



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 2797 of 2022**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Approved for Reporting	Yes	No

UMIYA NITINGAR GOSWAMI
Versus
PRATAPBHAI VALABHDAS CHTHANI & ANR.

Appearance:

MR VISHAL C MEHTA(6152) for the Appellant(s) No. 1
MR RATHIN P RAVAL(5013) for the Defendant(s) No. 2
RULE SERVED for the Defendant(s) No. 1

CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

**Date : 05/02/2026
ORAL JUDGMENT**

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the appellant–original claimant. against the judgment and award dated 26.04.2018 passed by the learned Motor Accident Claims Tribunal (Auxi), Bhuj-Kutch in MACP No.32 of 2014.

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

3. The brief facts of the case are that on the date of the accident, after offering prayers at Drabudi Temple, the applicant was returning to Village Gundiari along with her mother, sisters, and other relatives and was walking on the extreme left side of the road on the kacha portion. At about 12:15 p.m., when they reached near the place of the accident, Opponent No. 1



approached from behind driving his Hyundai car bearing Registration No. GJ-12-AE-8489 in a rash and negligent manner and at an excessive speed. He suddenly lost control of the vehicle, causing the car to hit the applicant from behind and drag her for some distance. As a result, the applicant sustained serious injuries and suffered permanent disability.

4. The learned counsel for the appellant has submitted that the Tribunal failed to properly appreciate the documents produced on record and did not correctly assess the income of the victim, who has suffered severe bodily disability. It is further submitted that the Tribunal did not award any compensation under the head of loss of marriage prospects, even though the victim, being a minor girl, had to undergo amputation of her right leg. Instead, only a meagre amount of Rs. 8,000/- was awarded under the head of pain, shock, and suffering. It was further contended that the evidence on record, including the certificates issued by the Orthopaedic Surgeon, remained unchallenged. The learned counsel submitted that the Tribunal committed an error in not considering minimum wages, which ought to have been taken into account, particularly when the right leg had been amputated and the disability was assessed at only 36%. Though the doctor was examined at Exhibit 33, the learned Tribunal ignored this aspect and considered only a notional income of Rs. 24,000/-. It was also submitted that the Tribunal failed to award amounts under the conventional heads, even though the claimant was a minor and had suffered considerable hardship. For these reasons as well, just and proper compensation is required to be awarded under the head



of pain, shock, and suffering. Therefore, considering the loss suffered due to her physical disability, interference by this Court is called for for enhancement of the compensation.

5. On the contrary, learned advocate appearing for the respondent No.2 has strongly opposed the appeal and submitted that the learned Tribunal has rightly awarded just and proper compensation in view of the evidence available on record. It was contended that the judgment and award passed by the Tribunal are based on a proper appreciation of the evidence and, therefore, no interference is called for. Accordingly, it was prayed that the appeal be dismissed.

6. Having heard the learned counsel for the respective parties and upon perusal of the material placed on record, it appears that the appeal has been filed on the ground of quantum, and the question of contributory negligence in the case of a minor is not required to be considered. After appreciating the evidence produced on record and relying upon the decisions of the Hon'ble Supreme Court in ***Bimla Devi v. H.R.T.C., AIR 2009 SC 2819, and Parmeshwar(i) Devi v. Amir Chand, (2011) 11 SCC 635***, the learned Tribunal has concluded that the alleged accident occurred due to the sole negligence of Opponent No. 1, and the said finding does not warrant interference. The involvement of the vehicle, liability, and coverage under the insurance policy are not in dispute.

7. So far as the question of quantum is concerned, it appears

that the learned Tribunal has considered the notional income of the claimant at Rs. 24,000/- per annum. It is needless to state that even in the case of a minor, as per the law laid down by the Hon'ble Supreme Court in **Hitesh Nagjibhai Patel v. Bababhai Nagjibhai Rabari & Anr.**, **Neutral Citation: 2025 INSC 1070**, the Tribunal or the High Court, while dealing with a case involving a child who has suffered injuries or has died, is required to assess loss of income on the basis of the minimum wages payable to a skilled worker in the concerned State at the relevant point of time i.e. Rs.5,750/-

8. Considering the nature of injury and age of the victim and has sustained the partial permanent disability and other consequential losses of said injury, claimant is entitled for getting the compensation in view of the decision of the Hon'ble Supreme Court in the case of **Kajal vs. Jagdish Chand and Others** reported in **(2020) 4 SCC 413** wherein it has been held that the Tribunal shall award the compensation very conservatively keeping in mind the degree of deprivation and the loss caused by such deprivation which can be termed as "just compensation" as insured / injured claimant has to face the consequences throughout her life and that should not be any token damages. Even, in the case of **Master Ayush vs. Branch Manager, Reliance General Insurance Company Limited and Anr.** reported in **(2022) 7 SCC 738**, relying on the decision in the case of **Kajal (Supra)**, the Hon'ble Supreme Court by observing in paragraph No.7 as under:-

"7. It was also argued that in a judgment reported as Kajal v. Jagdish Chand², the injured was a 12



years old girl who had suffered an injury to the extent that her IQ got less than 20% as compared to a child of her age and the medical board had assessed her social age to be only of a 9-months' old child. This Court had recognized that Schedule II of the Act could be used as a guide for the multiplier to be applied in each case. This Court in the aforesaid case held as under (SCC pp. 419, 421 & 426, paras 6, 12 & 27)

“6. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Act enjoins upon the courts to do. The court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by the victim. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, the compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. Such compensation is what is termed as just compensation. The compensation or damages assessed for personal injuries should be substantial to compensate the injured for the deprivation suffered by the injured throughout his/her life. They should not be just token damages.

xxx

xxx

xxx

12. The assesment of damages in personal injury cases raises great difficulties. It is not easy to convert the physical and mental loss into monetary terms. There has to be a measure of calculated guesswork and conjecture. An assessment, as best as can, in the circumstances, should be made.

1) xxx

xxx

xxx



27. One factor which must be kept in mind while assessing the compensation in a case like the present one is that the claim can be awarded only once. The claimant cannot come back to court for enhancement of award at a later stage praying that something extra has been spent. Therefore, the courts or the Tribunals assessing the compensation in a case of 100% disability, especially where there is mental disability also, should take a liberal view of the matter when awarding the compensation. While awarding this amount, we are not only taking the physical disability but also the mental disability and various other factors. This child will remain bedridden for life. Her mental age will be that of a nine-month-old child. Effectively, while her body grows, she will remain a small baby. We are dealing with a girl who will physically become a woman but will mentally remain a 9-month-old child. This girl will miss out playing with her friends. She cannot communicate; she cannot enjoy the pleasures of life; she cannot even be amused by watching cartoons or films; she will miss out the fun of childhood, the excitement of youth; the pleasures of a marital life; she cannot have children who she can love, let alone grandchildren. She will have no pleasure. Her's is a vegetable existence. Therefore, we feel in the peculiar facts and circumstances of the case even after taking a very conservative view of the matter an amount payable for the pain and suffering of this child should be at least Rs 15,00,000."

9. Thus, the Hon'ble Supreme Court in the aforesaid case relating to a minor has considered the multiplier of 18. As the learned Tribunal has not relied upon the ratio laid down by the Hon'ble Supreme Court in the case of **Kajal** (supra), an error has



been committed by the learned Tribunal in applying a multiplier of 15.

10. Further, compensation is required to be awarded once and for all, as the victim is not at fault, and it is the duty of the Tribunal to award just compensation. Considering the overall facts and circumstances relating to the treatment undergone by the claimant, mental agony, pain, disablement, loss of future earning capacity, expenditure incurred towards hospitalization, nutritious diet, and attendant charges, the said aspects were required to be duly taken into consideration. However, the learned Tribunal has not properly appreciated these factors and has failed to award just compensation under the heads of non-pecuniary damages, including loss of amenities. It is also pertinent to observe that adopting a sensitive approach is crucial for the Tribunal, as it plays a vital role in ensuring not only justice to the victim of a motor accident but also in determining fair and reasonable compensation. The Tribunal is expected to act with empathy so as to prevent further trauma, since victims of road accidents and their families often suffer severe physical and emotional distress, and a humane approach by the adjudicating authority instils a sense of support and understanding.

11. The Hon'ble Supreme Court in the case of **Sidram vs. Divisional Manager, United India Insurance Company Limited and Anr.** reported in **(2023) 3 SCC 439**, wherein the Hon'ble Supreme Court relying on its decision in the case of **Pappu Deo Yadav vs. Naresh Kumar** reported in **(2022) 13 SCC 790** has observed and held in paragraph 113 as under:



“113. Before we close this matter, it needs to be underlined, as observed in *Pappu Deo Yadav (supra)* that Courts should be mindful that a serious injury not only permanently imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon the victim. The attendant trauma of the victim's having to live in a world entirely different from the one she or he is born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in the judge's mind, whenever tasked to adjudge compensation claims. Severe limitations inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic component of the right to life under Article 21 of the individual, thus depriving the person of the essence of the right to a wholesome life which she or he had lived, hitherto. From the world of the able bodied, the victim is thrust into the world of the disabled, itself most discomfiting and unsettling. If courts nit-pick and award niggardly amounts oblivious of these circumstances, there is resultant affront to the injured victim.”

12. In view of the above, the minimum wages prevailing at the time of the accident are required to be considered. In the present case, for the year 2013, the prevalent minimum wages were Rs.5,750/- per month. Adding future prospects at the rate of 40%, the monthly income would come to Rs.8,050/- (Rs.5,750 + Rs.2,300). Applying the multiplier of 18, as laid down by the Hon'ble Apex Court in ***Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121 and National Insurance Co. Ltd. v. Pranay Sethi, 2017 ACJ 2700***, the total loss of income would be $\text{Rs.}8,050 \times 12 \times 18 = \text{Rs.}17,38,800/-$.

13. Now coming to the aspect of disablement, the doctor



initially opined that the claimant had suffered 90% disability and, in the cross-examination, admitted that the disability of the body as a whole would be required to be considered at 36%. The learned Tribunal accepted the said percentage, which is unjust and improper. Considering the amputation of the right leg and the age of the claimant, the learned Tribunal has, without assigning any reasons, straightaway accepted 36% disability. It is needless to state that physical disability and functional disability stand on different footings, particularly when the amputation stump length is only 6.5 cm below the knee. Having regard to the nature of injuries, the claimant cannot walk without support and cannot perform heavy work.

14. Considering these facts, as well as the medical evidence produced at Exhibit 33, and the injuries specified for permanent partial disablement in Schedule I, Part II of the Workmen's Compensation Act, in cases of amputation of the lower limb below the knee but not exceeding 12.7 cm, hence 50% permanent functional disability is required to be considered. Therefore, the learned Tribunal has committed an error to that extent. Accordingly, the amount towards future loss of income would come to $\text{Rs.}17,38,800 \times 50\% = \text{Rs.}8,69,400/-$.

15. So far as pain, shock and suffering are concerned, the learned Tribunal has awarded Rs.80,000/-. In view of the ratio laid down in the decisions of the Hon'ble Supreme Court in **K.S. Murlidhara v. R. Subbulakshmi**, reported in 2024 SCC OnLine SC 3385, and **Reshma v. Dajiba Krishna Lad and Another**, reported in 2025 INSC 1320, the amount awarded

under the said head is required to be enhanced to Rs.5,00,000/- from Rs.80,000/-.

16. It appears that Rs.1,22,000/- has been awarded towards medical expenses by the Tribunal, which appears to be just and proper and needs no interference. However, the learned Tribunal has committed an error in awarding compensation under the head of disfigurement, which is required to be considered under other permissible heads and which are considered accordingly. This Court has, therefore, reassessed the compensation under other heads: **Rs.3,00,000/-** towards loss of marriage prospects, whereas the Tribunal had awarded only Rs.70,000/- and Rs.2,00,000/- towards loss of amenities and loss of enjoyment of life, whereas the Tribunal had awarded Rs.80,000/- under the said head. The claimant is also entitled to Rs.1,50,000/- towards artificial limb and future medical expenses also and Rs.1,00,000/- towards special diet, attendant charges and transportation.

17. As discussed above, the appellant is entitled to compensation which is reassessed and computed as under:

Heads	Amount
Future loss of income	Rs.8,69,400/-.
Pain, shock and sufferings	Rs.5,00,000/-
loss of marriage prospect.	Rs.3,00,000/-
Loss of amenities and loss of enjoyment of life	Rs.2,00,000/-



Artificial Limb	Rs.1,50,000/-
Special diet, attendant and transportation	Rs.1,00,000/-
Total compensation	Rs.21,19,400/-

18. Hence, present appeals are **partly allowed**. The impugned judgment and award is hereby modified to **Rs.21,19,400/-** from **Rs.8,77,000/-**. The appellant would be entitled to get additional amount of **Rs.12.42,400/-** with proportionate costs and interest as awarded by the learned Tribunal. The opponents shall deposit said additional amount before the Tribunal within a period of **four weeks** from the date of receipt of this order.

19. Record and proceedings be remitted back to the concerned Tribunal forthwith. The Tribunal is directed to recover or deduct the deficit court fees on enhanced amount and thereafter disburse the amount accordingly. Award to be drawn accordingly.

(HASMUKH D. SUTHAR,J)

ALI