

ORDER
BELOW EXH. 1

- Heard the Ld. Advocate Mr. R.R. Mistry for applicant/decreed holder and Ld. Advocate Mr. A.M. Achhava for opponent/judgement debtors (Insurance Company) no. 5.
- The present applicant has filed execution petition against the opponent for the execution of order passed in MACP No. 225/2012 for claiming award of total Rs. 92,995/- along with the interest.
- Notice is duly served to the all the opponents. While opp. no. 1 to 4 Advocate has appeared but not filed any reply against the said execution petition. While opp. no. 5 has appeared through their Advocate and has filed reply vide Ex.-17 wherein taken strong objection against the said execution petition contended that original MACP No. 225/2012 was decided on 28/11/2016 for Rs. 34,740/- with cost and 9% interest against only opp. no. 1 i.e. Patel Virabhai Shankarbhar who was the owner of the tractor. The Hon'ble Tribunal held in Page No. 12 and Para No. 8 that "the applicant has produced copy of insurance policy of offending vehicle tractor at mark 15/2, but has not cared to exhibit the same. Moreover, the applicant has not

joined the driver of the offending vehicle tractor on whose negligence the alleged accident occurred. Thus, in absence of insurance policy, the opp. no. 2, the insurance company cannot be held liable to pay the compensation to the applicant. In view of the above facts and circumstances of the case, the opp. no. 1 owner of tractor bearing Registration No. G.J02AC0047 held liable to pay the compensation to the applicant". Thereafter, the legal heirs of the owner of the tractor have filed review application before the Hon'ble Tribunal vide review application no. 1/2020 on 17/03/2020. In the said review application order Hon'ble Tribunal in his order dated 28/09/2022 held that "there is no any mistake on the part of Hon'ble Court and therefore the said review is not tenable and also stated that the applicant have to file an appeal".

So therefore, in the present execution petition the applicant has joined opp. no. 5 (insurance company) wrongly as a party. Hence, it is requested to dismiss the said execution application against the opp. no. 5 the insurance company.

- While going through the execution petition filed by the applicant and also considering the objection filed by opp. no. 5 (insurance company). First of all, it is necessary to go through the MACP

225/2012 filed by the applicant against the four of the opponents, in which opp. no. 1 was driver of the vehicle, opp. no. 2 was National Insurance Co. Ltd. the insurance company of said vehicle, opp. no. 3 was owner of the vehicle and opp. no. 4 was New India Insurance Company Limited. The applicant said claim petition was partly allowed only against opp. no. 1, so opp. no. 1 was held liable to pay compensation to the applicant. While other opponent namely 2 to 4 was exonerated from their liability of paying compensation to the applicant. After that the applicant has filed review application no. M.A.C.P review no. 1/2020 wherein the applicant has sought review of the judgement passed in MACP no. 225/2012 exonerating the opp. no. 2 to 4. The Hon'ble Tribunal in its order dated 28/09/2022 dismissed the said review application, after said dismissal the applicant has not challenged the said order before Hon'ble High Court. So therefore as opp. no. 5 National Insurance Co. Ltd. was exonerated from its liability as per the judgement passed in MACP no. 225/2012 and thereafter the review petition no. 1/2020 was also dismissed. Till date applicant has not challenged either the order of MACP no. 225/2012 and review petition no. 1/2020. Under such circumstances, the applicant is not liable to join opp. no. 5 National Insurance Co. Ltd. in execution petition. Further, applicant had relied on

the judgement in the case of United India Insurance Co. Ltd.- petitioner v/s S. Ramkrishna Reddy and others respondent. (2005 ACJ 1229) The said judgement of Hon'ble High Court of Andhra Pradesh at Hyderabad is not applicable in this case because in said case earlier the Insurance Company is not impleaded later it comes in the knowledge of the applicant that the vehicle was insured and therefore it was impleaded for the liability in the execution proceedings. Now, in the present case the Insurance Co. was already impleaded and was party before the tribunal, while tribunal has exonerated them from the liability. Against the said order the applicant has not filed any appeal. So, the facts and circumstances of cited judgement and present case is different therefore not applicable in this case. As opp. no. 5 National Insurance Co. is being exonerated as per the judgement of MACP no. 225/2012, therefore applicant is not entitled to file execution petition against the opp. no. 5 National Insurance Co. Ltd. So, I pass order below.

ORDER

It is hereby ordered to dismiss present execution petition qua opp. no. 5 National Insurance Co. Ltd.

No order as to costs.

Pronounced in open Court to-day, 10th day of
March, 2025

Date: 10.03.2025

Place: Visnagar

[NASIR SAIDULLAH SIDDIQUE]

MOTOR ACCIDENT CLAIMS
TRIBUNAL (AUXI-II), MAHESANA
AT VISNAGAR.
CODE: GJ00650