IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 2034 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J. L. ODEDRA

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Approved for Reporting	Yes	No

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DIVISIONAL CONTROLLER
Versus
RAMANBHAI MADHUBHAI SURVE & ANR.

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Appearance:
MR HARDIK C RAWAL(719) for the Appellant(s) No. 1
MR AMRISH K PANDYA(3219) for the Defendant(s) No. 1
RULE SERVED for the Defendant(s) No. 2

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CORAM:**HONOURABLE MR.JUSTICE J. L. ODEDRA**

Date : 16/12/2025

ORAL JUDGMENT

1. The present appeal is against the judgment and award dated 14.07.2014 in MAC Petition No. 192/2009 by Motor Accident Claim Tribunal (Main), Valsad. By the impugned judgment and award, the Tribunal was pleased to partly allow the petition ordering opponents No.1 and 2 to jointly and severally pay an amount of Rs. 6,62,800/- with 8% interest to

the claimant.

2. The accident in question is of 26.06.2009. It appears that the Respondent-claimant, Shri Ramanbhai Madhubhai Surve was a driver of a Tempo bearing Registration No. DD-03-C-9609 travelling at a moderate speed going from Umargam Town Station where upon, an S.T. Bus bearing Registration No. GJ-18-V-9803 dashed against the said Tempo thereby causing injuries to the claimant, in respect of which the aforesaid claim petition was preferred by the claimant.

3. Aggrieved by the judgment and award, the original opponent No. 2, The State Transport Corporation has preferred this appeal. This Court has been informed by the learned advocate for the claimant in this appeal that no corresponding cross- appeal/cross-objections have been preferred by the original-claimant.

4. Heard learned advocates for the parties.

5. It appears that the judgment and award has been challenged both on the counts of negligence and on quantum. Learned advocate Mr. Hardik C Rawal appearing for the appellant has argued that the Tribunal has erred in holding the S.T. Corporation 100% negligent in causing the accident. However, no basis for adjudicating the negligence to a lesser percentage were canvassed before this Court. That apart, he submitted that the amounts awarded under the head of Pain, Shock and Suffering to the tune of Rs.75,000/-, that under the head of Loss of Amenities of Life to the tune of Rs. 1,00,000/- and that under the head of Loss of Expectancy of Life to the tune of Rs.1,00,000/- are excessive in nature and that therefore, the same may be reduced substantially so as to avoid the windfall benefits that have been caused to the original-claimant by way of the impugned judgment and award.

6. On the other hand, learned advocate for the original-claimant Mr. Amrish K Pandya appearing for the

Respondent No.2, the original-claimant has vehemently opposed the present appeal. He has submitted that the amounts awarded under the judgment are as such on the lower side. He has submitted that on perusal of the impugned judgment and award, more particularly, paragraph 13,14 and 15, it is apparent that the Tribunal, on one hand, has believed that the monthly income of the injured claimant/ respondent No.2 was Rs. 7,320/- per month. However, thereafter, the Tribunal, arbitrarily, has reduced the said amount to Rs.4000/- without justifying reduction in any manner. He has submitted that the witness of the original-claimant Mr. Arvind Hirani had deposed at examination-in-chief at Exhibit81 wherein he has produced proof of his income by way of producing Form No. 16 and the salary slip of the claimant. It was submitted that the perusal of the said Form No.16 indicates that the salary in terms of gross salary for the assessment year 2010-11 was Rs. 88,800/-. Learned Advocate Mr.

Amrish K Pandya appearing for the Respondents, further submitted that the date of the accident was 28.06.2009 and the corresponding Form-16 is for the period of 01.04.2009 till 31.03.2010. Moreover, in the cross-examination of the said witness, it has come to force that the last payment to the respondent No.2 had been made in May, 2010. It was submitted that owing to the accident, the Respondent No.2 has suffered severe injuries and therefore, he could not resume his services. Referring to the injuries that were caused to the appellant, the Injuries Certificate Exhibit-48 was brought to the notice of the Court wherein the injuries have been described in detail. It was also submittd that the Disability Certificate in the matter is at Exhibit-69 which indicates disability to the tune of 85%.

7. Relying on ***Jakir Hussein Versus Sabir reported at 2015 (0) AIJEL-SC 56230,*** more particularly, paragraph 15 thereof, it was submitted that in the said matter, the appellant therein had a fracture in the

humerus bone of his right hand and treatment included wiring and nailing and the Appellant therein was certified as suffering from 55% disability. The Hon'ble Supreme Court, considering the profession of the Appellant therein, held him to be suffering from 100% functional disability. It was submitted that in the present case, there was an amputation of right leg below knee and there were other critical injuries and that therefore, in the present case too, as held by Hon'ble Supreme Court in the judgment of ***Jakir Hussein (Supra),*** the functional disability may be assessed to be 100% in the interest of justice. It was thus submitted that as such, the compensation awarded by the Tribunal is on the lower side, inasmuch as the injuries suffered by the concerned original-claimant/Respondent No.2 were severe and very moderate sums have been awarded under various conventional heads in the impugned judgment and award. It was thus urged that the said amounts may be revised to a higher side inasmuch as the Tribunal

has not considered 100% disability of the Respondent No.2 and has arbitrarily decreased the monthly income of the injured Respondent No.2.

8. It was thus, urged that the appeal in the present case may kindly be rejected whilst enhancing the compensation of the claimant. It was submitted that the same is in view of the judgment of Hon'ble High Court of Gujarat in First Appeal No.2878 of 2016 dated 14.07.2025 and that of Hon'ble Supreme Court in ***Surekha vs. Santosh*** reported in **2021(16) SCC 467** wherein it has been held that merely because the original claimant has not preferred any appeal, the same would not come in the way of adjudicating a just and reasonable compensation to the claimant. He therefore, urged to pass appropriate orders in the interest of the Respondent-original claimant.

9. None has appeared for the original respondent No.2-Anandjibhai Chamarbhai Bari (though he has been served).

10. Having heard the learned advocates for the respective parties, this Court proceeds to decide the present appeal in terms appearing hereinafter.

11. The point of determination that arises for consideration of this Court in the present matter is whether the Tribunal has properly attributed 100% negligence to the Bus and secondly, whether the compensation awarded by the Tribunal is just and proper? If not, what would be the just and proper compensation in the facts of the present case?

12. Insofar as the negligence is concerned, the learned Tribunal has discussed the said paragraph 10 of the impugned judgment on perusal of the same, it appears that applicant Ramanbhai had deposed under affidavit of examination-in-chief at Exhibit-51 wherein he has alleged that it was the offending vehicle, S.T. Bus, the driver whereof was 100% negligent in driving the said vehicle.

13. On the other hand, the appellant ST Corporation

bus had also examined a witness Anandjibhai Chamarbhai Bari at Exhibit-92 wherein, he has alleged that it was a Tempo which had come and dashed against the Bus. On perusal of the said deposition of Exhibit- 92, it appears that apart from the conflicting assertions made by either side, no substantial oral evidence is led by either parties. And, if the F.I.R. is perused, it has been lodged by the concerned witness of the ST Corporation- Anandjibhai Chamarbhai Bari.

14. In the F.I.R. itself he admits that as he had to deboard passengers at a turning, he took a turn wherein he ended up dashing the bus against a tempo coming from the other side. The said F.I.R. is itself indicative of the fact that it was the bus which dashed against the tempo coming from the opposite side. Exhibit 85 also indicates that the place of the accident is by a turning point. Panchnama further indicates that at the place of incident there are fresh brake marks of the bus.

15. Thus, looking to the F.I.R. and Panchnama, more

particularly in absence of any particulars in the deposition of the witness of Anandjibhai Chamarbhai Bari at Exhibit 92 save the assertion that the concerned auto driver driving rashly who caused his vehicle to dash with the bus, there is no other evidence on the record of the Tribunal wherefrom the negligence can be assessed. Thus, based on the F.I.R. and the fact that the driver of the bus should be more careful in avoiding the blind-spot on a turnibng, as in narrow spacs, nearby vehicles cannot be seen (.i.e. there would be blind spots for a driver of a bus) and the fact that the bus is a larger vehicle as compared to an auto warranting large degree of diligence, and therefore this Court is not inclined to interfere with the findings of the Tribunal that it was the S.T. Bus who was 100% negligent in causing the accident.

16. Insofar as the quantum of the compensation is concerned, indeed, by way of deposition Exhibit 81, the claimant asserts that he was earning Rs. 7,400/- per month.

17. However, on perusal of the cross-examination of the said deponent, it transpires that there is an admission to the effect that the driver was being paid Rs. 4,500/- in cash. Such an admission in cross-examination would prevail over the documentary evidence indicating to the contrary and that therefore, the monthly income of the injured can be interfered, when the Tribunal has taken the said income to be Rs. 4,000/- per month to the extent of it being assessed as Rs. 4500/- instead of Rs. 4000/- as assessed by the Learned Tribunal.

18. However, insofar as assessing the functional disability is considered, reliance be made to para 15 of ***Jakir Hussein (supra)*** which reads as follows:-

> *"15.Further, with respect to the permanent disablement suffered by the appellant, Mr.K. Parameshwar, the learned amicus curiae, has rightly submitted that the appellant was examined by Dr. P.K. Upadhyay in order to prove his medical condition and the percentage of permanent disability. The doctor who has treated him stated that the appellant has one long injury from his arm up to the wrist. Due to this injury, the doctor has stated that the appellant had great difficulty to move his*

shoulder, wrist and elbow and pus was coming out of the injury even two years after the accident and the treatment taken by him. The doctor further stated in his evidence that the appellant got delayed joined fracture in the humerus bone of his right hand and with wiring and nailing and that he had suffered 55% disability and cannot drive any motor vehicle in future due to the same. He was once again operated upon during the pendency of the appeal before the High Court and he was hospitalised for 10 days. The appellant was present in person in the High Court and it was observed and noticed by the High Court that the right hand of the appellant was completely crushed and deformed. In view of doctor's evidence in this case, the Tribunal and the High Court have erroneously taken the extent of permanent disability at 30% and 55% respectively for the calculation of amount towards the loss of future earning capacity. No doubt, the doctor has assessed the permanent disability of the appellant at 55%.<u>However, it is important to consider the relevant fact namely that the appellant is a driver and driving the motor vehicle is the only means of livelihood for himself as well as the members of his family.</u> Further, it is very crucial to note that the High Court has clearly observed that his right hand was completely crushed and deformed. In the case of Raj Kumar v. Ajay Kumar (supra), this Court specifically gave the illustration of a driver who has permanent disablement of hand and stated that the loss of future earnings capacity would be virtually 100%. <u>Therefore, clearly when it comes to loss of earning due to permanent disability, the same may be treated as 100% loss caused to the appellant since he will never be able to work as a driver again. The contention of the respondent Insurance

> *Company that the appellant could take up any other alternative employment is no justification to avoid their vicarious liability. Hence, the loss of earning is determined by us at Rs.54,000/- per annum. Thus, by applying the appropriate multiplire as per the principles laid down by this Court in the case of Sarla Verma and Ors. Versus Delhi Transport Corporation and Anr. (2009) 6 SCC 121, the total loss of future earnings of the appellant will be at Rs.54,000/- x 16 = Rs.8,64,000/-."*

19. Now, in the present case also, it is undisputed fact that the leg of the present claimant had to be amputated and therefore, it is anybody's guess that the claimant cannot drive any vehicle. At this stage, the nature of injuries transpiring from the injury report may be referred to, and the parts concerning the local examination and the observations on X-ray of the body of the injured are quoted hereinbelow for the case of reference:-

> *"Local Exam:*
> *- Clinically # Right T F upper end with toes extensor movement absent.*
> *- Clinically # Left T F upper end without distal N V deficit.*
> *- CLW 14cm x 3cm x bone deep over Right Leg anterior aspect with with contamination+++*
> *- CLW of about 12cm x 7cm x muscle deep present over posterior apsect Right Knee contamination*

present, bleeding present.
- CLW over 12cm x 3cm x bone deep over Left leg anterior aspect with contamination+++
- CLW 15cm x 4cm x muscle deep over Left Knee popliteal fossa with active bleeding++ contamination present.
- CLW 5cm x 2cm x muscle deep over Right Thigh anterior aspect with contamination present.
- Multiple CLW of size 2cm x 1cm over Right Temporal region
- Abrasion over Right Forearm posterior aspect
- CLW 4cm x 1cm over Right Little finger
- Abrasion over Right Arm postero-laterally
- Superficial CLW of size 1.5cm x 0.1 cm over Right Arm postero-laterally.

<u>On X-ray</u>:
Right Leg: No bony injury seen
Left Leg: Fracture upper shaft tibia noted
Chest AP View: No displaced rib fracture
No hydro-pneumothorax
Skull APLAT :No displaced fracture is seen
No pneumocranium
Right Femur: No bony injury seen
Left Knee: Crush fracture upper shaft left tibia noted
Pelvis With Both Hips : Fracture right acetabular and superior, inferior ischio pubic rami
Noted, Fracture left superior and inferior ischio pubic rami noted. Diasthasis pubic is noted.
Right Knee:Crush fracture upper shaft tibia and fibula noted
Abdomen: No bony injury seen
Right Femur:Amputation at the level of lower shaft femur done noted
Right Leg:External fixation with rod & nail done noted
For fracture upper shaft right tibia noted
Left Leg: External fixation with rod & nail done

noted
For fracture upper shaft left tibia noted."

20. That apart, the disability certificate at Exhibit-69 indicates that the amputation of the right leg above knee together with an operation pertaining to Fracture of Tibia rendered the injured disabled to the tune of 85%. The said doctor was examined under the said Exhibit 68. In the said deposition, the doctor opines that if the person is a professional driver and right leg has been amputated then he cannot drive be it two wheeler or four wheeler. On the said aspect there is no cross-examination. The examination is only to the extent that the Doctor had not called for the history of the accident before opining as to the disability. Now, it is this Court's opinion is that irrespective of the fact that he had not made inquiry of history pertaining to the accident by the Doctor, the fact remains that the Doctor has opined on the disability as present on the date of issuing disability certificate, i.e. on 15.01.2010.

21. Thus, this Court, relying on the said deposition, together with the observation of the Hon'ble Supreme Court in ***Jakir Hussein (Supra)*** holds that the functional disability of the claimant would be to the tune of 100% as he being a driver, cannot drive any vehicle post his accident which assertion in the deposition Exhibition 68 has remained uncontroverted before the Tribunal.

22. Insofar as the amounts under the conventional heads namely Rs. 75,000/- towards Pain and Suffering and Rs. 2,00,000/- being the aggregate Loss of Amenities and Loss of Expectancy of Life, are reasonable and do not deserve any interference more particularly looking to the nature of injuries. Hence, the interference in favour of the appellant is not warranted and therefore naturally, the appeal is liable to be dismissed. However, in view of the judgment of the Hon'ble Supreme Court as also the judgments of this Court, even without cross-objections/cross-

appeals the compensation as awarded by Tribunal, if found to be on the lower side can be enhanced.

23. In the present case, the compensation awarded on the basis of 60% disability is liable to be enhanced on the basis that100% functional disability has occurred to the injured respondent no. 1. So calculated, the annual income of the injured respondent no. 1 would be Rs.4,500/- x 12 which is Rs. 54,000/-. Moreover, considering the age of the injured being 55 years as indicated in the disability certificate, leads this Court to believe that the applicable multiplier in terms of the decision in ***Sarla Verma and Ors. Versus Delhi Transport Corporation and Anr. (2009) 6 SCC 121,*** would be eleven. The relevant paragraph No. 21 is quoted hereinbelow for the ease of reference:-

> *"21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age froups of 15 to 20*

and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

Thus, taking the said multiplier and multiplying it with the multiplicand i.e. Rs.54,000/- x 11 an amount of Rs. 5,94,000/- is liable to be awarded towards future loss. All other amounts as awarded by the Tribunal are maintained. Thus, the amount liable to be awarded would be as follows:-

Sr.No.	Particulars	Amount awarded by the learned Tribunal (in Rs.)	Amount determined by this Court (in Rs.)
1	Future Loss of Income	1,72,800/- (Rs.28,800 X 6)	5,94,000/- (Rs.54,000 X 11)
2	Pain, Shock and Suffering	75,000/-	75,000/-
3	Medical Bills	1,85,000/-	1,85,000/-
4	Loss of amenities and expectancy of life	2,00,000/-	2,00,000/-
5	Special Diet	10,000/-	10,000/-
6	Attendant Charges	5,000/-	5,000/-
7	Transportation	5,000/-	5,000/-
8	Loss of Income	10,000/-	10,000/-

	Total:	6,62,800/-	10,84,000/-
	Less: Compensation as awarded by the learned Tribunal		6,62,800/-
	Enhancement as awarded by this Court		**Rs.4,21,200/-**

23. Hence, the enhancement is awarded to the injured respondent no.1, i.e. a sum of Rs.4,21,200/-. Considering that accident for the year 2009 and the enhancement is awarded in the year 2025, the applicable rate of simple interest on the said enhancement would be 9% per annum from the date of filing of the claim petition till actual deposition of the aforesaid enhanced amount by the appellant corporation before the learned Tribunal.

24. The said amount shall be deposited by the appellant within a period of 6 week from the date of availability of the signed copy of this judgment.

25. It is clarified that no further FDRs shall be created on the enhanced amount and the amount, enhanced or lying in FDRs, inlcuding the interest occurred thereon,

same shall be forthwith disbursed including any other amount pending for disposal together with interests before the Tribunal.

26. The present appeal stands disposed of in aforesaid terms.

27. R&P be forthwith remitted back to the Tribunal concerned.

(J. L. ODEDRA, J)

RIYA VISHWAKARMA