

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 4134 of 2024**

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ANISHABEN SHARIFBHAI SOLANKI & ORS.

Versus

SACHINBHAI BHARATBHAI SUVAGIYA & ORS.

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Appearance:

MR MONAL S CHAGLANI(10240) for the Appellant(s) No. 1,2,3,4

MR HARIVADAN PATEL FOR MR RAJ M THAKKAR(12366) for the
Defendant(s) No. 1,2

MS KIRTI S PATHAK(9966) for the Defendant(s) No. 3

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**Date : 14/02/2025****ORAL ORDER**

1. The present First Appeal, under Section 173 of Motor Vehicles Act, 1988, is preferred by the appellants – original claimants being aggrieved and dissatisfied with the judgment and award dated 4.9.2024 passed by the Motor Accident Claims Tribunal, Junagadh in Motor Accident Claim Petition No.11 of 2020.

2. Brief facts of the case are as under:-

2.1 That on Dt. 23/08/2019, Deceased Sharifbhai along with Appellants herein went to Durgah for worship, where they parked the car in passage of Durgah and as Deceased intended to attend nature's call, he went outside Durgah and while was walking on Jetpur Dhoraji Road near Village Pedhala at around 10:00 P.M., Res. no. 1 drove the two wheeler - Honda Shine

bearing Reg. no. GJ 03 LC 6202 in rash, reckless and negligent manner whereby dashed the Deceased and resulting to gross injuries succumbing Deceased to death.

2.2 Deceased was doing farming of his own farm as well as by way of Agricultural Labor he used to avail side income, wherefrom he used to earn Rs. 25,000/- p.m. and he was of young age, he was healthy and capable to earn more for his family in future.

2.3 Hence, for Loss of Future Income (including Future Prospects), For Consortium, Loss of Estate and Funeral & Other Misc. Expenses, Appellants have filed claim petition seeking compensation in tune of Rs. 30,00,000/- (in words Rupees Thirty Lakhs Only) along with Interest from Respondents jointly and severally.

3. Learned advocate for the appellants would submit that the learned Tribunal committed serious error in facts of the case believing that the offending vehicle is not involved in the road accident. He would further submit that not only in a written statement, it is contended by the driver and owner of the vehicle that the offending vehicle is involved in the road accident. He would further submit that there are other evidences in form of spot panchnama, charge sheet etc so also deposition of the claimant – widow of the deceased, who is eye witness to the incident, which demonstrate that the deceased while walking on the road hit by motorcyclist and thereby, the deceased fell on the road and died. He would further submit that in a claim petition filed either u/s 166 or 163A of the MV Act being a summary

proceeding, the claimants are not required to lead evidence in form of proving it beyond reasonable doubt. He would further submit that leading evidence in nature of preponderance of probabilities is sufficient which the claimant has led before the learned Tribunal and yet, the learned Tribunal taking strange approach to dismiss the claim petition noting some minor inconsistency, which does not go to the root of the case and therefore, he prays to allow this First Appeal.

4. Per contra, learned advocate Ms. Kirti Pathak referring to the deposition of Medical Officers from Gokul Hospital and Synergy Hospital at Exhs.54 and 61 and documents produced in their deposition would submit that in the history of the case papers, it has been narrated that the deceased was dashed by unknown four wheeler. She would further submit that the history stated in the case papers would assume significance on the ground that FIR is late by 8 days and yet, the vehicle was found on the road having blood stain. So, looking to this aspect, she would submit that it is a fit case where the claimant hatched conspiracy with the original opponent Nos.1 and 2 and implanted the vehicle and then, filed the claim petition u/s 166 of the MV Act. She would further submit that dubious proceedings are filed by the claimant and therefore, the learned Tribunal has rightly passed the impugned judgment and award and therefore, she urges to dismiss the First Appeal.

5. Learned advocate Mr. Harivadan Patel appearing for learned advocate Mr. Raj Thakkar for the respondent Nos.1 and 2 supports the submissions made by learned advocate Mr. Chaglani for the appellant as far as incident of road accident is

concerned.

Having heard learned advocates appearing for both the sides and considering their rival submissions in context of the pleadings and evidence on record.

6. The learned Tribunal framed issues at Exh.19, which reads as under:-

- “1. Whether applicants prove that deceased had expired on account of accidental injuries sustained in a vehicular accident occurred on 23/08/2019, due to rash and negligent driving of the driver of the Motorcycle No.GJ-03-LC-6202, involved in the accident?*
- 2. Whether the applicants are entitled to any compensation? If yes, what amount?*
- 3. What award and against whom?”*

7. Learned Tribunal recorded the deposition of Anishaben, who was eye witness. In the cross-examination, a specific question was put by the insurance company about non-involvement of the motorcycle in the road accident, but the witness has categorically denied it. She has also denied that she has given case history to Gokul Hospital about dashing to the deceased by the four wheeler. In the copy of the FIR Exh.24, a clear allegation of rash and negligent driving was levelled against the accused. The spot panchnama was drawn on 24.8.2019 and the accident took place on 23.8.2019 and the FIR was lodged on 30.8.2019. Even, accident entry No.21 of 2019 is also noted. Exh.26 is the charge sheet is filed against the opponent No.1 for rash and negligent driving. Form 54 as per Central Motor

Vehicle Rules is also placed on record at Exh.33. All these evidence were overwhelming and they sufficient to prove that on the fateful day, the deceased was hit by the motorcyclist. The driver-cum-owner who filed written statement at Exh.15 in para 9 thereof accepted the occurrence of the accident. All these evidence were enough one to believe the involvement of the vehicle in the road accident.

8. In case of ICICI Lombard General Insurance Co.Ltd. Versus Rajani Sahoo, 2025 (0) INSC 6, the Hon'ble Apex Court after referring to the judgment in case of Mangla Ram V. Oriental Insurance Co. Ltd. And Ors., 2018 5 SCC 656, believed that the Court should take holistic view of the evidence and has to report the police for proving the case on touchstone of preponderance of probabilities. Relevant para is 7 to 9, which reads as under:-

*“7. As regards the reliability of charge sheet and other documents collected by the police during the investigation in motor accident cases, this Court in the case of **Mangla Ram v. Oriental Insurance Co. Ltd. and Ors., (2018) 5 SCC 656; 2018 INSC 311** held in paragraph No.27, thus : -*

27. Another reason which weighed with the High Court to interfere in the first appeal filed by Respondents 2 & 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis done by the Tribunal is to hold that Jeep No. RST 4701 was driven rashly and negligently by Respondent 2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge-sheet filed by the police, naming

*Respondent 2. This Court in a recent decision in Dulcina Fernandes [**Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646**], noted that the key of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt. Suffice it to observe that the exposition in the judgments already adverted to by us, filing of charge-sheet against Respondent 2 prima facie points towards his complicity in driving the vehicle negligently and rashly. Further, even when the accused were to be acquitted in the criminal case, this Court opined that the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the Tribunal. (Emphasis Supplied)*

*8. It is true that the Tribunal had looked into the oral and documentary evidence including the FIR, final report and such other documents prepared by the police in connection with the accident in question. The Tribunal had also taken note of the fact that based on the final report, the driver of the offending truck was tried and found guilty for rash and negligent driving. The High Court took note of such aspects and found no illegality in the procedure adopted by the Tribunal and consequently dismissed the appeal. In the contextual situation it is relevant to refer to a decision of this Court in **Mathew Alexander v. Mohammed Shafi & Anr., (2023) 13 SCC 510; 2023 INSC 621** this Court held thus:-*

12. A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking

*compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in **Dulcina Fernandes vs. Joaquim Xavier Cruz, (2013) 10 SCC 646** which has referred to the aforesaid judgment in Bimla Devi.*

9. Thus, there can be no dispute with respect to the position that the question regarding negligence which is essential for passing an award in a motor vehicle accident claim should be considered based on the evidence available before the Tribunal. If the police records are available before the Tribunal, taking note of the purpose of the Act it cannot be said that looking into such documents for the aforesaid purpose is impermissible or inadmissible.”

9. It is very unfortunate that the learned Tribunal instead of taking holistic view, tried to find out smaller inconsistency in the evidence to throw out the claim filed u/s 166 of the MV Act. The learned Tribunal instead of believing on the testimony of the eye witness and police records, believed the deposition of two Medical Officers and more particularly, case history recorded by the Medical Officer given by some third party about the alleged road accident and believed that since according to them, the incident took place due to four wheeler, involvement of the motorcycle in the road accident is doubtful and rather it is implanted. The approach taken by the learned Tribunal could be very wise if the learned Tribunal was deciding the criminal case, whereby the nature of evidence must be beyond reasonable doubt. Hence, the approach of the learned Tribunal which ought to have been in consonance with section 167 of the MV Act to grant just and fair compensation to the victim of the road accident, has taken hyper-technical view, which is totally insensitive. I am failed to understand that how this kind of

approach has been taken by the learned Tribunal, though there is sufficient evidence placed on record. Filing of the FIR and charge sheet have not been challenged by either driver and owner of the offending vehicle nor the insurance company.

10. Another point, which requires to be recorded that the insurance company, who is relying upon the evidence of the Medical Officer from Gokul Hospital and Synergy Hospital, did not lead evidence to establish its contention. As per the Evidence Act, first the insurance company is required to enter into the witness box to establish its contention and then can lead necessary evidence in support of its contention. Learned advocate Ms. Kirti Pathak who have heavily relied upon the deposition of the Medical Officers at Exhs.54 and 61 to say that four wheeler was involved in the road accident could not lay her hand on the deposition of Exh.46 DW 1 Dr. Badalkumar Vachchani led by the insurance company, who is favouring the case of the claimant. All in all, what could be held that the learned Tribunal was totally ignoring the very purport and object of the MV Act to grant just and fair compensation.

11. The Hon'ble Apex Court in case of K. Suresh V. New India Assurance Co. Ltd (2012) 12 SCC 274 Hon'ble Apex Court held as follows : (SCC p. 276, para 2)

2. There cannot be actual compensation for anguish of the heart or for mental tribulations. The quintessentiality lies in the pragmatic computation of the loss sustained which has to be in the realm of realistic approximation. Therefore, Section 168 of the Motor Vehicles Act, 1988 (for brevity the Act) stipulates that there should be grant of just

compensation. Thus, it becomes a challenge for a court of law to determine just compensation which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance.

12. Adopting sensitive approach is a crucial for the MACT. The tribunal plays key and vital role in ensuring not only justice to the victim of the motor accident, but also to determine just and fair compensation. The MACT is expected to have empathy and has to prevent subsequent trauma by taking sensitive approach feeling pain of the victim of the road accident, because the victim of the road accident and their family often dealt with physical and emotional trauma and empathetic approach can provide them sense of support and understanding, which may nurse the pain of the victim and put them back to the pre-accident stage at least. Moreover, compensating approach can prevent effect of emotional stress that might arise from the adversarial legal process. The MACT entrusting summary jurisdiction to decide the issue keeping in mind the principle of paying just and fair compensation u/s 168 of the MV Act. Ultimately, goal of the Tribunal is to deliver justice.

13. In view of above, present First Appeal is allowed and impugned judgment and award is quashed and set aside. MACP No. **11 of 2020** is restored to its original proceedings.

13.1 The learned Tribunal is directed to issue notice to the claimant as well as to the respondents and to proceed further to decide the petition on its own merits without being influenced by its earlier order, as early as possible.

13.2 Both the parties are at liberty to lead fresh evidence, if they so desire.

13.3 Parties shall remain present before the learned Tribunal on **17.3.2025**.

13.4 R & P, if any, to be sent back to the concerned Court immediately preferably on or before **17.3.2025**.

SHEKHAR P. BARVE

(J. C. DOSHI,J)