

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 2172 of 2016****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

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Approved for Reporting	Yes	No

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SUMAIYABANU MAHMAD ASIF SHAIKH & ORS.**Versus****BABUBHAI PANGDABHAI BHABHOR & ORS.**

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Appearance:**MR.HIREN M MODI(3732) for the Appellant(s) No. 1,2,3****DISMISSED FOR NON PROSECUTION for the Defendant(s) No. 4****MR.KRUTIK A PARIKH(7268) for the Defendant(s) No. 3****RULE SERVED for the Defendant(s) No. 1,2**

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CORAM:HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**Date : 13/08/2026****JUDGMENT**

1. The captioned appeal is preferred against the impugned judgment and award dated 29.04.2016 passed by the learned Motor Accident Claims Tribunal (Aux.), Vadodara in M.A.C.P. No. 420 of 2009, whereby the learned Tribunal has partly allowed the claim petition and awarded a sum of Rs. 5,16,500/- (Rupees Five Lacs Sixteen Thousand Five Hundred Only) along with interest at the rate of 9% per annum, from the date of filing of the claim petition till realization.



2. The succinct facts, which lead to the filing of the captioned appeal are summarized as under :-

- i. On 21.12.2008, deceased-Asif Noormohmad Shaikh was proceeding towards Indore while driving an Indigo Car bearing Registration No. GJ-06-BL-9119. When he was crossing the bridge over the Khan River near Village Pusari, opponent No. 1 came from the opposite direction, driving Jeep bearing Registration No. MP-45-D-0350 in a rash and negligent manner and at an excessive speed and collided with the car of the deceased. As a result, deceased Asif Noormohmad Shaikh sustained grievous injuries in the accident and despite receiving treatment, succumbed to the said injuries.
- ii. The notices/summons of the Claim Petition were duly served upon the opponents. The opponent nos.1, 2 & 4 have chosen not to appear before the learned Tribunal, however, the opponent nos.3 appeared and filed Written Statement vide Exh.16, denying the contents of the claim petition and prayed for dismissal of the claim petition.



iii. Having considered the pleadings of the parties, the learned Tribunal framed the following issues at Exh.17, for determination.

i. Whether it is proved that the deceased died due to injuries on account of rashness or negligence in driving on the part of the driver of the vehicle involved in the accident?

ii. What amount, if any, the claimants are entitled to by way of compensation and from which of the opponents?

iii. What order?

iv. Having considered the oral as well as documentary evidence on record, and having considered the submissions of the learned counsels for the parties, the learned Tribunal awarded a sum of Rs. 5,16,500/- (Rupees Five Lacs Sixteen Thousand Five Hundred Only) along with interest at the rate of 9% per annum, from the date of filing of the claim petition till realization.



- v. Being aggrieved and dissatisfied by the impugned judgment and award, the claimants - appellants herein preferred the present appeal.

3. Heard learned counsels for the parties.

4. Mr. Hiren Modi, learned advocate appearing for the claimants-appellants vehemently submitted that at the time of the accident, the deceased was working as a driver and was aged about 29 years. According to the claimants-appellants, the deceased was earning a monthly salary of Rs.6,000/-. However, the learned Tribunal assessed the income of the deceased at Rs.4,500/- per month, which is on the lower side. It was submitted that the learned Tribunal ought to have considered the oral evidence led by the claimants-appellants with regard to the income of the deceased and should have assessed his monthly income at Rs.6,000/-. In support of his contention, he has placed reliance upon the judgment of Hon'ble Apex Court rendered in the case of **Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors.** reported in (2013) 10 SCC 695.

5. It is submitted that the learned Tribunal had awarded a meagre amount of compensation under the head of loss of consortium and funeral expenses. It is submitted that the learned Tribunal had not awarded any compensation under the head of loss of estate. He, therefore, prayed for enhancement of compensation. In support of his contentions,



he has placed reliance upon the judgments of Hon'ble Apex Court rendered in the case of **National Insurance Company Ltd. Vs. Pranay Sethi** reported in **2017 (16) SCC 680** and **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Ors.**, reported in **(2018) 18 SCC 130**.

6. Per contra, Mr. Krutik Parikh, learned advocate appearing on behalf of respondent no.3-Insurance Company vehemently submitted that the income of the deceased was not proved by leading cogent evidence and, therefore, the learned Tribunal has rightly assessed the income of the deceased at Rs.4,500/- per month. It is submitted that the accident in question occurred on 21.12.2008 and considering the minimum wages payable to a skilled worker at the relevant point of time, the learned Tribunal has appropriately assessed the income of the deceased. It is submitted that the learned Tribunal had awarded just compensation under all the heads. It is submitted that there is no infirmity in the impugned judgment and award. Therefore, the captioned appeal is liable to be dismissed.

7. Having considered the submissions advanced by the learned counsel for the parties and having gone through the record, it is to be noted that the claimants - appellants have challenged the impugned judgment and order on the ground of quantum.



8. So far as the quantum of compensation is concerned, it is not in dispute that, at the time of the accident, the deceased was aged about 29 years. The evidence on record reveals that the deceased was working as a driver of the offending car. The widow of the deceased entered the witness box and filed her affidavit in lieu of examination-in-chief. In her affidavit, she deposed that, at the time of the accident, the deceased was earning Rs.6,000/- per month. In the case of *Minu Rout* (supra), the Hon'ble Apex Court assessed the income of the deceased driver at Rs.6,000/- per month. Therefore, considering the year of the accident, the occupation of the deceased and having regard to the ratio laid down by the Hon'ble Apex Court, the monthly income of the deceased is reassessed at Rs.6,000/- per month. It is not in dispute that at the time of accident, the deceased was aged about 29 years. Therefore, 50% of the monthly income is added on account of future prospects of the deceased. Thus, after adding 50% to the notional monthly income, it would come to Rs. 9,000/- (Rs.6,000/- + Rs.3,000/- (50% of Rs.6,000/-)). At the time of accident, the deceased was survived by 3 legal representatives, therefore, 1/3 of the monthly income is to be deducted on account of personal expenses of the deceased. Thus, after deducting 1/3 of the monthly income, it would come to Rs. Rs.6,000/-(Rs.9,000/- - Rs.3,000/- (1/3 of Rs.9,000/-)). After applying the multiplier of 17 as per the age of the deceased, the future loss of income would come to Rs. 12,24,000/- (Rs.6,000/-x12x17).

9. The learned Tribunal has awarded a sum of Rs.1,00,000/- under the head of loss of consortium, loss of love and affection etc. It is evident from the record that the claim petition was filed by 3 legal representatives. All the claimants are entitled to get the compensation under the head of consortium. Accordingly, in view of the ratio laid down by the Hon'ble Apex Court in *Magma General Insurance Co. Ltd.* (supra), a sum of Rs.1,45,200/- (Rs.48,400/- × 3) is awarded under the head of loss of consortium.

10. The learned Tribunal had awarded meagre amount of compensation under the head of transportation and funeral expenses. Therefore, having regard to the ratio laid down by the Hon'ble Apex Court in the case of *Pranay Sethi* (supra), the compensation awarded under this head is enhanced to Rs.18,150/-.

11. The learned Tribunal had not awarded any compensation under the head of loss of estate. Having regard to the ratio laid down by the Hon'ble Apex Court in the case of *Pranay Sethi* (supra), a sum of Rs.18,150/- is awarded under the head of loss of estate.

12. Therefore, in view of the above discussions, the claimants shall be entitled for the following compensation:-

Sr. No.	Heads	Amount Awarded in rupees.
1	Loss of Dependency	12,24,000/-



2	Funeral Expenses	(+)	18,150/-
3	Loss of Estate	(+)	18,150/-
4	Loss of Consortium	(+)	1,44,00/-
			Rs. 14,05,500/-
	Less:1/2 on account of self-negligence of the deceased	(-)	Rs.7,02,750/-
	TOTAL COMPENSATION		Rs.7,02,750/-
	Less : Compensation awarded by impugned Judgment and Award	(-)	Rs. 5,16,500/-
	Enhanced amount of compensation		Rs. 1,86,250/-

13. Thus, in view of the above discussion, the claimants - appellants shall be entitled for an additional compensation of Rs.1,86,250/- (Rs.7,02,750/- - Rs.5,16,500/-). The learned Tribunal has awarded the interest at the rate of 9% per annum from the date of the claim petition till its realization. Therefore, the claimants shall also be entitled for the same rate of interest on the additional amount of compensation from the date of filing of the claim petition till its realization.

14. In view of the above discussions, the captioned appeal stands allowed partly and judgment and award is modified to that extent. The respondent-Insurance Company is directed to deposit the additional compensation amount along with interest, with the concerned learned Tribunal within a period of eight weeks from the date of receipt of copy of this order. Upon depositing the said amount of compensation, learned



Tribunal shall disburse the entire awarded amount of compensation along with interest to the claimants – appellants after deducting deficit Court fee and due verification.

15. If any amount is lying deposited in the captioned appeal with the Registry of this court, the same may be transmitted to the concerned learned Tribunal. Records & Proceedings, if any, be sent back to the concerned learned Tribunal. No order as to costs.

16. Pending application, if any stands disposed of.

GIRISH

(MOOL CHAND TYAGI, J)