IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 2148 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J. L. ODEDRA

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Approved for Reporting	Yes	No

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GEETABEN SUNILBHAI GAMIT & ORS.
Versus
ASHOKSING RAMAKANTSING CHOUHAN (DISMISSED) & ANR.

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Appearance:
MR.HIREN M MODI(3732) for the Appellant(s) No. 1,2,3,4,5,6
DISMISSED FOR NON PROSECUTION for the Defendant(s) No. 1
MS E.SHAILAJA(2671) for the Defendant(s) No. 2

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CORAM:**HONOURABLE MR.JUSTICE J. L. ODEDRA**
Date : 26/02/2026
JUDGMENT

1. The present appeal arises from the impugned judgment and award dated 07.09.2013 passed by Motor Accident Claims (Aux.) Tribunal at Surat deciding the Motor Accident Claims Petition No.109 of 2006.

2. By way of the impugned judgment and award, the Tribunal was pleased to award a sum of Rs.8,00,960/- with simple interest at the rate of 9% per annum from the date of filing of the claim petition till realization jointly and severally from opponent Nos.1 & 2.

3. Learned advocate for the appellant has contested the appeal only on two grounds, namely, the extent of

attribution of the negligence of the deceased motorcyclist, Sunilbhai Jesabhai Gamit and also on the quantum being of a meager amount.

4. The accident in question had happened on 08.01.2006 when the said Sunilbhai Jesabhai Gamit (hereinafter '**the deceased**') was riding his motorcycle bearing registration No.GJ-19-K-3538 with a pillion rider and was traveling from Uchchhal to Songadh. However, near Anandpur village, he met with an accident with a truck bearing registration No.GJ-5-V-3584, approaching the motorcycle from the opposite side.

5. Learned advocate submitted before this Court that admittedly, the deceased was aged 29 years at the time of the accident. He further submitted that the Tribunal has erred in attributing 20% negligence to the deceased inasmuch as no evidence whatsoever was lead to draw an inference that the negligence of 20% was liable to be attributed to the claimant. It was submitted that it was for the Insurance Company to allege negligence and insulate themselves from paying *pro rata* share of compensation commensurate to such negligence. It was,

thus, submitted that the burden to prove the same was on the Insurance Company. It was further submitted that no evidence whatsoever except the Panchnama has been relied upon by the Tribunal to come to the aforesaid conclusion. He submitted that the driver of the truck was never examined though the said owner could have easily summoned him for deposing before the Tribunal. It was submitted that in absence of driver deposing before the Tribunal, the extent of negligence cannot be proved by the Insurance Company. He therefore, submitted that finding as to negligence of 20% cannot possibly be attributed to the driver of the motorcycle.

6. It was submitted that as such, the Tribunal has considered Rs.3,000/- per month as the notional income of the deceased in absence of any evidence for income of the said deceased. However, it was submitted that the said income together with prospective increase to such income, is liable to be increased. Even the loss of consortium is only awarded to the extent of Rs.1,00,000/- and Rs.50,000/- has been awarded under the Head of Loss of Care and Guidance. It was submitted that the

dependents of the deceased are a widow, 3 minor daughters and both the parents. It was thus, submitted that all of them would be entitled to consortium at the rate of Rs.48,400/- each and that therefore, the amount under consortium would be Rs.48400/- x 6 which is Rs.2,90,400/-. It was submitted that additional amount which would be Rs.2,90,400/-. It was further argued that under the head of loss of Estate and Funeral Expenses, a sum of Rs.18,150/- ought to be awarded. He further submitted that accordingly the compensation may kindly be enhanced.

7. Opposing the appeal vehemently, learned advocate Ms. E. Shailaja appearing for the respondent No.2 herein has submitted that the Tribunal has rightly attributed 20% negligence to the deceased. It was submitted that the Panchnama itself indicates that there was a higher damage to the vehicle of the deceased, and therefore, the deceased can be inferred to have been traveling at a higher speed, thereby causing higher damage to his vehicle. It was also submitted that even otherwise if the said Panchnama is taken into account, the negligence to a bigger vehicle would be at a higher rate and that to

the smaller vehicle would be lower extent, which was the case before the Tribunal, and therefore, the Tribunal rightly awarded 80% negligence to the driver of the bigger vehicle – the truck and only 20% to the deceased. It was, thus, submitted that the findings pertaining to 20% negligence may be sustained.

8. In so far as the compensation awarded is concerned, it was submitted that as such, considering the law as prevalent as on the date of accident and standard of living prevalent during the period, including the minimum wages, the amount awarded towards compensation is just, fair and reasonable, and therefore, there is no reason to interfere in the same.

9. Having heard learned advocates for the parties, this Court proceeds to decide the present proceedings in terms appearing hereinafter.

10. The points of determination which arise for the consideration of this Court in the appeal are as follows:-

(a) Whether the contributory negligence attributed to the deceased is liable to be adjusted 20%? If not, to what extent would be the motorcyclist held to be contributing to the extent.

(b) Whether the compensation awarded by the Tribunal in the facts and circumstances of the present case is just, fair and reasonable? If not, what would be the just, fair and reasonable compensation liable to be awarded to the deceased?

11. Indeed, there is no evidence on record except for the Panchnama performed at the scene of the accident, for determining the accident. On perusal of the Panchnama, it does not indicate as to at which lane of the road, the accident had happened. Therefore, the negligence, on the basis that the vehicle veered to the other side and caused an impact/collusion, upon the other vehicle allegedly travelling its own lane, is not possible to determine from the said Panchnama.

12. Again, this Court reiterates that it is for the Insurance Company to prove the negligence of the claimant in order to avoid corresponding liability from

falling on them. However, the Insurance Company appears not to have examined the driver. Again, the argument of the learned advocate Ms. E. Shailaja, for the Insurance Company was that that it would be the vehicle which was traveling at a higher speed which would cause/suffer higher damage is not scientifically sustainable. The damage to a vehicle would depend upon the nature of material that it is made on and combined velocity of both the vehicles at the time of a collusion. Therefore, merely because the motorcycle has suffered damage at a higher scale does not mean that it was the motorcyclist who was traveling at a higher speed. Lastly, it was again a contention that in absence of evidence the bigger vehicle would be attributed at a higher negligence and the smaller vehicle which is lower negligence. This test is also not sustainable inasmuch as negligence is a factual determination and merely because a particular vehicle is higher or lower, negligence cannot be apportioned on the basis of such vehicular size. In the circumstances, as the burden of proving contributory negligence by the Insurance Company has not been discharged, therefore, the finding of the Tribunal that the motorcyclist was negligent to the extent of 20% is liable to be interfered with, and accordingly, it is set aside.

13. In so far as the compensation is concerned, the argument of the learned advocate for the appellant is only limited to the extent of consortium and the amount under loss of estate and funeral. This Court has noticed that the Tribunal has awarded sum of Rs.25,000/- under the Head of Funeral Expenses and Rs.1,00,000/- towards Loss of Consortium and Rs.50,000/- under the Head of Loss of Care and Guidance. All of the aforesaid heads are liable to be interfered with inasmuch as as per the judgment in ***National Insurance Company Limited Versus Pranay Sethi*** reported in ***(2017) 16 SCC 680***, both for Funeral Expenses and under the Head of Loss of Estate, are liable to be compensated for sum of Rs.18,150/- each. Similarly, under the Head of Loss of Consortium, for each of the dependents, namely, the widow, 3 minor daughters and both the parents, a sum of Rs.48,400/- is liable to be awarded. Accordingly, the aggregate sum under the head of consortium could be Rs.48,400/- x 6 which would be Rs.2,90,400/-. Hence, the enhancement would be to the tune of Rs.11,52,900/-, that is the

aggregate amount under the present appeal less the amount awarded by the Tribunal. The calculation as regards the enhanced amount would be Rs.11,52,900/- less Rs.8,00960/-, which would be equal to Rs.3,51,940/-. Accordingly, the total compensation would be as follows:-

Sr. No.	**Particulars**	**Amount as awarded by this Court (in Rs.)**	**Amount as awarded by the learned Tribunal (in Rs.)**
1	Loss of Future Income	Rs.8,26,200/-	Rs.8,26,200/-
2	Funeral Expenses	Rs.18,150/-	Rs.25,000/-
3	Loss of Estate	Rs.18,150/-	Nil
4	For loss of consortium (Rs.48,400/- multiplied by	Rs.2,90,400/-	Rs.1,00,000/-

	6)		
5	For the Care and Guidance	-	Rs.50,000/-
	Total	**Rs.11,52,900/-**	**Rs.10,01,200/-**
	Amount already awarded by the Tribunal	Rs.8,00,960/-	
	Additional amount which is enhanced (at simple interest of 9% per annum)	**Rs.11,52,900/-** **- Rs.8,00,960/-** **Rs.3,51,940/-**	

14. The Insurance Company is directed to deposit the awarded amount together with 9% interest as aforesaid within a period of 8 weeks from the date of availability

of the signed copy of this judgment. The Tribunal shall forthwith disburse the amount so deposited without creating any FDRs in the matter.

15. The appeal stands as having been disposed of in aforesaid terms. The Record and Proceedings be remitted back to the Tribunal.

(J. L. ODEDRA, J)

Manoj Kumar Rai