

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 600 of 2016**

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CHANDUBHAI KANTIBHAI @ HIMMATBHAI VASAVA

Versus

NARESHKUMAR SAVABHAI RABARI & ORS.

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Appearance:

MR.HIREN M MODI(3732) for the Appellant(s) No. 1

MR GC MAZMUDAR(1193) for the Defendant(s) No. 5

MR HG MAZMUDAR(1194) for the Defendant(s) No. 5

MR VC THOMAS(5476) for the Defendant(s) No. 3

RULE SERVED for the Defendant(s) No. 1,2,4

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 01/09/2026

JUDGMENT

1. Present First Appeal is directed against the judgment and award dated 20.3.2015 passed by the learned Motor Accident Claims Tribunal, Vadodara in MACP No.624 of 2999, by which, the learned Tribunal granted total compensation of Rs.2,75,000/- together with interest at 9% per annum from the date of deposit till realisation. The award was also passed against the opponent Nos.1 to 3 to the extent of paying 50% amount of compensation and opponent No.4 to pay 50% of the amount of compensation.

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

2.1 That on 13/04/1999 at about 11:30 a.m., the appellant was coming from Shinor to his Village Saadhli, alongwith his



goods like vessel stand, cloth etc in the Tempo No. GJ-6-U-7304 being driven by the respondent no.4. When they reached near place of accident at that time, the respondent no.1 came by driving his Tempo No. GJ-6-W-6159 in rash and negligent manner and dashed with the Tempo of the appellant. The collision resulted in grievous injuries to the claimant, including an open fracture of the tibia, dislocation of the right wrist joint, a fracture of the radial head, a cut to the wrist, and injury to the radial artery and muscles.

2.2 Initially, the claimant was treated in the Mota Fofaliya Prathmik Hospital, then was shifted to S.S.G. Hospital at Vadodara, admitted there from 13/4/99 to 5/7/99. He had to undergo much painful treatment, wherein, even his half of the right hand wrist was required to be amputated.

2.3 Dr. Mahesh Patel issued disability certificate, as per which, the claimant received 34% permanent partial disability right upper limb, namely right hand. It is also reported in the certificate that the claimant suffered disability of 15% due to loss of index finger and 24% due to loss of function of right thumb.

2.4 Therefore, the appellant have prayed compensation for Rs. 5,00,000/- and held that the respondents jointly and severally liable to pay the amount of compensation.

2.5 The learned Tribunal after assessing issue of inter se



negligency of the vehicle, granted the compensation as stated herein above.

2.6 Hence, present First Appeal.

3. Heard learned advocates for the respective parties.

4. At the outset, I may refer to the disability certificate (Exh.43) issued by Dr. Mahesh Patel and proved by the doctor's testimony at Exh. 56. The certificate recorded following injuries:-

“Right Hand:-

Tenderness + all around the wrist Joint & Hand.

Swelling + on the wrist & Hand due to flap.

Scar Well Healed & Tender.

Amputated Thumb & Index Finger.

Power:- Grade 4 in all groups of muscles in the Elbow. Hand is Functionless due to loss of Extensors of wrist & Hand.

Movements:-All the movements of wrist & Fingers lost.

HIS PERMANENT PARTIAL DISABILITY ASSESSED TODAY IS 34% (THIRTY FOUR PERCENT) OF RIGHT UPPER LIMB- (15 % Due to Index Finger & 24 % Due to loss of function of Thumb).”

5. The certificate further records that the claimant, who was working as a labourer, had lost the use of his right index finger and thumb, and that this made clear that the claimant, who was required to use his right hand for his work, had lost



material earning capacity. Therefore, learned Tribunal has not committed any error in taking up 50% functional disability. However, the learned Tribunal erred in not granting compensation towards loss of future prospects in view of the judgment of the Hon'ble Apex Court in case of **V.Pathmavathi Versus Bharthi Axa General Insurance Co.Ltd., AIR 2026 SC 840.**

6. The income part taken up by the learned Tribunal is correct being based on the claimant's rate of earnings, and that the claimant had not placed on record any other source of income or any later income figure. Multiplier taken up by the learned Tribunal is also correct since the claimant is of 22 years of age. However, the compensation under other heads are required to be worked out.

7. To be noted that this was a case involving composite negligence. The claimant was not the driver of either vehicle, but was travelling as a passenger in one of the tempos, and had not in any way contributed to the accident. In these circumstances, relying on the observations in a recent judgment of the Supreme Court in case of **Manomati Chouhan Versus Oriental Insurance Co. Ltd., 2026 ACJ 742**, the opponent Nos.1,2 and 4 are held to be jointly and severally liable towards the compensation.

8. Therefore, total compensation would be as under, which the claimant/s is/are entitled to get.

Particulars	Amount (Rs.)
Future loss of income (50% disability)	3,02,400/-
Pain, shock and suffering	1,00,000/-
Medical expenses	10,000/-
Special diet, attendant charges, transportation & prosthetic leg	10,000/-
6 months monthly income	12,000
Loss of amenities	25,000/-
Total...	4,59,400/-
Less : Amount which is already awarded	2,75,000/-
Additional amount which is awarded	1,84,400/-

9. Therefore, I hold that the claimant are entitled to get the enhanced compensation of Rs.1,84,400/- with 9% p.a. interest from the date of filing the claim petition till its realisation, which would meet the ends of justice. Rest of the direction(s) of the Tribunal remain same.

10. For the reasons recorded above, the following order is passed.

10.1 The present appeal is **partly allowed**.

10.2 The Insurance Company is directed to deposit the enhanced amount Rs.1,84,400/- with 9% p.a. interest from the date of claim petition till its realization before the concerned



Tribunal, within a period of 12 weeks from the date of receipt of this order. The claimant would be entitled to recover the enhanced amount of compensation from the respondent Nos.1,2 and 4 jointly and severally.

10.3 It is clarified that the insurance company, if paid an amount in excess of its share of liability would be entitled to recover the excess amount from the other opponent/s.

10.4 The Tribunal shall disburse the entire awarded amount lying in the FDR and/or with the Tribunal, with accrued interest thereon, if any, to the claimant, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.

10.5 While making the payment, the Tribunal shall deduct the courts fees, if not paid, in accordance with rules/law.

11. Record and proceedings be sent back to the concerned Tribunal, forthwith.

SHEKHAR P. BARVE

(J. C. DOSHI,J)