

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 2793 of 2019****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE MOOL CHAND TYAGI****Sd/-**

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Approved for Reporting	Yes	No

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GORDHANBHAI DALSUKHBHAI RATHWA (BARIYA)**Versus****VIPULKUMAR VITHTHALBHAI NAYAK & ORS.**

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Appearance:

MR R G DWIVEDI(6601) for the Appellant(s) No. 1

MR. NISARG D SHAH(7299) for the Appellant(s) No. 1

MR KV GADHIA(319) for the Defendant(s) No. 5

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

MR. BK. RAJ(3794) for the Defendant(s) No. 1

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

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CORAM:HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**Date : 11/08/2026****ORAL JUDGMENT**

- 1 The captioned appeal is preferred against the impugned judgment and award dated 30.03.2017 passed by the learned Motor Accident Claims Tribunal (Auxiliary) at Chhotaudepur in M.A.C.P. No.454 of 2017 (Old MACP



No.1471 of 2005), whereby the learned Tribunal has partly allowed the claim petition and awarded a sum of Rs.7,00,00/- (Rupees Seven Lakhs Only) along with interest at the rate of 7% 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 :-

2.1 That on 21/08/2005, the victim was traveling in auto rickshaw No.GJ-6-W-2938 and when the said auto-rickshaw reached at the place of incident, one Jeep No.GJ-17-A8169, which was being driven by the driver of the said vehicle in a rash and negligent manner, came there, and collided with the auto-rickshaw, in which victim was traveling. Thus, the accident has occurred, wherein the victim sustained grievous injuries. A complaint about this incident was lodged with the Bodeli police Station vide C.R. No.58/2005. Therefore, the claimant has filed the claim petition before the learned Tribunal.

2.2 The notices/summons of the Claim Petition were duly served upon the opponents. The opponent nos.1, 2 and 4 have chosen not to appear before the learned Tribunal, however, the opponent no.3-Insurance Company filed Written Statement vide Exh.10, denying



the contents of the claim petition and prayed for dismissal of the claim petition.

2.3 Having considered the pleadings of the parties, the learned Tribunal framed the following issues at Exh.18, for determination:

- (1) Whether it is proved that the claimant sustained injuries on account of rashness and negligence in driving on the part of the drivers of the vehicles involved in the accident?
- (2) What amount, if any, the claimant is entitled to by way of compensation and from which the opponents?
- (3) What order?

2.4 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.7,00,000/- (Rupees Seven Lakhs Only) along with interest at the rate of 7% per annum, from the date of filing of the claim petition till realization.

2.5 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 Learned advocate **Mr. R.G. Dwivedi**, appearing on behalf of the claimant-appellant, vehemently submitted that the learned Motor Accident Claims Tribunal has rightly assessed the monthly income of the claimant at Rs.10,000/-, inclusive of future prospects, and the said finding has not been assailed in the present appeal. However, he submitted that the learned Tribunal has committed an apparent error in assessing the functional disability of the claimant at only 30%, despite the overwhelming medical evidence available on record. It was submitted that the claimant sustained multiple grievous injuries in the accident, including fractures in both lower limbs, resulting in amputation of the right lower limb above the knee. In addition thereto, the claimant also sustained permanent disability in the left lower limb. The Medical Board, after examining the claimant, issued a disability certificate certifying 60% permanent disability of the right lower limb and 60% permanent disability of the left lower limb. Learned counsel further submitted that at the relevant point of time, the claimant was serving as a daily wager in the Irrigation, Agriculture and Animal Husbandry Department. Owing to the permanent disabilities suffered in the accident, the claimant became physically incapable of discharging his duties and was constrained to resign from



service on 31.10.2007. It was, therefore, submitted that considering the nature of the injuries, amputation of the right leg, permanent disability of the left leg and the complete loss of earning capacity, the learned Tribunal ought to have assessed the functional disability at 90%, instead of restricting it to 30%. Learned counsel further submitted that the compensation awarded under the conventional heads, particularly under the head of pain, shock and suffering, is wholly inadequate and does not constitute "just compensation" as contemplated under the Motor Vehicles Act, 1988. It was, therefore, prayed that the impugned judgment and award be modified by suitably enhancing the compensation. In support of his submissions, learned counsel placed reliance upon the judgments of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi**, reported in (2017) 16 SCC 680, and **Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram & Others**, reported in (2018) 18 SCC 130.

- 5 Per contra, learned advocate **Mr. V.C. Thomas**, appearing for respondent No.3 – Insurance Company, and learned advocate **Mr. K.V. Gadhia**, appearing for respondent No.5 – Insurance Company, opposed the appeal. It was submitted that the learned Tribunal has properly appreciated both the oral and documentary evidence on record and has awarded just, fair and reasonable compensation under all permissible heads. It was further



submitted that the monthly income of the claimant has rightly been assessed at Rs.10,000/-, and the compensation awarded by the learned Tribunal is in consonance with the settled principles. According to the respondents, the impugned judgment and award does not suffer from any legal infirmity warranting interference by this Court and, therefore, the appeal deserves to be dismissed.

- 6 I have heard the learned advocates appearing for the respective parties and have carefully perused the material available on record. It is evident that the present appeal is confined only to the question of quantum of compensation
- 7 Insofar as the quantum of compensation is concerned, it is an admitted position that at the time of the accident, the claimant was 53 years of age and the learned Tribunal has assessed his monthly income at Rs.10,000/-, which finding has not been challenged by either side. The principal grievance raised by the claimant is to the assessment of functional disability. The evidence on record establishes that the claimant sustained multiple fractures in both lower limbs. The injuries were so severe that the right lower limb had to be amputated above the knee, and the claimant also suffered permanent disability in the left lower limb. The Medical Board has certified 60% permanent disability of the right lower limb and 60% permanent disability of the left lower limb. The material on



record further reveals that the claimant was employed as a daily wager. Owing to the permanent disabilities sustained in the accident, the claimant was rendered incapable of performing any work requiring physical labour and consequently resigned from service on 31.10.2007.

- 8 Having regard to the nature of injuries, the amputation of one leg, the permanent disability suffered in the other leg and the resultant loss of earning capacity, this Court is of the considered opinion that the learned Tribunal committed an error in assessing the functional disability at 30%. In the facts and circumstances of the case, the functional disability deserves to be assessed at 90%. Accordingly, applying the multiplier of 11, having regard to the age of the claimant, the future loss of earning capacity is re-assessed as Rs.11,88,000/- ($\text{Rs.10,000} \times 12 \times 11 \times 90\% = \text{Rs.11,88,000/-}$). The claimant is, therefore, entitled to Rs.11,88,000/- towards future loss of income.
- 9 The learned Tribunal has rightly awarded Rs.2,00,000/- towards actual loss of income and Rs.1,00,000/- towards pain, shock and suffering. The said amounts do not require any interference. However, the compensation of Rs.50,000/- awarded towards special diet, attendant charges and transportation expenses is found to be inadequate. Considering the grievous nature of the injuries, prolonged hospitalization, continuous medical



treatment, permanent disability suffered in both lower limbs and the amputation of the right leg, the claimant would necessarily have incurred substantial expenditure under the aforesaid heads. Accordingly, the compensation under this head deserves to be enhanced to Rs.1,00,000/-. It is further evident from the record that despite the amputation of the claimant's right leg, the learned Tribunal has failed to award any amount towards the procurement of a prosthetic limb and its future maintenance. Having regard to the facts and circumstances of the case, this Court deems it appropriate to award a further sum of Rs.1,00,000/- towards the cost of a prosthetic limb and its maintenance.

10 The evidence on record further establishes that the claimant has suffered permanent disability which has substantially impaired his ability to lead a normal life and to enjoy the ordinary amenities thereof. He has become dependent upon others for carrying out his day-to-day activities. Despite these undisputed facts, the learned Tribunal has not awarded any compensation under the head of loss of amenities of life. In the considered opinion of this Court, the claimant deserves to be awarded a sum of Rs.1,00,000/- under the said head.

11 Therefore, in view of the above discussions, the claimant shall be entitled for the following compensation:-



Sr. No.	Heads	Amount Awarded in rupees.
1	Future loss of income	11,88,000/-
2	Actual loss of income	(+) 2,00,000/-
3	Pain, shock and suffering	(+) 1,00,000/-
4	Loss of amenities	(+) 1,00,000/-
5	Special diet, attendant and Transportation	(+) 1,00,000/-
6	Medical expenses	(+) 70,000/-
7	Cost of prosthetic leg and its maintenance	(+) 1,00,000/-
	TOTAL COMPENSATION	Rs. 18,58,000/-
	Compensation awarded by impugned Judgment and Award	(-) Rs. 6,00,000/-
	Enhanced amount of compensation	(=) Rs. 12,58,00/-

12 Thus, in view of the above discussions, the claimants - appellants herein shall be entitled for an additional compensation of Rs. Rs.12,58,000/- (Rs.18,58,000/- – Rs.6,00,000/-). The learned Tribunal has awarded the interest at the rate of 7% per annum from the date of the claim petition till its realization. Therefore, the claimant 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.

13 In view of the above discussion, the captioned appeal stands allowed partly and judgment and award is modified to that extent. The Insurance Company is directed to



deposit the additional compensation amount along with interest, with the concerned learned Tribunal within a period of four weeks from today. Upon depositing the said amount of compensation, learned Tribunal shall disburse the entire awarded amount of compensation along with interest to the claimant-appellant herein after due verification and after deducting of deficit of Court fee, if any.

14 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.

15 Pending application, if any stands disposed of.

MEHUL B. TUVAR

(MOOL CHAND TYAGI, J)