towards loss of consortium is reassessed as Rs.96,800/- (i.e. Rs.48,400/- X 2). Therefore, the appellants are entitled for additional amount of **Rs.71,800/-** towards loss of consortium instead of love and affection.
- 13) 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.15,12,000/-	Rs.22,68,000/- including additional amount of Rs.7,56,000/-
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 love and affection / Loss of consortium	Rs.25,000/-	Rs.96,800/- including additional amount of Rs.71,800/- (Rs.48,400/- X 2)
Total compensation	Rs.15,67,000/-	Rs.24,01,100/- including total additional amount of Rs.8,34,100/-

14) In view of above, as the Tribunal has awarded total compensation of Rs.15,67,000/- , however, as discussed above the appellants are entitled to get additional amount of **Rs.8,34,100/-** (Rs.24,01,100/- - Rs.15,67,000/-) with proportionate costs and interest as awarded by the learned Tribunal.

15) So far the argument of the learned Advocate to increase the interest from 9% to 12 % is concerned, it is the discretion of the under Section 171 of the MV Act and hence the learned Tribunal has not committed any error in awarding interest @ 9% per annum.

16) Hence, present appeal is **partly allowed**. The judgment and award dated 22.12.2021 passed by learned Motor Accident Claims

Tribunal (Aux.), Anand, in MAC Petition No.276 of 2010 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.8,34,100/-** 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.

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

(HASMUKH D. SUTHAR,J)

ANKIT JANSARI