

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 537 of 2016****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J. C. DOSHI****Sd/-**

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Approved for Reporting	Yes	No
	Yes	

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HEENABEN WD/O RAJUBHAI VADILAL SHAH & ORS.

Versus

SAROSH JAHANGIRJI DUMASIYA & ANR.

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Appearance:

MR.HIREN M MODI(3732) for the Appellant(s) No. 1,2,3,4,5

MR MATAFER R PANDE(3952) for the Defendant(s) No. 1

MS HINA DESAI(1023) for the Defendant(s) No. 2

RIDDHISH V MODI(7672) for the Defendant(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI****Date : 18/09/2026****JUDGMENT**

1. The present First Appeal, under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as the 'MV Act'), is preferred by the appellants – original claimants being aggrieved and dissatisfied with the judgment and award dated 17.12.2015 passed by the Motor Accident Claims Tribunal (Aux.), Surat in Motor Accident Claim Petition No.217 of 2002, by which the learned Tribunal has granted the compensation of Rs.6,01,400/- with interest at the rate of 9% per annum from the date of the

petitioner till realization. The claimants being aggrieved have preferred this appeal for enhancement of the compensation.

2. Brief facts of the case are as under:

2.1 The accident occurred on 17.11.2001 at about 3:45 pm, deceased Rajubhai Vadilal Shah was approaching from Nansura Pipleshwar Mahadev Temple to Timaliyawad by driving his scooter and by following rules of traffic. When he reached near the place of accident, one ST bus bearing registration No. GJ-18-V-3683 driven by opponent No.1, owned and managed by the opponent No.2 came from the back side in a rash and negligent manner and dashed the scooter, and as a result, the scooter of the deceased fell down and received severe head injuries and succumbed to the injuries on the spot.

2.2 The FIR of the incident was registered at Athwalines Police Station vide CR No. I-230 of 2001 against the ST driver.

2.3 Claimant being widow, children and mother, who were dependent on the deceased, filed the claim petition under Section 166 of the 'MV Act' claiming the total compensation of Rs.20,00,000/- along with interest at the rate of 12% per annum.

2.4 The opponents, upon issuance of notice, appeared before the Tribunal and contested the claim petition by filing written statement.

2.5 During this factual aspect of the proceedings before the learned Tribunal, to assess the compensation, the claimant

has produced the income tax returns for the year from 1992 to 2002 to establish the income of the deceased. The learned Tribunal has omitted to take the income tax returns of the deceased to calculate the income of the deceased and it took up Rs.3,000/- as the monthly income and assessed the compensation of Rs.6,01,400/- and granted the same along with 9% interest from the date of the petition till realization.

2.6 Being aggrieved, the claimants have preferred this appeal.

3. Learned advocate Mr. Hiren Modi for the appellants - claimants has submitted that the Tribunal has committed an error in not properly calculating the amount of compensation, more particularly in taking up Rs.3,000/- as the monthly income of the deceased and omitting to take into consideration the income tax returns of the deceased produced by the claimants. 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.

3.1 Learned advocate for the appellants relied upon the judgment of the Supreme Court in the case of **Sayar & Ors. v. Ramkaran & Ors.**, rendered in **SLP (C) No.24501 of 2025** to submit that out of the three last income tax returns placed on record, two were filed posthumously by looking to the net income of the deceased remained consistent in pre or post death, has taken the income tax returns to assess the income of the deceased.

3.2 Mainly upon above submission, 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 Ms Hina Desai for respondent – Insurance Company could not point out the case for denying the enhancement of the compensation granted by the learned Tribunal. More particularly, when the GSRTC has not contested the claim petition by filing the written statement.

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 endeavor 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 endeavor 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. Regard being had to the rival submissions, let me take the worthy assistance from the judgment of the Hon'ble Supreme Court in the case of **N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal & Ors.**, reported in **(1980) 3 SCC 457**, which explained the scope and gambit of Section 166 of the 'MV Act'. Para 3 is important, which reads as under:-

"3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the Courts, as has been observed by us earlier in other case, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising

this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their "neighbour". Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Art. 41 of the Constitution lays the jurisprudential foundation for state relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Court should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard."

7. Thus, what has been apprehended from the aforesaid legal dictum that it is a duty of the learned Tribunal to see that innocent victims do not suffer. Inadequacy of the compensation or undue parsimony practised by tribunals was a matter of concern before the Supreme Court and the Supreme Court further held that there is no justification for niggardliness in compensation. What appears that, the income tax returns were filed by the claimants from the year 1992 to 2002 at Exhibit-30 to 45.

8. The Supreme Court in the case of **Rashmirekha Tripathy & Anr. v. The Branch Manager (Legal Claims)**,

Srirram General Insurance Company Ltd. & Ors., reported in **2026 LiveLaw (SC) 654** held that, the the income tax returns being a statutory documents, serve as an important reference point. It is further held that for the salarized person, the income tax returns of the previous year is enough to showcase the annual income from salary, whereas for self-employed individuals or those carrying out their own business, the average income specified in the ITRs of up to the previous three years should be taken as a reference point, owing to fluctuations in business income. Para 14 to 20 are important, which reads as under:-

"14. Mr. Salil Paul, learned amicus curiae has submitted that this Court in ICICI Lombard General Insurance Co. Ltd. v. Ajay Kumar Mohanty and Anr. (2018) 3 SCC 686 relied upon the average income of the ITRs for the previous three years to compute the income of the claimant therein.

15. At the outset, we must reiterate that it is settled law that the objective behind the claim process in the Motor Vehicles Act 1988 is to grant 'just and fair compensation'. Recently, a two-judge Bench of this Court in V. Pathmavathi and Ors. v. Bharthi Axa General Insurance Co. Ltd. and Anr. 2026 SCC OnLine SC 158 had succinctly summarised this position and observed:

"12. We ought to remind ourselves, at the outset, that when an individual dies as a result of a fatal road accident and his distressed dependents apply for compensation either from the owner of the vehicle responsible for the death or the insurance company with whom such vehicle is insured, no amount of money can truly compensate for the loss. Compensation is nothing but a rough estimate, being a token attempt to ease the financial burden on the dependents. Take consortium, for example. It is impossible to put a price on the loss of a loved one's companionship. Spousal, filial or parental

compensation are all about acknowledging the emotional void but the payout can never be more than a rough approximation. It is like trying to measure the immeasurable. Considering the income of the deceased, the needs of his dependents and the emotional toll of the loss, the best that can be ensured is that the compensation is fair and reasonable, without being either arbitrary or niggardly. This would be in accord with the foundational principle governing the determination of "just compensation" under Section 168 of the Act.

13. In Reshma Kumari v. Madan Mohan [(2013) 9 SCC 65], a three-Judge Bench of this Court held that the purpose of award of compensation under section 166 read with section 168 of the Act is to place the distressed dependents of the victim of a fatal road accident, if the victim had been the sole bread earner, in almost the same position financially if he lived his natural span of life. It is obviously not intended to put such distressed dependents in a better financial position in which they would otherwise have been if the accident had not occurred. At the same time, the determination of compensation is not an exact science and the exercise involves an assessment based on estimation and conjectures, here and there, as many imponderable factors and unpredictable contingences have to be taken into consideration. Obviously, award of damages in each case would depend on the particular facts and circumstances of the case but the element of fairness in the amount of compensation so determined is the ultimate guiding factor."

(emphasis supplied)

16. Similarly, another two-judge Bench of this Court in Anant v. Pratap and Anr. (2018) 9 SCC 450, had expounded that 'the purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident.'

17. In the considered view of this Court, there can be no hard and fast formula for computing the annual income of a

deceased person/claimant. ITRs being a statutory document are an important reference point when it comes to assessing one's income, for the purposes of compensation under the Motor Vehicle Act.

18. We find force in the submission put forth by Mr. J.R Midha, learned senior counsel. There must be a bifurcation made between salaried individuals and self-employed individuals when it comes to assessment of annual income. In our view, for salaried individuals, only the ITR of the previous year will be sufficient for showcasing the annual income from salary. The reason for considering only the preceding year is that the financial impact of promotions is significant and may be reflected in the ITR for only that year. A situation may also arise whereby the deceased/claimant might not have completed a year in the promoted position before the accident or might not have filed ITR for such period. In such cases the Court concerned shall take reference to the promotion letter and other corroboratory financial statements.

19. When it comes to self-employed / individuals carrying out their own business, in our view, the average of the income specified in the ITRs of up to the previous three years is to be taken as a reference point for assessment of annual income from their business. There may also be a scenario where only one or two ITRs have been filed. Given such scenarios and the fluctuation of income in these professions, surrounding circumstances are also to be taken into consideration. These would include:

- a) The nature of the business (including geographic location, category etc.);*
- b) Growth pattern of the business and impact of death on the business;*
- c) Potential growth of business (for instance certain businesses are capital intensive at the outset and are profitable at scale/in the future);*
- d) Negative income (certain businesses may require losses in the initial years, which may not reflect the*

true financial standing); and

e) Any other relevant factor relating to the business.

20. The date when the ITRs are filed would also become a relevant consideration, as there may be scenarios where inflated income is showcased after death/injury. In these circumstances, the surrounding factors of the business would become more relevant. However, if sufficiently supported by financial statements, such ITRs may also be taken into consideration.”

9. In the present case, out of the last 3 income tax returns of the financial year 1998-99, 1999-2000 and 2000-2001, last two have been filed posthumously. The income of the deceased in the financial year 1998-99 was Rs.61,298/-, in the financial year 2000-2001 was Rs.74,565/- and in the financial year 2000-2001, it was Rs.92,024/-. Net income after deduction of the tax comes to Rs.60,124/-, Rs.70,642/- and Rs.83,963/-.

10. The income tax returns, which are filed posthumously, does not show any substantial rise in the income, which makes it consistent to prove the previous income of the deceased claimant. There is no hard and fast rule that the posthumously filed returns cannot be taken into consideration.

11. The Supreme Court in a recent judgment in **Sayar (Supra)**, after referring the judgment in the case of **Nidhi Bhargava v. National Insurance Co. Ltd.**, reported in **2025 SCC OnLine SC 872**, in para 11 and 12 of the judgment observed as under:-

“11. In the attending facts and circumstances of the present

case, we are inclined to interfere with the judgment and order of the Courts below in assessing the annual income of the deceased at Rs.84,000/-. The claimant-appellant(s) have place on record the Income Tax Returns of the deceased for the year 2004-05 from which it is evident that the income of the deceased for the concerned year was Rs.84,000/- per annum. So far as the Income Tax Return for the year 2005-06 is concerned, both the Courts below have concurrently held that the said return was not proved and was not genuine, mainly on the grounds that it had been filed posthumously and that there were certain variations in the signatures of the deceased on the said return. Be that as it may, this Court in *Nidhi Bhargava v. National Insurance Co. Ltd* 2025 SCC OnLine SC 872, has held that: -

"12. Just because on the date of the accident i.e., 12.08.2008, the Return for the Assessment Year 2008-2009 had not been filed, cannot disadvantage the appellants, for the reason that the period for which the Return is to be submitted covers the period starting 1st of April, 2007 and ending 31st March, 2008. Thus, for obvious reasons, the Return would be only for the period 01.04.2007 to 31.03.2008, and date of submission would be post-31.03.2008. No income earned beyond 31.03.2008 would reflect in the Income Tax Return for the Assessment Year 2008-2009. To reject the Return on the sole ground of its submission after the date of accident alone, in our considered view, cannot be legally sustained.

13. ... In *K Ramya v. National Insurance Co. Ltd.*, 2022 SCC OnLine SC 1338, after taking note of, inter alia, *Ningamma v. United India Insurance Co. Ltd.*, (2009) 13 SCC 710, the Court held that the ... Motor Vehicles Act of 1988 is a beneficial and welfare legislation that seeks to provide compensation as per the contemporaneous position of an individual which is essentially forward-looking. Unlike tortious liability, which is chiefly concerned with making up for the past and reinstating a claimant to his original position, the compensation under the Act is concerned with providing stability and continuity in peoples' lives in the future."

(emphasis supplied)

12. *What flows from Nidhi Bhargava (supra) is that the Income Tax Returns filed after the accident/death can also be taken into consideration for calculation of income to award compensation. However, having due regard for the Tribunal's well-placed doubts, in so far as returns filed for the relevant year, we take a different approach. In the instant case, it cannot be simply assumed that there is no profit accruing from the business of the deceased at the time of the accident. To adopt such a presumption would be contrary to the settled principles guiding the assessment of compensation. Rather, the returns for the preceding year or years must be taken as a foundational benchmark, subject to careful judicial examination, recognizing that business profits are seldom static and often exhibit a progressive growth trajectory. The exercise thus calls for a fair and reasonable assessment, grounded in available evidence, of the financial benefits that the deceased would have justifiably earned but for the untimely accident. In our considered view, in order to award just and fair compensation, the annual income of the deceased is re-assessed at Rs.1,00,000/- per annum. The claimant-appellant(s) are also entitled to compensation under other heads in accordance with the settled principles of law."*

12. In the present case, as observed earlier, the income tax returns, which are filed posthumously, does not show any substantial hike in the income, it is consistent with the previous income of the deceased, as to showcase that those income tax return were filed with the oblique purpose of establishing the manufactured income of the deceased. The net income of the last three income tax returns comes to Rs.2,14,729/-. The average of which comes to Rs.71,576/- and that is adopted as the income of the deceased. The learned Tribunal has granted 30% of the income towards the loss of future prospects. The deceased was

45 years at the time of the road accident, which will rather entail 25% of the income towards the loss of future prospects. Since there are 5 dependents, the deduction of 1/4th towards personal expenses would apply. The multiplier of 14 as per the settled principle 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** will apply. Further, considering the ratio laid down by the Hon'ble Apex Court in the case of **Pranay Shethi (Supra)**, 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 five 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**.

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

Particulars	Amount (Rs.)
Future dependency Loss	9,39,442/-
Loss of Estate, consortium & funeral expenses	18,150/- + 2,42,000/- + 18,150/-
Total...	12,17,742/-
Less: compensation to be awarded	6,01,400/-
Additional amount which is awarded	6,16,342/-

14. Therefore, I hold that the claimants are entitled to get the enhanced compensation of Rs.**6,16,342/-** 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.

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

15.1 The present appeal is **allowed**.

15.2 The GSRTC is directed to deposit the enhanced amount before the learned Tribunal with interest as stated herein above within a period of Eight weeks from the date of receipt of this order.

16. 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.

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

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

Sd/-
(J.C. DOSHI, J.)

Raj