IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7506 of 2026

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GUDDIBEN RAKESHBHAI VASUNIYA W/O. RAKESH KANABHAI VASUNIYA (LHS OF DECD. RAKESH KANABHAI VASUNIYA)
Versus
UPENDRA MOHANBHAI KADIVAR & ORS.
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Appearance:
MR MONARCH K PANDYA(11437) for the Petitioner(s) No. 1
NOTICE SERVED for the Respondent(s) No. 1,2,3
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CORAM:**HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

Date : 03/08/2026

ORAL ORDER

1. This Petition impugns order dated 13.11.2025, passed by the learned Motor Accidents Claims Tribunal (Main) & Principal District Judge, at Morbi in the application below Exh.18 preferred by original opponent No.3 – Magma General Insurance Co. Ltd. seeking its deletion from the array of parties on the ground that at the time of the vehicular accident, the deceased himself was riding the motorcycle and was negligent in causing the accident, as such, the legal representatives of the deceased cannot claim compensation from the owner and insurer of the motorcycle. The learned Tribunal, after considering the said application, had allowed the application below Exh.18 and ordered to delete original opponent No.3 - Insurance company from the array of the parties. The Petitioners herein are the Original Claimants.

2. Though the Rule has been duly served upon the respondents, they have chosen not to appear before this Court to assist this Court.

3. Heard learned counsel for the petitioners.

4. At the outset, learned counsel appearing on behalf of the petitioners argued that the learned Tribunal ought not to have deleted original opponent No.3 - Insurance company from the array of parties without permitting the parties to lead their evidence. He contended that the learned Tribunal has presumed that the deceased himself was negligent for causing the accident. He argued that the issue of negligence can only be determined after permitting the parties to lead their evidence, as such, argued that the findings returned by the learned Tribunal is not legally sustainable. He further submitted that the Insurance Company has charged the premium under the head of "Compulsory PA Cover (Owner- Driver)", as such, argued that the risk of the deceased was covered under the policy. Hence, he argued that the deletion of original opponent No.3 - Insurance Company from the array of parties is erroneous and prayed that the impugned order be quashed and set aside.

5. Having considered the submissions of the learned counsel for the Petitioners and having gone through the material available on record, it is not in dispute that motorcycle bearing registration No.GJ-36-AG-3520 and Tractor bearing registration No.GJ-36-AG-4766 were involved in the vehicular accident in question. This Court is of the view that the issue as to who is negligent for causing the accident can only be determined after appreciating the oral as well as documentary evidence, however, in the instant case, the learned Tribunal had decided the factum of negligence in an application preferred by the Insurance Company seeking its deletion from the array of the parties. In my considered view, the view taken by the learned Tribunal regarding negligence is premature and erroneous, as it can be decided only after permitting the

parties to lead their oral as well as documentary evidence and after appreciating the evidence led on record. Therefore, the observation made by the learned Tribunal on the issue of negligence is not sustainable at this juncture. Further, so far as the issue as to whether the risk of the deceased is covered under the policy or not is concerned, the same cannot be decided in the present petition. Therefore, both the issue of negligence and the issue as to whether the risk of the deceased was covered under the policy or not, are kept open to be decided by the learned Tribunal after permitting the parties to lead their evidence and after duly appreciating the evidence on record. Hence, the impugned order is liable to be quashed and set aside for the aforementioned reasons.

6. Accordingly, the impugned order deleting original opponent No.3 – Insurance Company from the proceedings of Claim Petition No. No.53 of 2024, is hereby quashed and set aside. Consequently, original opponent No.3 – Magma General Insurance Co. Ltd. shall remain in the array of parties.

7. In view thereof, the captioned petition stands disposed of.

(MOOL CHAND TYAGI, J)

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