

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/FIRST APPEAL NO. 195 of 2022
With
R/CROSS OBJECTION NO. 255 of 2023
In
R/FIRST APPEAL NO. 195 of 2022**

**FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

| | | |
|------------------------|-----|----|
| Approved for Reporting | Yes | No |
| | | ✓ |

**RELIANCE GENERAL INS CO LTD
Versus
SHITALBEN WD/O JIGNESHKUMAR PAREKH & ORS.**

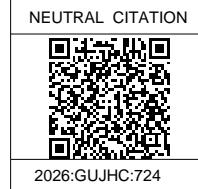
Appearance:

MS MASUMI V NANAVATY(9321) for the Appellant(s) No. 1
MR VIBHUTI NANAVATI(513) for the Appellant(s) No. 1
MR MOHSIN M HAKIM(5396) for the Defendant(s) No. 1,2,3,4
RULE SERVED for the Defendant(s) No. 5,6

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

**Date : 07/01/2026
ORAL JUDGMENT**

[1.0] By way of present First Appeal under Section 173 of the Motor Vehicles Act, 1988, the appellant – insurance company has assailed the impugned judgment and award dated 03.09.2021 passed by the learned Motor Accident Claims Tribunal (Auxi.), at Halol, District Panchmahals (for short “learned Tribunal”) in Motor Accident Claim Petition No.2987/2017 (Old MACP No.23/2017), whereby the learned Tribunal has allowed the claim petition in favor of the original claimants by directing the appellant herein – original opponent No.3 – insurance company to pay compensation of Rs.97,07,248/- to the original claimants with interest at the rate of 8% per annum from the

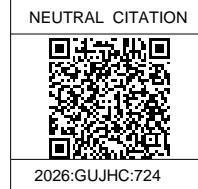


date of claim petition. Cross Objection No.255/2023 in First Appeal No.195 of 2022 is filed by the original claimants seeking enhancement of compensation.

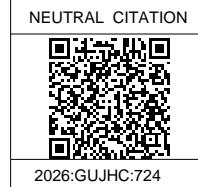
[2.0] The brief facts leading to filing of present appeals and cross-objections are as follows:

[2.1] On 02.09.2016, Jigneshkumar Kanayalal Parekh (hereinafter referred to as "deceased") was driving his Motorcycle No.GJ-17-L-598 with slow speed on correct side of the road for going to Pavagadh for personal purpose and while arriving at Gopipura Cross roads on main State Highway, the opponent No.1 had parked his Tanker No.GJ-16-Z-3174 illegally and unauthorizedly on the middle of the road without displaying any reflectors on backside of the vehicle and without any precautionary signal or measures that too during night hours and even its parking lights were off due to which the deceased motorcyclist could not see the parked tanker and dashed his motorcycle with the offending Tanker. As a result, deceased died due to the accidental injuries on the spot and original claimants – legal heirs and representatives of the deceased filed the claim petition seeking compensation of Rs.90 lakh.

[2.2] After considering the evidence produced on record by the respective parties, learned Tribunal has been pleased to hold the original opponent No.1 solely negligent for the accident and awarded compensation of Rs.97,07,248/- to the original claimants with 8% interest per annum. Hence, present First Appeal is filed by the appellant – insurance company challenging the impugned judgment and award on the ground of negligence and cross-objections are filed by the original claimants seeking enhancement of compensation.



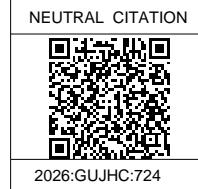
[3.0] As the appellant – insurance company has challenged the impugned judgment and award mainly on the ground that the alleged accident occurred due to negligence on the part of deceased motorcyclist himself as he was driving the motorcycle rashly and negligently and hence, present appeal is filed on the ground of negligence but during the course of hearing, on going through the material and evidence produced on record, learned advocate for the appellant has not argued further or disputed the finding and reasons assigned by the learned Tribunal. Hence, issue of negligence is not required to be discussed further as the learned Tribunal relying on the decisions of the Hon'ble Supreme Court in the case of **Bimla Devi vs. H.R.S.T.C.** reported in **AIR 2009 SC 2819** and **Parmeshwari Devi vs. Amir Chand** reported in **(2011) 11 SCC 635** has rightly held the driver of offending Tanker to be solely negligent for the accident by appreciating the evidence *qua* negligence emerging on the record as it clearly transpires that the offending Tanker No.GJ-16-Z-3174 was parked illegally and unauthorizedly on the middle of the road without displaying any reflectors on backside of the vehicle and without any precautionary signal or measures that too during night hours and even its parking lights were off due to which the deceased motorcyclist could not see the parked tanker and dashed his motorcycle with the offending Tanker. Hence, present appeal fails as the learned Tribunal has properly appreciated the evidence *qua* negligence and perusing the evidence on record, learned Tribunal has rightly come to the conclusion that the driver of offending Tanker i.e. stationary vehicle was solely negligent for the accident and reasons assigned by the learned Tribunal does not call for any interference at the hands of this Court more particularly in light of the decisions of the coordinate Bench of the coordinate Bench of this Court in the case of **United India Insurance Company Limited vs. Falguniben Amrishkumar Soni**



reported in **2019(4) GLH 339** and decision of Hon'ble Supreme Court in the case of **Jumani Begum vs. Ram Narayan & Ors.** reported in **2020 (1) ACC 255 (SC).**

[4.0] So far as Cross Objection No.255/2023 in First Appeal No.195/2022 filed by the original claimants is concerned, perusing the record, it appears that while deciding the quantum, the learned Tribunal has relied on the evidence produced on record and come to conclusion that the deceased was aged 35 years. The deceased was serving as Senior Mechanical Engineer in M/s. Gunnebo India Pvt. Ltd. at GIDC, Halol and earning gross salary of Rs.55,000/- per month. The salary slip (Exh.40) of the deceased is produced on record demonstrating the gross salary of the deceased. The learned Tribunal has also considered the appointment letter (Exh.39) issued to the deceased. To award just and proper compensation, the learned Tribunal has considered the salary of the deceased for the month of August, 2016 i.e. Rs.44,817/- but perusing the record and salary slip produced on record including basic salary, educational allowance, transport allowance, medical bills, leave travel assistance, gratuity, HRA and salary towards leave is required to be considered after deducting Rs.200/- towards professional tax and thus, the monthly salary of the deceased is re-assessed at Rs.48,624/- to award just compensation under the head of future loss of dependency.

[4.1] The deceased was in permanent employment and therefore, the learned Tribunal has rightly considered 50% towards additional future prospects as per the decision of the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Shethi** reported in **(2017) 16 SCC 680.** Therefore, considering monthly income of the deceased at Rs.48,624/- and adding Rs.24,312/- (50% of

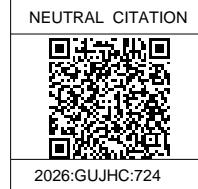


Rs.48,624/-) would come to Rs.72,936/- towards monthly loss of dependency. It is an admitted position that the deceased was four dependents at the time of accident and therefore, deducting 1/4 amount i.e. Rs.18,234/- ($\frac{1}{4}$ of Rs.72,936/-) towards personal expenses, total monthly loss of dependency would come to Rs.54,702/- and hence, **yearly loss of dependency** would come to **Rs.6,56,424/- (Rs.54,702 x 12)**. As the deceased was aged 35 years i.e. in the age group of 31 to 35 at the time of accident, in view of decision of the Hon'ble Supreme Court in the case of **Smt. Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.** reported in **2009 ACJ 1298**, multiplier of 16 would apply and hence, applying multiplier of 16, **future loss of dependency** would come to **Rs.1,05,02,784/- (Rs.6,56,424 x 16)**.

[4.2] Further, the learned Tribunal has awarded an amount of Rs.15,000/- each under the head of **loss of estate** and **funeral expenses** which is required to be **enhanced to Rs.18,150/- each**. Further, the learned Tribunal awarded Rs.40,000/- under the **filial / parental consortium** which is enhanced to **Rs.1,93,600/- (Rs.48,400/- x 4)** as the deceased was having four dependents.

[5.0] Hence, the claimants are entitled to get the reassessed compensation as under:

| Heads | Awarded by Tribunal | Reassessed by this Court |
|---------------------------|---------------------|---|
| Future loss of dependency | Rs.96,37,248/- | Rs.1,05,02,784/- including additional amount of Rs.8,65,536/- |
| Loss of consortium | Rs.40,000/- | Rs.1,93,600/- including additional amount of Rs.1,53,600/- |

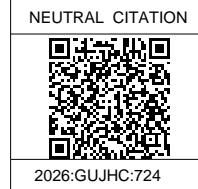


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|---------------------------|-----------------------|--|
| Funeral Expenses | Rs.15,000/- | Rs.18,150/- including additional amount of Rs.3150/- |
| Loss of Estate | Rs.15,000/- | Rs.18,150/- including additional amount of Rs.3150/- |
| Total Compensation | Rs.97,07,248/- | Rs.1,07,32,684/- including additional amount of Rs.10,25,436/- |

Thus, total compensation of **Rs.97,07,248/-** as awarded by the learned Tribunal is on lower side, for the reasons recorded hereinabove, and therefore, same is required to be enhanced to the aforesaid extent i.e. **Rs.1,07,32,684/-** and hence, the original claimants are entitled to get **enhanced (additional) amount of Rs.10,25,436/-** towards compensation and therefore, the impugned judgment and award passed by the learned Tribunal is modified to the aforesaid extent.

[6.0] It is needless to say that in view of ratio laid down by the Hon'ble Supreme Court in case of **Nagappa vs. Gurudayal Singh and others**, reported in **(2003) 2 Supreme Court Cases 274**, 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.

[7.0] In wake of aforesaid conspectus, **First Appeal No.195 of 2022** is **dismissed** and **Cross Objection No.255/2023** in First Appeal No.195/2022 is **partly allowed** and impugned judgment and award dated 03.09.2021 passed by the learned Motor Accident Claims



Tribunal (Auxi.), at Halol, District Panchmahals in Motor Accident Claim Petition No.2987/2017 (Old MACP No.23/2017) is modified and amount of compensation to be awarded to the original claimants is enhanced to **Rs.1,07,32,684/-** as discussed hereinabove.

[8.0] The Insurance Company is directed to deposit the reassessed **amount of compensation i.e. Rs.1,07,32,684/-** alongwith accrued interest as ordered by the learned Tribunal within a period of FOUR WEEKS from the date of receipt of this judgment.

[9.0] The Tribunal shall disburse the entire amount of compensation (lying in the FDR and/or with the Tribunal including the enhanced amount of compensation), with accrued interest thereon, if any, to the claimants, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.

[10.0] While making the payment, the Tribunal shall deduct the courts fees, if not paid.

[11.0] Record and proceedings, if any, be sent back to the concerned Tribunal, forthwith.

Sd/-
(HASMUKH D. SUTHAR, J.)

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