IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 4300 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE L. S. PIRZADA

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Approved for Reporting	Yes	No

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MANUBHAI MAHIJIBHAI THAKOR
Versus
NIRAJSINH PUSHPASINH YADAV & ANR.

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Appearance:
NISHIT A BHALODI(9597) for the Appellant(s) No. 1
MR GC MAZMUDAR(1193) for the Defendant(s) No. 2
MR HG MAZMUDAR(1194) for the Defendant(s) No. 2
NOTICE SERVED for the Defendant(s) No. 1

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CORAM:**HONOURABLE MR.JUSTICE L. S. PIRZADA**

Date : 03/11/2026

ORAL JUDGMENT

1. The present appeal has been preferred by the appellants-original claimants under Section 173 of the Motor Vehicles Act, 1988 for enhancement of the compensation awarded vide judgment and award dated 17.09.2025 passed by the M.A.C.T. (Aux.) and 4th Additional District Judge, Anand, in M.A.C.P. No.242 of 2021, whereby the learned Tribunal has awarded an amount of Rs.4,21,589/- with interest at the rate of 9% per annum from the date of the claim petition till its

realization from opponent Nos.1 and 2, jointly and severally.

2.1 The factual matrix of the present case is that, on 12.01.2021, the present appellant-original claimant was proceeding towards the Borsad Taluka Panchayat Office by driving his motorcycle bearing registration No.GJ-23-J-1083. After completing his work, at about 5:00 p.m., while he was passing near Kismat Kathiyavadi Hotel on Borsad-Tarapur Road, at that time opponent No.1 came by driving his car bearing registration No.GJ-16-CS-9130 at an excessive speed and in a rash and negligent manner and dashed against the motorcycle. As a result, the claimant sustained a fracture of the right hand and ankle and left leg tibia fibula and also sustained injuries on other parts of his body. He was shifted to Shraddha Hospital, Borsad, where primary treatment was given and was subsequently referred to Karamsad Hospital, where he remained as an indoor patient for 10 days and an operation was performed on his right hand, wherein a rod was inserted and he has incurred handsome amount

towards medicines, medical treatment, attendant, special diet etc. and as he was hale and hearty at the time of the accident and earning Rs.9,000/- per month by doing agricultural and contractor work and because of the injuries sustained in the accident, the claimant developed disability, which adversely affected his earning capacity. Hence, the original claimant filed a claim petition before the learned Tribunal seeking compensation of Rs.15,00,000/- from the opponents.

2.2 After considering the oral and documentary evidence adduced by the respective parties, the learned Tribunal assessed the income of the claimant at Rs.8,000/- per month. Further, the learned Tribunal held that the claimant was also negligent and attributed 50% negligence to him, while opponent No.1, the driver of the car, was held negligent for the remaining 50% of the accident. The age of the claimant was 51 years, as his date of birth was 01.01.1970 and the accident occurred on 12.01.2021. By a pursis at Exh.57, the learned advocates for both parties agreed to consider the

disability at 28% of the body as a whole. Accordingly, the claim petition was partly allowed, and compensation of Rs.4,21,589/- with interest at the rate of 9% per annum from the date of the claim petition till realization was awarded against opponent Nos.1 and 2, jointly and severally, vide judgment and award dated 17.09.2025.

2.3 Being aggrieved and dissatisfied with the aforesaid judgment and award, the original claimant has preferred the present appeal seeking enhancement of the compensation awarded by the learned Tribunal.

3.1 Learned advocate Mr.Nishit A. Bhalodi for the appellant submitted that, insofar as the question of negligence is concerned, the learned Tribunal has erred in attributing 50% negligence to the claimant without assigning any cogent reasons. It was submitted that the claimant had stated in his cross-examination that he had produced his driving licence. However, upon perusal of the entire record of the case, it appears that the claimant had not produced a copy of the driving licence. Therefore,

an adverse inference was required to be drawn against the claimant, and it was presumed that he was not holding a driving licence at the time of the accident. Despite this, he was driving the motorcycle, and the accident occurred. On that basis, the learned Tribunal concluded that the claimant was negligent to the extent of 50%. It was submitted that the aforesaid findings are contrary to the settled principles of law. In support of his submissions, Mr. Bhalodi relied upon the judgment of the Hon'ble Apex Court in the case of **Saraswati Palariya and Ors. v. New India Assurance Company Limited and Ors.**, reported in **(2019) ACJ 42.**

3.2 Learned advocate Mr.Bhalodi further submitted that the income of the claimant has been assessed by the learned Tribunal on the lower side and that no addition towards future prospects has been granted. As the claimant was 51 years old at the time of the accident, he is entitled to an addition of 10% towards future prospects. It was further submitted that the learned

Tribunal awarded only Rs.25,000/- towards pain, shock and suffering, which deserves to be enhanced considering the injuries sustained by the claimant. The actual loss of income was calculated by the learned Tribunal for three months on the basis of the income assessed at Rs.8,000/- per month. However, as the income has been assessed on the lower side and the minimum wages have not been considered, the actual loss of income is required to be recalculated on the basis of the applicable minimum wages.

4. On the other hand, learned advocate Mr.H.G. Mazmudar appearing for respondent No.2 - Insurance Company submitted that the appeal is devoid of merit and that the learned Tribunal has rightly assessed the income of the claimant at Rs.8,000/- per month. He further submitted that the learned Tribunal has also considered the fact that the claimant was not holding a driving licence on the date of the accident. In this regard, opponent No.1, the driver of the car, has given his

evidence. In his examination-in-chief at Exh.62, Nirajsinh Pushpasinh Yadav, who was driving the motor car bearing registration No.GJ-16-CS-9130 and was an eyewitness to the accident, specifically stated that he was driving his car on the correct side at a moderate speed and that the motorcycle rider attempted to cross the road, resulting in the accident. Nothing fruitful has emerged from the cross-examination of this witness. Therefore, the learned Tribunal has rightly concluded that the claimant was also negligent and attributed 50% negligence to him. It was further submitted that the learned Tribunal has rightly calculated the compensation and partly allowed the claim petition. Considering the overall evidence produced by the respective parties, the findings recorded by the learned Tribunal are just and proper and does not require any interference.

5. Having heard the rival submissions of the respective parties and perusing the judgment and award passed by the learned Tribunal, the first question for consideration

is with regard to negligence. The learned Tribunal, particularly in paragraph 12 of its judgment, observed that the claimant was contributorily negligent only on the ground that he had not produced a copy of his driving licence. On that basis, an adverse inference was drawn that the claimant was not holding a driving licence and, despite that, was driving the motorcycle, and the claimant was held negligent to the extent of 50%, while opponent No.1, the driver of the car, was held negligent for the remaining 50% of the accident.

6. Insofar as the finding of contributory negligence is concerned, contributory negligence requires proof of negligence on the part of the claimant, or of conduct that materially contributed to the accident resulting in the injury. The question of contributory negligence depends upon the facts and circumstances of each case. The relevant test is whether, by exercising reasonable care, the victim could have avoided the consequences of the negligence that caused the accident. Mere violation of

law by the victim does not, by itself, constitute contributory negligence. There must be a causal connection between such violation and the occurrence of the accident or the impact of the injury suffered by the victim. The burden of establishing contributory negligence lies upon the party alleging it. Mere absence, invalidity or non-production of a driving licence, by itself, does not constitute contributory negligence.

7. In the present case, it is an admitted position that an FIR was registered against opponent No.1 and that a charge-sheet was also filed against him. Further, it is pertinent to note that opponent No.1 has not filed his written statement to the claim petition but has only filed his examination-in-chief, in the absence of any pleadings. Opponent No.1 gave his examination-in-chief at Exh.68 and, in his cross-examination, admitted that he had not filed any written statement. He also admitted that a charge-sheet had been filed against him in connection with the said accident. The panchnama was also

produced by the claimant before the learned Tribunal at Exh.33. Upon considering the panchnama, it cannot be said that the claimant had contributed to the occurrence of the accident.

8. In this regard, learned advocate for the appellant relied upon the judgment of the Hon'ble Apex Court in the case of **Saraswati Palariya (supra),** wherein, in paragraph 5, it has been held as under:

> *"5. The finding of the High Court of contributory negligence on the ground that the deceased was driving the vehicle without a driving licence is equally unsustainable. Driving without a valid driving licence may expose the claimant(s) to other liabilities but no inference of contributory negligence can be arrived at on that basis."*

9. Considering the findings recorded by the learned Tribunal and the dictum of the Hon'ble Apex Court, driving without a valid driving licence may expose the claimant to other liabilities, but no inference of

contributory negligence can be drawn on that basis alone. In the absence of any other independent evidence, and considering the fact that the FIR has been registered and the charge-sheet has been filed against opponent No.1, the finding of the learned Tribunal attributing 50% contributory negligence to the claimant is not supported by any evidence. Hence, the finding of the learned Tribunal attributing 50% contributory negligence to the claimant, who was driving the motorcycle, is required to be set aside. Accordingly, it is held that original opponent No.1, i.e. present respondent No.1, the driver of the Hyundai Creta Car bearing registration No. GJ-16-CS-9130, was 100% negligent.

10. So far as the question of income of the claimant is concerned, the learned Tribunal assessed the same at Rs.8,000/- per month. It is an admitted fact that no cogent evidence was produced regarding the claimant's agricultural income or other earnings. In the absence of such evidence, the learned Tribunal assessed his income

at Rs.8,000/- per month. The accident occurred on 12.01.2021, and the learned Tribunal assessed the income in the absence of cogent evidence by considering the minimum wages. The minimum wage prevailing at the time of the accident was Rs.9,079/- per month. Therefore, the income of the claimant is required to be reassessed at Rs.9,079/- per month.

11. Further, as per the judgment of the Hon'ble Apex Court in the case of **National Insurance Company Limited v. Pranay Sethi,** reported in (2017) 16 SCC 680, an addition of 10% towards future prospects is required to be considered on account of the fact that the claimant was 51 years old at the time of accident. Accordingly, the monthly income of the appellant, including addition of 10% future prospects, comes to Rs.9,987/-.

12. So far as the question of disability is concerned, there is no dispute, as both parties have agreed to consider the disability at 28% of the body as a whole. The

age of the claimant at the relevant time was 51 years old. Therefore, considering 51 years old of the claimant at the time of accident, as per Sarla Varma's case 11 multiplier is required to be applied, Therefore, the claimant would be entitled to_Rs.9987/- x 28% = 2,796/- and 2,796/- x 12 x 11 = Rs.3,69,072/-. The medical expenses have already been awarded by the learned Tribunal. So far as amount awarded for pain, shock and suffering is concerned, considering the injuries sustained by the claimant, the amount of Rs.25,000/- awarded by the learned Tribunal is required to be enhanced to Rs.75,000/-. The actual loss of income, calculated by the learned Tribunal at Rs.24,000/- for three months, is required to be enhanced to Rs.54,474/- for three months, considering the reassessed income. The amount of Rs.9,000/- awarded towards special diet, attendance and transportation charges is required to be enhanced to Rs.15,000/-.

13. As discussed above, the compensation payable to the

present appellant is reassessed as under:

Heads of Compensation	**Awarded by the Tribunal**	**Reassessed by this Court**
Future Loss Of Income	Rs.2,95,680/-	Rs.3,69,072/-
Medical Expenses	Rs.4,89,499/-	Rs.4,89,499/-
Pain, Shock and Suffering	Rs.25,000/-	Rs.75000/-
Actual Loss of Income	Rs.24,000/-	Rs.54,474/-
Special Diet, Transportation and Attendant Charges	Rs.9,000/-	Rs.15,000/-
Total Compensation	**Rs.8,43,179/-**	**Rs.10,03,045/-**
Deduction of 50% towards contributory negligence by the Tribunal	Rs.4,21,589/-	Nil
Net Compensation	**Rs.4,21,589/-**	**Rs.10,03,045/-**
Less: Compensation awarded by the learned Tribunal	-	- Rs.4,21,589/
Enhanced amountEnhanced Compensation	**-**	**=Rs.5,81,456/-**

14. Considering the above, the learned Tribunal had awarded compensation of Rs.4,21,589/-. Upon reassessment, the claimant is entitled to enhance compensation of Rs.5,81,456/-, with interest at the rate of 9% per annum from the date of the claim application till realization.

15. Hence, the present appeal is partly allowed. The judgment and award dated 17.09.2025 passed by the M.A.C.T. (Aux.) and 4th Additional District Judge, Anand, in M.A.C.P. No.242 of 2021, stands modified to the aforesaid extent. The respondent-Insurance Company shall deposit the enhanced amount of Rs.5,81,456/- along with interest, as awarded by the learned Tribunal, before the learned Tribunal within a period of four weeks from the date of receipt of copy this order.

16. Considering that the accident took place in the year 2021, upon deposit of the enhanced amount by the Insurance Company, the total amount lying with the concerned Tribunal, along with the enhanced amount and accrued interest, if any, shall be disbursed to the

claimants by Account Payee Cheque and/or NEFT and/or RTGS, after due verification and following proper procedure.

17. The learned Tribunal is directed to recover or deduct the deficit court fees, if any, on the enhanced amount and thereafter disburse the amount accordingly.

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

19. The award shall be modified accordingly.

(L. S. PIRZADA, J)

STANCY GOMES

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: STANCY GOMES(HC02364), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 03/11/2026 14:24:47