

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 3142 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

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Approved for Reporting	Yes	No

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JAYESHKUMAR SIRILBHAI PARMAR

Versus

NAGINBHAI PARSOTTAMBHAI ROHIT & ORS.

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Appearance:

NISHIT A BHALODI(9597) for the Appellant(s) No. 1

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

NOTICE NOT RECD BACK for the Defendant(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR****Date : 22/01/2026****ORAL JUDGMENT**

- 1) Feeling aggrieved and dissatisfied with the judgment and award dated 07.02.2023 passed by learned Motor Accident Claims Tribunal (Main), Kheda at Nadiad (hereinafter referred to as "**the Tribunal**" for short), in Motor Accident Claim Petition No.1094 of 2019, the appellant – original claimant has preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "**the Act**" for short).
- 2) Heard Mr. N. A. Bhalodi, learned Advocate for the appellant – original Claimant and Mr. T. B. Karia, learned Advocate for the respondent no.3 – Insurance Company.

- 3) It is the case of the appellant – original claimant that on 04.10.2019, at about 04:00 in the evening, on Ahmedabad – Vadodara National Highway, near the end of Mogar Bridge the applicant was standing behind the motorcycle on the side of the road, at that time, one Vitkos Minibus bearing Reg. No.GJ-04-X-9820 came in rash and negligent manner and dashed the motorcycle due to which the applicant sustained injuries and admitted in the Hospital. A complaint being I-C.R.No.59 of 2019 was registered with Vasad Police Station. Therefore, the appellant had filed MAC Petition seeking compensation, wherein, the learned Tribunal after appreciating the evidence produced on record the learned Tribunal has allowed the claim petition.
- 4) Learned Advocate for the appellant has submitted that the learned Tribunal has committed error by considering the income of the appellant as Rs.4,500/- per month on notional basis without considering the rate as per minimum wages and also erred in not considering future prospective income. He has further submitted that the learned Tribunal has awarded meagre amount towards pain shock and suffering and loss of amenities. Hence, he has requested to allow the present appeal.
- 5) Learned Advocate for the respondent – Insurance Company has opposed the present appeal and submitted that the learned Tribunal has properly appreciated the evidence produced on record and rightly assessed the income and awarded sufficient amount towards other heads and therefore the compensation awarded by the Tribunal is just and proper. He has further submitted that the learned Tribunal has properly dealt with the issue of negligent and fastened the liability in the ratio of 80:20 for the occurrence of the accident. Hence, he has requested to dismiss the present appeal.

- 6) Having heard the learned Advocates for the respective parties and going through the record it appears that the learned Tribunal has considered the evidence on record and relied on the judgment in the cases of ***Bimla Devi Vs. H.R.T.C***, reported in ***AIR 2009 SC 2819***, and ***Parmeshwari Devi Vs. Amir Chand***, reported in ***2011 (11) SCC 635***, and appreciated the evidence. The claimant has tendered the affidavit at Exhibit 19, wherein all the facts of the accident have been narrated in the chief-examination and supported the claim petition. The claimant has produced complaint at Exhibit 26, panchnama at Exhibit 27 and charge-sheet at Exhibit 29. Further, 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 prevailing rate of minimum wages in absence of evidence of monthly income of the claimant. In the present case the accident occurred on 04.10.2019 and during that time the appellant – injured was doing job in Patanjali and also working as a Musician and earning Rs.9,000/-, whereas, the Tribunal has assessed the income of the claimant as Rs.4,5000/- which is required to be considered as per the rate of minimum wages and hence, the income of the appellant is reassessed as **Rs.8,200/- per month**. It appears that the learned Tribunal has observed the age of claimant as 35 years at the time of accident and the learned Tribunal has committed error in not considering future prospect, however, this Court is of the view that **40% addition towards future prospectus** is required to be awarded. Moreover, the parties have agreed to consider 55% permanent disablement body as a whole before the learned Tribunal, therefore, once the parties have voluntarily agreed to

consider 55% disablement the learned Tribunal has not committed any error in considering **55% disability** of the injured.

- 7) Further, considering the age of claimant as 35 years at the time of accident the Tribunal has considered multiplier of 16 which as per the judgment of the Apex Court in the case of **Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. [2009 (6) SCC 121]** is just and proper and no interference of this Court is required. Further, the Tribunal has awarded Rs.1,54,712/- towards medical expenditure, Rs.20,000/- towards pain shock and sufferings, Rs.20,000/- towards special diet, attendant and transportation which are just and proper. However, as this Court has reassessed the income of the appellant the amount of Rs.13,500/- awarded towards actual loss of income is reassessed as **Rs.24,600/-** (additional Rs.11,100/-).
- 8) Therefore, recalculating the income of the claimant as Rs.8,200/- and future prospect of 40% = Rs.3,280/- which comes to Rs.11,480/-. Now total income under the head of future economic loss is required to be considered as Rs.11,480/- x 12 x 16 x 55% / 100 = Rs.12,12,288/-. Therefore, the appellant is entitled to get additional amount of **Rs.7,37,088/-** towards **future economic loss**.
- 9) So far negligence part is concerned, the learned Tribunal has taken into consideration the judgment in MAC Petition No.1071 of 2019, arising out of the same accident, and the present opponent no.1 – driver of Vitkos Minibus bearing Reg. No.GJ-04-X-9820 was held negligent to the extent of 80%, whereas, the other party who was held 20% negligent have not been joined as party in the present case. In view of above, once in another matter the Tribunal has

already held negligence in the ratio of 80:20 percentage, then such finding is required to be confirmed and no interference of this Court is required to be called for and arguments canvassed on the said aspect and no ground is raised and hence no discussion is required on the issue of negligence. Accordingly, the appellant is entitled for 80% amount of the enhanced amount.

- 10) As discussed above, the appellant – injured – original claimant is entitled to get compensation computed as under:

Heads	Awarded by Tribunal	Reassessed by this Court
Future economic loss	Rs.4,75,200/-	Rs.12,12,288/- including additional amount of Rs.7,37,088/-
Medical Expenditure	Rs.1,54,712/-	Rs.1,54,712/-
Pain, shock and suffering	Rs.20,000/-	Rs.20,000/-
Special diet, attendant and transportation	Rs.20,000/-	Rs.20,000/-
Actual loss of income for 3 months	Rs.13,500/-	Rs.24,600/- including additional amount of Rs.11,100/-
Total compensation	Rs.6,83,412/-	Rs.14,31,600/- including total additional amount of Rs.7,48,188/-
After deducting negligence	Rs.5,46,730/- (after deducting 20% negligence)	Rs.11,45,280/- (after deducting 20% negligence) (Rs.14,31,600/- - Rs.2,86,320/-)
Enhanced amount of compensation	Rs.5,98,550/- (Rs.11,45,280/- - Rs.5,46,730/-)	

- 11) 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 and in an appropriate case, where from the evidence brought on record if the Tribunal / Court considers that the claimant is entitled to get more compensation than claimed, the amount of compensation more than the claimed amount can be awarded.
- 12) In view of above, as the Tribunal has awarded total compensation of Rs.5,46,730/-, however, as discussed above the appellant is entitled to get additional amount of **Rs.5,98,550/-** (Rs.11,45,280/- - Rs.5,46,730/-) with proportionate costs and interest as awarded by the learned Tribunal.
- 13) So far the interest on the enhanced amount is concerned, pursuant to the order dated 14.08.2025 passed by the Co-ordinate Bench of this Court, the appellant is not entitled to claim interest on the said enhanced amount for the period of 571 days.
- 14) Hence, present appeal is **partly allowed**. The judgment and award dated 07.02.2023 passed by learned Motor Accident Claims Tribunal (Main), Kheda at Nadiad, in MAC Petition No.1094 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.5,98,550/-** 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) Award to be drawn accordingly.

(HASMUKH D. SUTHAR,J)

ANKIT JANSARI