

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 1902 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

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Approved for Reporting	Yes	No

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PATEL JASHIBEN GOVINDBHAI WIFE OF DECD. & ORS.

Versus

SHAITAN SINGH S/O ARJUN SINGH & ANR.

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Appearance:

ARCHAN HIRPARA WITH

KAASH K THAKKAR(7332) for the Appellant(s) No. 1,2,3

MR KK THAKKAR(2834) for the Appellant(s) No. 1,2,3

MS E.SHAILAJA(2671) for the Defendant(s) No. 2

RULE SERVED for the Defendant(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**Date : 05/05/2026****JUDGMENT**

1. The captioned appeal is preferred against the impugned judgment and award dated 09.03.2021 passed by the learned Motor Accident Claims Tribunal (Main), Patan in M.A.C.P. No. 114 of 2017, whereby the learned Tribunal has partly allowed the claim petition and awarded a sum of Rs.5,96,020/-(Rupees Five Lakhs Ninety Six Thousand Twenty Only) along with

interest at the rate of 9% per annum, from the date of filing of the claim petition till realization, as compensation.

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

- i. on 22.03.2017, at about 08:00 p.m., deceased Govindbhai Patel was proceeding on his Activa bearing Registration No. GJ-2-BA-8583 from Unjha towards Mahervada on the correct side of the road and at a moderate speed for the purpose of dropping his sister-in-law (Bhabhi)-Savitaben. When he reached near Mangalmurti Godown, the headlight of vehicles coming from the opposite direction dazzled his eyes and consequently, he dashed against the rear side of Truck bearing Registration No. RJ-22-GA-9229, which was stationed on the road without any signal, reflector or parking lights. As a result of the accident, he sustained grievous head injuries and other bodily injuries and during the course of treatment, succumbed to the said injuries.
- ii. The notices/summons of the Claim Petition were duly served upon the opponents. The opponent no.1 chosen not to appear before the learned Tribunal, however, the opponent no.2 appeared and filed Written Statements vide Exhs.53,

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.21, for determination.

i. Whether the applicants prove that the deceased died in the accident, which occurred due to rash, careless and negligent driving of the driver of the motor vehicle involved in the accident?

ii. What amount of compensation the applicants are entitled to get and from whom and at what rate of interest?

iii. What order and award?

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.5,96,020/-(Rupees Five Lakhs Ninety Six Thousand Twenty Only) along with interest at the rate of 9% per annum, from the date of filing of the claim petition till realization, as compensation.

- 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. Archan Hirpara, learned advocate appearing for the claimants/appellants, vehemently submitted that the accident had occurred owing to the sole negligence of the driver of the truck, as the said truck was parked on the road without any indicator or obstruction to warn oncoming vehicles in gross violation of Sections 122 and 126 of the Motor Vehicles Act. However, the learned Tribunal attributed negligence to the extent of 30% to the deceased himself. It is submitted that the learned Tribunal ought to have held that the driver of the offending truck was solely negligent for causing the accident. It is submitted that the FIR came to be lodged against the driver of the truck and, thereafter, charge-sheet also came to be filed against him. Therefore, the learned Tribunal ought to have concluded that the driver of the truck alone was responsible for the accident. In support of his submissions, learned advocate placed reliance upon the judgment of the Hon'ble Apex Court in **Archit Saini & Anr. v. Oriental Insurance Company Ltd. & Ors.** reported in **2018 (3) SCC 365.**

5. It is submitted that the learned Tribunal had awarded a meagre amount of compensation under the conventional head. He, therefore, prayed for enhancement of compensation under the conventional head. In support of his contention, he placed the reliance upon the judgment of Hon'ble Apex Court rendered in the case of **National Insurance Company Ltd. Vs. Pranay Sethi 2017 (16) SCC 680** and **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Ors., reported in (2018) 18 SCC 130.**

6. On the other hand, Ms.E.Shailja, learned advocate appearing on behalf of respondent no.2-Insurance Company vehemently submitted that the deceased himself dashed from the behind with the stationary truck. Therefore, the learned Tribunal has rightly held the deceased himself contributory negligent. It is submitted that there is no infirmity in the finding returned by the learned Tribunal on the issue of negligence.

7. It is submitted that the learned Tribunal has awarded just compensation under the conventional head in accordance to the ratio laid down by Hon'ble Apex Court in the case of Pranay Sethi (Supra). She further submitted that there is no infirmity in the impugned judgment and award. Therefore, the captioned appeal is liable to be dismissed.

8. Having considered the submissions advanced by the learned counsel for the respective parties and having gone

through the record, it is to be noted that the claimants-appellants herein have preferred the captioned appeal on the ground of negligence as well as on the ground of quantum.

9. So far as negligence is concerned, the learned Tribunal, after appreciating the oral as well as documentary evidence on record, came to the conclusion that both the deceased and the driver of the offending truck were contributorily negligent in causing the accident. The learned Tribunal held that the driver of the offending truck was negligent to the extent of 70%, whereas the deceased himself was held negligent to the extent of 30% for causing the accident.

10. It emerges from the record that the claimants-appellants herein examined Jasiben Govindbhai Patel and Savitaben. Jasiben Govindbhai Patel admitted in her cross-examination that she was not an eye-witness to the accident. Therefore, her deposition on the aspect of negligence is of no assistance. However, Savitaben being the pillion rider is an eye-witness to the incident. She deposed that at the time of the accident, she was travelling on the scooter as a pillion rider along with the deceased. She further deposed that the accident took place at about 7:30 p.m. According to her testimony, the truck was parked in such a manner that half portion thereof was on the road and the remaining half portion was off the roadside.

11. A perusal of the documentary evidence viz. FIR, panchnama and charge-sheet also corroborates the version of

the claimants-appellants herein. Thus, the evidence on record clearly indicates that at the time of the accident, the truck was parked in such a manner that half portion thereof was on the road and the remaining half portion was off the roadside, without any indicator, parking signal or obstruction being placed so as to caution approaching vehicles and avoid the accident. The accident took place at about 7:30 p.m. Therefore, in the absence of any indicator or warning signal, it would have been difficult for the deceased to notice the truck parked on the road. The manner in which the truck was parked was in gross violation of the provisions contained in Sections 122 and 126 of the Motor Vehicles Act.

12. It is also evident from the record that the Insurance Company did not examine the driver of the truck in order to rebut the version put forward by the claimants-appellants. Thus, having regard to the totality of the facts and circumstances of the case, this Court is of the considered view that the driver of the truck was solely negligent in causing the accident, as he had parked the truck on the highway during night hours without any indicator, parking signal or obstruction to caution approaching vehicles. Therefore, the finding recorded by the learned Tribunal attributing contributory negligence to the deceased is not sustainable in the eyes of law and deserves to be reversed. Accordingly, it is held that the driver of the offending truck was wholly negligent for causing the accident.

13. So far as the compensation awarded under the conventional heads is concerned, the learned Tribunal awarded a sum of Rs.15,000/- towards funeral expenses and a sum of Rs.15,000/- towards loss of estate. The learned Tribunal further enhanced the said amounts by 10%. Since the accident had occurred in the year 2017, the original claimants-appellants are entitled to a further enhancement of 10% in view of the ratio laid down by the Hon'ble Apex Court in the case of Pranay Sethi (Supra). Accordingly, a sum of Rs.18,150/- is awarded under the head of funeral expenses and a sum of Rs.18,150/- is awarded under the head of loss of estate. The learned Tribunal had awarded a sum of Rs.44,000/- under the head of loss of consortium. It emerges from the record that the deceased was survived by his widow and two children. In view of the ratio laid down by the Hon'ble Apex Court in Magma General Insurance Co. Ltd. (Supra), all the claimants are entitled to compensation under the head of loss of consortium. Hence, accordingly, a sum of Rs.1,45,200/- is awarded under the head of loss of consortium.

14. 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	7,74,444/-
2	Loss of Estate	(+) 18,150/-
3	Funeral Expenses	(+) 18,150/-

4	Loss of Consortium	(+)	1,45,200/-
	TOTAL COMPENSATION		9,25,944/-
	Compensation awarded by impugned Judgment and Award .	(-)	Rs. 5,96,020/-
	Enhanced amount of compensation	(=)	Rs. 3,29,924/-

15. Thus, in view of the above discussions, the appellant shall be entitled for an additional compensation of Rs. 3,29,924/- (Rs.9,25,944/- - Rs.5,96,020/-). 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 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.

16. In view of the above discussions, 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 six 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 appellant after due verification.

17. 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.

18. Pending application, if any stands disposed of.

GIRISH

(MOOL CHAND TYAGI, J)