

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 621 of 2022****With****R/FIRST APPEAL NO. 1417 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

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Approved for Reporting	Yes	No

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LEGAL HEIRS AND DEPENDENTS OF DECD. MAYURBHAI JESINGBHAI
DHUDA MINABEN JESINGBHAI DHUDA & ANR.

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION THROUGH THE
DIVISIONAL CONTROLLER

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Appearance:

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

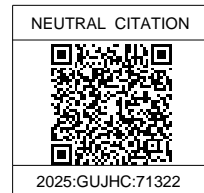
MS ESHA S. BHAVSAR FOR AISHVARYA(8018) for the Defendant(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**Date : 10/12/2025****COMMON ORAL JUDGMENT**

Since both these appeals arise out of the same accident against the MAC Petition No.52 of 2019, they have been heard together and are being decided by this common judgment.

- 1) Feeling aggrieved and dissatisfied with the judgment and award dated 28.01.2021 passed by learned Motor Accident Claims Tribunal (Main), Junagadh (which shall hereinafter be referred to as "**the Tribunal**" for short) in MAC Petition No.52 of 2019, the



appellants – original claimants have filed First Appeal No.621 of 2022 and opponent no.1 – Gujarat State Road Transport Corporation (which shall hereinafter be referred to as "**Corporation / GSRTC**" for short) has filed First Appeal No.1417 of 2022, under Section 173 of Motor Vehicles Act, 1988 (which shall hereinafter be referred to as "**the Act**" for short).

- 2) Heard learned Advocate Mr. M. S. Chaglani learned Advocate for the appellants – original claimants and learned Advocate Ms. E. S. Bhavsar on behalf of Aishvarya for respondent – Corporation. Perused the original record and proceedings.
- 3) It is the case of the appellants that on 24.02.2019 one Mayurbhai Jesinghbhai Dhuda (who shall hereinafter be referred to as "**deceased / motorcyclist**") along with his sister Sejalben and niece Bhavnaben were proceeding on motorcycle bearing Reg. No.GJ-11-DF-8942, from Magharvada to Keshod and when they reached on Keshod Junagadh Highway at about 03:00 O'clock one ST Bus bearing Reg. No.GJ-18-Y-8693, came from the opposite side driving the bus in full speed and in rash and negligent manner and dashed the motorcycle driven by the Mayurbhai. As a result of which Mayurbhai and Sejalben sustained fatal injuries and succumbed to it, whereas, Bhavnaben sustained injuries. Therefore, the appellants – claimants being legal heirs of the deceased had filed MAC Petition seeking compensation, wherein, the learned Tribunal after appreciating the evidence produced on record was pleased to partly allowed the claim petition.
- 4) Learned Advocate Mr. M. S. Chaglani, for the original claimants has submitted that the learned Tribunal has committed error in

considering 10% contributory negligence of the deceased in absence of any evidence. Merely head on collision is there and in every cases of head on collision the contributory negligence is not required to be considered. The deceased was driving LMV vehicle whereas the offending vehicle bus is a heavy vehicle and the learned Tribunal has ignored the said aspect and straightaway fastened the liability of motorcyclist on the ground that he was riding motorcycle along with two pillion riders in total three persons were riding on the said motorcycle is not a ground to automatically consider contributory negligence in absence of any proof. Merely, tripling ride on two-wheeler is not a ground to saddle liability of negligence. He has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Kumari Kiran Vs Sajjan Singh and Ors.***, reported in **2014 ACJ 2550**. and submitted that the learned Tribunal has committed error in considering income despite the deceased was doing job with Cubic Construction Co., though income of only Rs.9,000/- per month is considered. The claimants have produced salary certificate and payment summary certificate however the Tribunal has ignored the said aspect and awarded meagre amount. Further the Tribunal has to consider minimum Rs.3,00,000/- as the income of the deceased as he was an Engineer, whereas, the Tribunal has committed error by considering rate of minimum wages. The Tribunal has also committed error by considering ½ deduction merely on the basis that the deceased was a bachelor which is not permissible as four persons were dependents of the deceased. The Tribunal has also not awarded consortium to all the claimants. Hence, he has requested to allow the present First Appeal No.621 of 2022.

- 5) Per contra the learned Advocate Ms. E. S. Bhavsar, for the GSRTC in support of First Appeal No.1417 of 2022 as well as refuting the submission made in First Appeal No.621 of 2022, and has submitted that the Tribunal has not considered the fact that the deceased himself negligent and as per head on collision 50% contributory negligence of the deceased is required to be considered. The deceased was riding the vehicle in full speed and along with two pillion riders and because of his negligent driving he dashed the motorcycle with the ST Bus and there was no negligence on the part of driver of ST Bus. So far enhancement of compensation is concerned, the Tribunal has considered the rate of minimum wages of skilled person though the deceased was pursuing Engineering. Even the witness examined for income failed to produce any material showing actual payment being made to the deceased in respect of his salary. Mere production of certificate is not enough and in the cross-examination also income is not proved and the Tribunal elaborately discussed the evidence examined by the claimants. Hence, she has requested to allow the First Appeal No.1417 of 2022 filed by the GSRTC by holding 50% contributory negligence of the deceased and dismiss the appeal filed by the claimants.
- 6) Having heard the learned Advocates for the respective parties and going through the record it appears that the learned Tribunal has considered the evidence on record. The claimant no.2 has tendered the affidavit at Exhibit 18 wherein all the facts of the accident have been narrated in the chief-examination and supported the claim petition and relied on the FIR at Exhibit 34, panchnama at Exhibit 35, charge-sheet at Exhibit 41 and oral



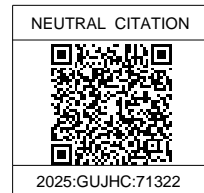
evidence of witness Rasikbhai Mohanbhai Dhadia at Exhibit 30, i.e. employer of the deceased. Perusing the said evidence it appears that the ST Bus bearing Reg. No.GJ-18-Y-8693 was in the middle of the road and motorcycle bearing Reg. No.GJ-11-BF-8942, was lying at the place of accident and front portion of the motorcycle was totally damaged. To prove the contributory negligence the driver of the offending bus was examined below Exhibit 65, wherein, he has stated that one handcart of watermelon was going on his side and he drove the bus on the side of motorcycle and due to this reason the motorcycle collided against the bus and alleged accident was occurred. The Tribunal has considered 10% contributory negligence of the deceased. If we peruse the evidence on record it appears that the charge-sheet is filed against the driver of the bus and in cross-examination of the driver of the bus it appears that due to handcart of watermelon he drove the bus in the said and from the opposite side motorcycle was coming and both vehicles were collided and the accident occurred. In absence of any material proving contributory negligence of the deceased merely the deceased was riding tripling is not a ground to hold the deceased negligent. The contributory negligence cannot be presumed and collision on the road did not inherently indicate the negligence by the driver but negligence must be proved by the evidence with preponderance of probabilities as standard, in this regard reference is required to be drawn to the case of ***Shrikrishna Kanta Singh Vs. The Oriental Insurance Company Ltd., and Ors.***, *Neutral Citation – 2025 INSC 394*. Moreover, considering ***Kumari Kiran (supra)*** the vehicle coming from opposite side is not a ground to hold the motorcyclist negligent. Further, as per the judgment of the Hon'ble Supreme Court in

the case of ***Mohammed Siddique & Anr., vs National Insurance Company Ltd., and Ors., reported in AIR 2020 Supreme Court 520***, merely the deceased was riding the motorcycle is not itself without any evidence to hold him liable for contributory negligence but there must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. Merely tripling ride is not a ground in absence of such tripling has caused or contributed the alleged accident and due to such tripling the motorcyclist had lost the control over steering of the motorcycle or due to rash and negligent driving he has contributed the alleged accident. Therefore, considering the aforesaid facts in absence of any material or evidence or causal connection between the violation and the accident such type of presumption is not permissible. Accordingly, the Tribunal has committed error in holding 10% contributory negligence of the deceased. Hence, the arguments canvassed by the learned Advocate for the GSRTC is not acceptable in absence of any material or evidence on record. Accordingly, the order qua 10% contributory negligence of the deceased is modified and the driver of the bus is held solely negligent in occurrence of the accident.

- 7) Now coming to the quantum part, it is the case of the claimants that at the time of accident the deceased was working as an Engineer and earning Rs.27,000/- per month and also doing videography and earning Rs.35,000/-. The claimants have examined Rasikbhai Mohanbhai Ghadiya i.e. Proprietor, Cubic Construction at Exhibit 30, wherein, he has stated that the deceased was working as an Engineer in his company but



perusing the record it appears that the deceased was pursuing Engineering and was in 2nd year and not become an Engineer. Further, he has stated that the monthly salary of the deceased was Rs.26,500/- and he has issued certificate on the letterhead at Exhibit 33 and he has also transferred various amounts through NEFT / RTGS but in his cross-examination he failed to show any entry in the passbook or any material showing salary paid to the deceased and further admitted that no appointment letter was issued to the deceased and no Provident Fund was deducted. Considering the aforesaid facts the Tribunal has not applied the said evidence on record. If we peruse the said document at Exhibit 33 he has stated that during 28.02.2018 to 31.05.2018 he had paid monthly salary of Rs.26,500/- and thereafter at the event of marriage of sister of the deceased, he has transferred Rs.50,000/-, Rs.49,500/- and Rs.49,500/- from 21.12.2018 to 10.01.2019 through NEFT and Rs.26,750/- in cash. Except the advance payment on the occasion of marriage of sister of the deceased he has paid the aforesaid amount but no evidence which shows monthly payment of salary or payment of Rs.26,750/- and in cross-examination he has stated that he has given said amount in cash but no evidence is produced in this regard also. Perusing the cross-examination no salary slip or bank details qua payment is produced. Nonetheless he was Proprietor of Cubic Construction Co., but deceased was not employed or permanent employee of the said company as witness is a labour contractor engaged as temporary person in the job as payment of any employee depends on nature of the work and the deceased was working in Morbi site no evidence contract was there and further stated that he is unable to show that he has maintained books of account for the payment or



made any entry for payment. Considering the aforesaid facts the Tribunal has not accepted the evidence of the said witness. Even otherwise there is no evidence for advance payment. So far certificate at Exhibit 33 is concerned the wherein also the monthly salary is stated Rs.17,000/- and TA and DA Rs.6,500/- for lodging and food and Rs.3,000/- for petrol allowance, except this letterhead no evidence is produced which shows receiving or payment of income. Further, the entry in the passbook is qua advance and in the oral arguments the learned Advocate for the appellants has submitted that same amount was transferred towards loan facility for marriage of sister of the deceased.

- 7.1) In view of above in absence of any evidence of the salary the Tribunal has not committed any error in assigning the reason to advert the submission made by the learned Advocate for the appellants qua income, this Court has re-appreciated the evidence and the reason assigned by the learned Tribunal. The Certificate produced below Exhibit 33 and evidence tendered by the witness Rasikbhai, it clearly reveals that the witness himself is engaged in casual contract work and based on requirement as he get the construction work he engage the person. In absence of any supporting documentary evidence like voucher, transfer of amount, account book of Cubic Construction or any evidence of expenditure or the regular transfer the said evidence is not inspiring the confidence and even perusing the writing on the letterhead *prima facie* it seems "ready to use" certificate. When the deceased was pursuing study then how appointment as Engineer is possible and the same is questionable. Considering the aforesaid facts the learned Tribunal has not committed error in ignoring the said documents and considering minimum wages of the year 2019 and has rightly considered Rs.9,000/- per

month income of the deceased. Moreover, the learned Tribunal has considered the 20 years age of the deceased and on the basis of the same considered 40% addition towards future prospectus, as the deceased was bachelor ½ deduction towards personal and living expenses of the deceased and multiplier of 18 were considered by the learned Tribunal as per the judgment of the Apex Court in the case of **Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation & Anr. [2009 (6) SCC 121]** and **National Insurance Company Ltd. Vs. Pranay Sethi, reported in 2017 ACJ 2700**, are just and proper and the Tribunal has rightly awarded Rs.13,60,800/- towards future loss of income.

- 8) Further, the learned Tribunal by relying on the judgment of **National Insurance Company Ltd. Vs. Pranay Sethi, reported in 2017 ACJ 2700**, has awarded total Rs.30,000/- under two conventional heads, however, this Court is of the view that amount is required to be reassessed as Rs.18,150/- towards loss of estate, Rs.18,150/- towards funeral expenses. Therefore, the appellants – are entitled for additional amount of **Rs.6,300/-** (i.e. Rs.18,150/- - Rs.15,000/- = Rs.3,150/- towards loss of estate and Rs.18,150/- - Rs.15,000/- = Rs.3,150/- towards funeral expenses).
- 9) Moreover, in view of ratio laid down by the Hon'ble Supreme Court in the case of **Magma General Insurance Co. Ltd., Vs. Nanu Ram, reported in (2018) 18 SCC 130** and **Janabai Wd/o Dinkarrao Ghorpade & Ors., Vs M/s ICICI Lambord Insurance Company Ltd., reported in 2022 LiveLaw (SC) 666**, the Tribunal has committed error by not awarding loss of consortium to the claimants, therefore, in view of above judgments the appellants – original claimants being legal heirs of the deceased are entitled for Rs.48,400/- each towards loss of consortium.

Therefore, loss of consortium is assessed as Rs.96,800/- (i.e. Rs.48,400/- X 2). Hence, the appellants are entitled for additional amount of **Rs.96,800/-** towards loss of consortium.

- 10) As discussed above, the appellants – original claimants are entitled to get compensation computed as under:

Heads	Awarded by Tribunal	Reassessed by this Court
Loss of future income	Rs.13,60,800/-	Rs.13,60,800/-
Loss of estate	Rs.15,000/-	Rs.18,150/- including additional amount of Rs.3,150/-
Funeral expenses	Rs.15,000/-	Rs.18,150/- including additional amount of Rs.3,150/-
Loss of consortium	NIL	Rs.96,800/- including additional amount of Rs.96,800/- (Rs.48,400/- X 2)
Total compensation	Rs.13,90,800/-	Rs.14,93,900/- including total additional amount of Rs.1,03,100/-
Final amount	Rs.12,51,720/- (after deducting 10% contributory negligence of the deceased)	NIL (as this Court has considered 100% negligence of the driver of offending ST Bus)
Total final compensation		Rs.14,93,900/-

- 11) In view of above, as the Tribunal has awarded final compensation of Rs.12,51,720/- (after deducting 10% own negligence), however, as discussed above the appellants are entitled to get additional amount of **Rs.2,42,180/-** (Rs.14,93,900/- - Rs.12,51,720/-) (including additional amount of Rs.1,03,100/- plus Rs.1,39,080/-



amount deducted for 10% negligence of the deceased which is set aside by this Court), with proportionate costs and interest as awarded by the learned Tribunal.

- 12) Hence, the First Appeal No.621 of 2022 is **partly allowed** with no order as to costs and the First Appeal No.1417 of 2022 stands **dismissed** with no order as to costs. The judgment and award dated 28.01.2021 passed by learned Motor Accident Claims Tribunal (Main), Junagadh, in MAC Petition No.52 of 2019 stands modified to the aforesaid extent. Rest of the judgment and award remains unaltered. The respondent – GSRTC shall deposit the said additional amount of **Rs.2,42,180/-** along with interest as awarded by the Tribunal, before the Tribunal within a period of **four weeks** from the date of receipt of this order. Record and proceedings be remitted back to the concerned Tribunal forthwith.
- 13) The learned Tribunal is directed to recover or deduct the deficit court fees on enhanced amount and thereafter disburse the amount accordingly.
- 14) Award to be drawn accordingly.

(HASMUKH D. SUTHAR,J)

ANKIT JANSARI