



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 875 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

Approved for Reporting	Yes	No

SONALBEN JAYESHKUMAR PARMAR & ORS.

Versus

MAHESHKUMAR KULABHAI PARMAR & ORS.

Appearance:

MR VAIBHAV N SHETH(5337) for the Appellant(s) No. 1,2,3,4,5

RULE SERVED for the Defendant(s) No. 1,2,3

CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 22/09/2026

JUDGMENT

Admit. Learned advocate Ms. Kirti Pathak states at bar that she has instructions to appear for the respondent No.3 – insurance company and waives service of notice of admission.

1. The present First Appeal, under Section 173 of Motor Vehicles Act, 1988, is preferred by the appellants – original claimants being aggrieved and dissatisfied with the judgment and award dated 12.12.2024 passed by the Motor Accident Claims Tribunal, nadiad in Motor Accident Claim Petition No.242 of 2023.

2. The brief facts of the case are that, on the evening of 24/12/2020, deceased Jayeshbhai of this work was returning from Nanpur Chowkdi to his house at Sansoli Mukam while



sitting on the back seat of motorcycle No. G.J-07-EJ-0703, when he was going from Nanpur Chowkdi to Khatraj Chowkdi, near Poonampura Patiya, in front of Gayatri Cutlery Store, on the road, the driver of motorcycle No. 1 of this work, G.J-07-EJ-0703, recklessly and recklessly, without caring for the lives and property on the road, drove in a manner that endangered the lives of humans and collided with an unknown vehicle, causing a serious accident. Deceased Jayeshbhai sustained serious injuries and was immediately taken to Khatraj Chowkdi Vet Hospital and there on the date of From 24/12/2020 to 27/12/2020, he was treated as an inpatient and was admitted as an inpatient at Civil Hospital, Ahmedabad on 27/12/2022 for further treatment, where he died after suffering pain, suffering, agony, agony and agony during treatment, for which he has applied for Rs. 30,00,000/- as compensation by filing aforesaid claim petition.

2.1 The learned Tribunal after hearing both the parties and considering the evidence on record, was pleased to pass the judgment and award as stated herein above.

2.3 Hence, this appeal.

3. Learned advocate for the appellants - claimants has submitted that the Tribunal has committed an error in not properly calculating the amount of compensation. He has submitted that amount of award is on lower side as the Tribunal



has not properly considered the various aspects; like prospective income of the deceased, negligence, liability and family circumstances, etc. He would further submit that the learned Tribunal has committed error in attributing negligency of the pillion rider and deducted amount of compensation, which is erroneous approach of the learned Tribunal. He would further submit that perhaps, the learned Tribunal failed to understand the difference between the contributory negligence and composite negligence. He would further submit that the Hon'ble Apex Court in case of **Khenyei Versus New India Assurance Company Limited, 2015 (9) SCC 273** explained the difference between contributory negligence and composite negligence. Yet, the learned Tribunal without analyzing such difference, mechanically, decided the issue. Para 22 of the said judgment is relevant, which reads as under:-

"22. What emerges from the aforesaid discussion is as follows :

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasons and to recover the entire compensation as liability of joint tort feasons is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tort feasons vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tort feasons have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feasons is only



for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award."

3.1 In **Sushma Versus Nitin Ganapati Rangole, AIR 2024 SC 4627**, in para 18, the Hon'ble Apex Court has discussed principle of composite negligency, which reads as under:-

*"In the case of **Union of India v. United India Insurance Co. Ltd., (1997) 8 SCC 683** this Court dealt with the question whether the driver's negligence in any manner vicariously attaches to the passengers of the motor vehicle of which he was the driver, and it was held as below: -*

*" **10** . There is a well-known principle in the law of torts called the "doctrine of identification" or "imputation". It is to the effect that the defendant can plead the contributory negligence of the plaintiff or of an employee of the plaintiff where the employee is acting in the course of employment. But, it has been also held in **Mills v. Armstrong [(1888) 13 AC 1, HL]** (also called The Bernina case) that that principle is not applicable to a*

passenger in a vehicle in the sense that the negligence of the driver of the vehicle in which the passenger is travelling, cannot be imputed to the passenger. (Halsbury's Laws of England, 4th Ed., 1984 Vol. 34, p. 74; Ratanlal and Dhirajlal, Law of Torts, 23rd Ed., 1997, p. 511; Ramaswamy Iyer, Law of Torts, 7th Ed., p. 447.) The Bernina case [(1888) 13 AC 1, HL] in which this principle was laid in 1888 related to passengers in a steamship. In that case a member of the crew and a passenger in the ship Bushire were drowned on account of its collision with another ship Bernina. It was held that even if the navigators of the ship Bushire were negligent, the navigators' negligence could not be imputed to the deceased who were travelling in that ship. This principle has been applied, in latter cases, to passengers travelling in a motor vehicle whose driver is found guilty of contributory negligence. **In other words, the principle of contributory negligence is confined to the actual negligence of the plaintiff or of his agents. There is no rule that the driver of an omnibus or a coach or a cab or the engine driver of a train, or the captain of a ship on the one hand and the passengers on the other hand are to be "identified" so as to fasten the latter with any liability for the former's contributory negligence. There cannot be a fiction of the passenger sharing a "right of control" of the operation of the vehicle nor is there a fiction that the driver is an agent of the passenger. A passenger is not treated as a backseat driver.** (Prosser and Keeton on Torts, 5th Ed., 1984, pp. 521- 22.) It is therefore clear that even if the driver of the passenger vehicle was negligent, the Railways, if its negligence was otherwise proved — could not plead contributory negligence on the part of the passengers of the vehicle. What is clear is that qua the passengers of the bus who were innocent, — the driver and owner of the bus and, if proved, the Railways — can all be joint tortfeasors." (emphasis supplied)."



3.2 He has submitted that the compensation is required to be enhanced by modifying the award impugned accordingly and this appeal may be allowed.

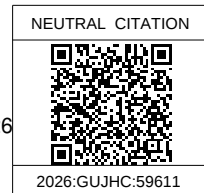
4. *Per contra*, learned advocate for respondent – Insurance Company has submitted that the impugned judgment and award passed by the Tribunal is just and proper. The Tribunal has rightly considered the income of the deceased, the age of the deceased, the dependency and future aspect of income. It is submitted that under the head of loss of estate and funeral expenses, the Tribunal has rightly awarded compensation. It is submitted that the amount under the head of loss of consortium is just and proper. It is submitted that this appeal may be dismissed and no interference be made by this Court.

5. Apt to note that the Motor Vehicle Act, 1988 is a beneficial piece of Legislation. The concept of just and fair compensation is integral and seminal to the MV Act. The compensation to be awarded under the principle of just and fair compensation to the injured of the road accident or the legal representative/s of the deceased person is based on the principle of fairness, reasonableness and equability. Anguish of the heart or for mental turbulence being consequential result of the road accident cannot be actually compensated, but the quint essentiality lies in adopting holistic and pragmatic view to the computation of the compensation for the loss sustained, which is to be in the realm of realistic approximation. Although exact or perfect arithmetical calculation of compensation for reparation of



the loss arrived from the road accident is almost impossible. The Tribunal is bestowed with duty to make an endeavour to award just compensation regardless of the amount claimed by the claimants. The determination of the quantum of compensation therefore, must be liberal and not niggardly since the law values life and limb in a free country in generous scale. Needless to state that money may be awarded, so that something tangible may be procured to reach something else of the like nature, which has been destroyed or lost, but money cannot renew physical frame that has been battered and shattered being a result of the road accident. Yet Tribunal to endeavour to bring back victim to stage of pre-road accident as far as possible. Thus, the award must be reasonable and cannot be assessed with moderation though it cannot at the same time be pity and what could be granted must be just, fair and equitable compensation.

6.1 I have considered the submissions made by the rival parties. I have perused the record and proceedings of the Tribunal. I have gone through the impugned judgment and award passed by the learned Tribunal. From the record, it transpires that the learned Tribunal has not properly considered monthly income of the deceased. Further, considering the ratio laid down by the Hon'ble Apex Court in the case of National Insurance Company Ltd. Vs. Pranay Shethi reported in (2017) 16 SCC 680, the general and non-pecuniary damages, Rs.18,150/- each towards loss of estate and funeral expenses should be awarded. Towards loss of consortium, there are four



dependents and therefore, Rs.48,400/- to each dependent should be awarded as per the decision of the Hon'ble Apex Court in the case of *United India Insurance Co. Ltd., versus Satinder Kaur @ Satwinder Kaur* reported in (2021) 11 SCC 780.

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

Particulars	Amount (Rs.)
Future dependency Loss	21,17,826/-
Loss of Estate, consortium & funeral expenses	3,64,470/-
Total...	24,82,296/-
Less: compensation to be awarded	15,58,936/-
Additional amount which is awarded	9,23,360/-

7. Therefore, I hold that the claimants are entitled to get the enhanced compensation of Rs.9,23,360/- 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.

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

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

8.2 The Insurance Company is directed to deposit the enhanced amount with interest as stated herein above within a



period of six weeks from the date of receipt of this order.

8.3 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 claimants, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.

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

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

SHEKHAR P. BARVE

(J. C. DOSHI,J)