

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 1276 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Approved for Reporting	Yes	No

MADHUBEN WD/O NARENDRASINH & ORS.

Versus

HIMMATSINH DHIRSINH BARIA & ORS.

Appearance:

NISHIT A BHALODI(9597) for the Appellant(s) No. 1,2,3,4,5

MR DHAIRYAWAN D BHATT(11817) for the Defendant(s) No. 3

NOTICE SERVED for the Defendant(s) No. 1

UNSERVED EXPIRED (N) for the Defendant(s) No. 2

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 22/01/2026

ORAL JUDGMENT

- 1) Feeling aggrieved and dissatisfied with the judgment and award dated 07.12.2022 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.81 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 Mr. N. A. Bhalodi, learned Advocate for the appellants – original Claimants and Mr. D. D. Bhatt, learned Advocate for

respondent – Insurance Company. Perused the original record and proceedings.

- 3) It is the case of the appellants that on 05.03.2019 the deceased Narendrasinh Prabhatsinh Chauhan, (who shall hereinafter be referred to as "**deceased**") was going by walking on the side of the road and while he was passing from the place of the accident at that time the opponent no.1 came with the Tractor bearing Reg. No.GJ-20-N-5804, in rash and negligent manner and dashed with the said vehicle with the deceased. As a result of which the deceased sustained grievous 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) The appeal is filed on limited ground that the learned Tribunal has not considered minimum wages of prevalent time and also not considered consortium to each appellants due to which the appellants suffered loss.
- 5) As challenge is given only qua income and consortium hence the appeal is required to be decided in narrow compass. 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 based on preponderance of probabilities. The claimant no.1 has tendered the affidavit at Exhibit 22, wherein, all the facts of the accident have been narrated in the chief-examination and supported the claim petition and relied on the FIR at Exhibit 23, panchnama at Exhibit 24, driving license at Exhibit 27. 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 evidence of monthly income of the deceased. In the present case the accident occurred on 05.03.2019 and during that time the deceased was doing masonry work and was earning Rs.10,000/-, whereas, the Tribunal has assessed the income of the deceased as Rs.3,500/- per month which is required to be enhanced as per the rate of minimum wages and hence, the income of the deceased is reassessed as **Rs.8,200/- per month**. Further, as the deceased was aged 50 years at the time of accident on the basis of which the learned Tribunal has considered future prospective income as 25% and as the deceased was having 5 dependents 1/4 deduction towards personal and living expenses of the deceased and multiplier of 13 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.

- 6) Therefore, recalculating the income of the deceased as Rs.8,200/- and future prospect of 25% = Rs.2,050/- which comes to Rs.10,250/- and 1/4 amount is required to be deducted towards personal living expenses of the deceased which comes to Rs.2,562/- and the net amount comes to **Rs.7,688/-**. In view of above the amount under the head of loss of dependency is required to be reassessed as $Rs.7,688/- \times 12 \times 13 = Rs.11,99,328/-$. Therefore, the appellants are entitled to get additional amount of **Rs.6,87,453/-** under the head of loss of dependency.

7) 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. 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).

8) 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.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. Rs.48,400/- X 5). Therefore, the appellants are entitled for additional amount of **Rs.2,02,000/-** under the head of loss of consortium.

9) 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.10,80,000/-	Rs.11,99,328/- including additional

		amount of Rs.6,87,453/-
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.5,81,875/-	Rs.14,77,628/- including total additional amount of Rs.8,95,753/-

- 10) In view of above, as the Tribunal has awarded total compensation of Rs.5,81,875/-, however, as discussed above the appellants are entitled to get additional amount of **Rs.8,95,753/-** (Rs.14,77,628/- - Rs.5,81,875/-) with proportionate costs and interest as awarded by the learned Tribunal.
- 11) So far the interest on the enhanced amount is concerned, pursuant to the order dated 09.04.2025 passed by the Co-ordinate Bench of this Court, the appellants are not entitled to claim interest on the said enhanced amount for the period of 663 days.
- 12) Hence, present appeal is **partly allowed**. The judgment and award dated 07.12.2022 passed by learned Motor Accident Claims Tribunal (Aux.), Dahod at Limkheda, in MAC Petition No.81 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.8,95,753/-** 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.

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

(HASMUKH D. SUTHAR,J)

ANKIT JANSARI