

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1743 of 2022

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

Approved for Reporting	Yes	No
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**LH OF DECD NILESHBHAI MAHENDRABHAI VASANT
Versus
JIGAR BABUBHAI SHAH & ANR.**

Appearance:

MR VISHAL C MEHTA(6152) for the Appellant(s) No. 1
MS KIRTI S PATHAK(9966) for the Defendant(s) No. 2
RULE SERVED for the Defendant(s) No. 1

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

**Date : 08/01/2026
ORAL JUDGMENT**

[1.0] This appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the appellants – original claimants against the impugned judgment and award dated 06.05.2021 passed by the learned Motor Accident Claims Tribunal (Main), Ahmedabad (for short referred to as “learned Tribunal”) in Motor Accident Claim Petition No.524 of 2011 under Section 166 of the Motor Vehicles Act, 1988 (for short referred to as “MV Act”) wherein the learned Tribunal has partly allowed the claim petition of appellants and awarded compensation of Rs.41,05,240/- with interest at the rate of 7.5% per annum from the date of the claim petition.

[2.0] Heard learned advocates for the respective parties. Though served, none appears for respondent No.1.

[3.0] The brief facts of the claim petition are that the accident took

place on 01.04.2011, when Nileshbhai Mahendrabhai Vasant (hereinafter referred to as "deceased") alongwith his friend was going to Balotara for watching Horse Fair in one car bearing registration No.GJ-01-HG-1200 driven by original opponent No.1 and when they were passing opposite IOC, Siddhpur-Palanpur Highway road, at that time, one ST Bus came from service road to main road due to which driver of car applied the sudden brake and lost control over steering as a result of which the car turned turtle and accident took place wherein the deceased sustained serious multiple fractures on head and other injuries on various parts of body. The deceased was taken to government hospital, Siddhpur, Patan and treatment went on upto 03.06.2011 and thereafter, deceased died on 28.02.2012 during his treatment at home. The appellants herein – legal heirs and representatives of deceased filed the captioned claim petition and learned Tribunal after appreciating the evidence awarded aforesaid compensation. Being aggrieved with quantum of compensation, the appellants herein have filed the present appeal for enhancement of compensation.

[4.0] Learned advocate Mr. Vishal Mehta appearing for the appellants has submitted that the learned Tribunal has materially erred in not awarding the just and proper compensation considering the expenses incurred by the deceased towards his treatment and under the head of loss of consortium, the learned Tribunal has not awarded just compensation considering the number of dependants of the deceased. Learned Tribunal has committed an error in not considering medical bills produced at Exhs.71 and 72 and learned Tribunal has ignored the document produced at Exh.71 i.e. medical bills for an amount of Rs.2,52,899/- and even towards attendant and transportation charges, the learned Tribunal has erred in not awarding Rs.1,59,600/- though receipts were produced on record. He has further submitted that the learned Tribunal ought to have considered the medical expenses which

are incurred by one Shantaben Atmaramdas Patel Charitable Trust on behalf of the deceased. He has further submitted that the deceased remained in hospital as indoor patient for 64 days. Hence, he has requested to allow the present appeal.

[5.0] Learned advocate Ms. Kirti Pathak appearing for the insurance company has opposed the present appeal by submitting that the learned Tribunal has properly appreciated the evidence and in absence of any material or evidence question does not arise to enhance the compensation. She has further submitted that the said Trust has already paid the amount and even if said fact is accepted, the said Trust has not claimed the amount spent by it towards medical expenses of the deceased and therefore, once the claimants have received the amount from the said Trust, in absence of any evidence, the claimants owe the said amount to the said Trust and therefore, question to consider the said request does not arise and the learned Tribunal has properly ignored the evidence produced at Exhs.71 and 72. Hence, she has requested to dismiss the present appeal.

[6.0] In the present appeal issue of liability or negligence is not challenged and appeal is filed on limited ground that the learned Tribunal has ignored the expenditure towards medical bills produced at Exhs.71 and 72 and therefore, present appeal is considered in narrow compass.

[7.0] Having heard learned advocate appearing for the respective parties and perusing the evidence on record, it appears that the learned Tribunal has taken into consideration the fact that the deceased was admitted in Sterling Hospital, Ahmedabad and expenditure sheet is produced at Exh.70 which shows that total amount of Rs.16,27,865/- was spent out of which Rs.1,00,000/- was reimbursed to the claimants by way

of medical claim and Rs.10,86,415/- is paid by Shantaben Atmaramdas Patel Charitable Trust and therefore, the claimants have paid Rs.4,41,450/- and the learned Tribunal has considered the said amount but it appears that the document produced at Exhs.71 and 72 are not considered. The deceased came to be discharged from the Sterling Hospital on 23.06.2011 and expenditure sheet produced at Exh.71 demonstrates that medical bills amounting to Rs.2,52,899/- are dated 23.06.2011 and thereafter and hence, the learned Tribunal has committed an error in not considering the said bills. Therefore, the claimants are entitled to an amount of **Rs.2,52,899/- towards medical bills**. Further, the claimants have relied on Exh.72 for claiming compensation under the head of attendant and transportation charges but perusing the record it appears that some bills at Exh.72 are duplicate and of overlapping dates of aforesaid time each of Rs.12,000/- and even otherwise, under the head of pain, shock and suffering, the learned Tribunal has awarded Rs.1,94,100/- and hence, this Court is not inclined to accept the said document produced at Exh.72 as a gospel truth and as it is. However, this Court deems it fit to award lumpsum amount of **Rs.50,000/- towards attendant and transportation charges**. The deceased was having four dependants and the learned Tribunal has awarded only Rs.44,000/- towards loss of consortium however, in view of decision of the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Shethi** reported in **(2017) 16 SCC 680**, the claimants are entitled to get **Rs.1,93,600/- (Rs.48,400 x 4) towards loss of consortium**.

[8.0] So far as claim of claimants to award Rs.10,86,415/- which was paid by Shantaben Atmaramdas Patel Charitable Trust on behalf of the deceased is concerned, the said amount is to be paid to the said Trust however, there is no evidence in this regard and even otherwise the claimants owe the said amount to the said Trust and therefore, the

claimants are not entitled to receive the said amount of Rs.10,86,415/- more particularly in view of the fact that compensation under the MV Act is not a bonanza or a jackpot and once expenses are incurred, original claimants are not entitled to receive the said amount.

[9.0] Thus, now the appellants – original claimants are entitled to the reassessed compensation as under:

Heads	Amount awarded by the Tribunal	Reassessed by this Court
Future loss of dependency	Rs.33,92,640/-	Rs.33,92,640/-
Loss of consortium	Rs.44,000/-	Rs.1,93,600/- including additional amount of Rs.1,49,600/-
Funeral Expenses	Rs.16,500/-	Rs.16,500/-
Loss of Estate	Rs.16,500/-	Rs.16,500/-
Medical Expenditure	Rs.4,41,500/-	Rs.6,94,399/- including additional amount of Rs.2,52,899/-
Pain, shock and suffering	Rs.1,94,100/-	Rs.1,94,100/-
Attendant & transportation charges	---	Rs.50,000/-
Total...	Rs.41,05,240/-	Rs.45,57,739/-

Thus, total compensation of **Rs.45,57,739/-** as awarded by the **learned Tribunal** is on lower side, for the reasons recorded hereinabove, and therefore, same is required to be reassessed and enhanced to the aforesaid extent i.e. **Rs.45,57,739/-** and therefore, the impugned judgment and award passed by the learned Tribunal is modified to the aforesaid extent.

[10.0] In wake of aforesaid conspectus, present **First Appeal is partly allowed**. The respondents are hereby directed to deposit reassessed amount of compensation of **Rs.45,57,739/-** alongwith accrued interest thereon at the rate of 7.5% per annum, with the learned Tribunal within a period of FOUR WEEKS from the date of receipt of the present judgment. The Impugned judgment and award dated 06.05.2021 passed by the learned Motor Accident Claims Tribunal (Main), Ahmedabad in Motor Accident Claim Petition No.524 of 2011 is modified to the aforesaid extent and rest of the impugned judgment and award remains unaltered.

[10.1] After the aforesaid amount of enhanced compensation is deposited by the insurance company, learned Tribunal is directed to disburse the entire amount with accrued interest thereon, if any, to the original claimants, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.

[10.2] 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.

Ajay

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