IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 2601 of 2023

With
R/CROSS OBJECTION NO. 68 of 2024
In
R/FIRST APPEAL NO. 2601 of 2023

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THE UNITED INDIA INSURANCE CO. LTD.
Versus
GIRISHKUMAR ISHWARBHAI MAKWANA & ORS.

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Appearance:
MR RATHIN P RAVAL(5013) for the Appellant(s) No. 1
MR R G DWIVEDI(6601) for the Defendant(s) No. 3
RULE NOT RECD BACK for the Defendant(s) No. 4
RULE SERVED for the Defendant(s) No. 1,2,5

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Date : 08/01/2026

ORAL ORDER

1) Feeling aggrieved by and dissatisfied with the judgment and award dated 30.11.2022 passed by learned Motor Accident Claims Tribunal at Ahmedabad Rural, in Motor Accident Claim Petition No.1363 of 2013, the appellant – Insurance Company has preferred present appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" for short), whereby, the Tribunal has directed to pay the compensation from the Insurance Company and then to recover from the owner of the vehicle. Against the same, the owner of the vehicle has filed Cross-Objection.

2) Heard Mr. Rathin Raval, learned counsel for the appellant- Insurance Company and Mr. R.G.Dwivedi, learned counsel for respondent No.3. Though served, none appears for respondent No.1, 2, 4 and 5.

3) It is the case of the claimants that on 25.01.2013, the deceased was going in rickshaw and when the rickshaw reached near the spot of accident, at that time, one buffalo came in way of rickshaw, due to which immediately brakes were applied and another rickshaw coming from back side collided

with the insured rickshaw. As a result, deceased received fatal injuries and succumbed to it. Hence, claimants were filed claim petition seeking compensation of Rs.75,00,000/-. The tribunal partly allowed the claim petition and awarded compensation of Rs.1265800/- along with interest at the rate of 9 % from the date of filing of claim petition till its realization from the appellant Insurance Company.

4) Learned counsel for the appellant has submitted that the Tribunal has committed an error in passing the order of “pay and recover”. Driver of rickshaw did not possess any license to ply the rickshaw and said defense is proved on record by examining RTO officer below Exh:44, from which it clearly shows that the license was obtained after the accident. Hence, the insurance company is required to be exonerated as they having no liability to indemnify the owner. Hence, he has requested to quash and set aside the order of pay and recover.

5) Learned counsel for respondent No.3 – owner of the rickshaw who has filed Cross-Objection has submitted that the driver of the rickshaw No.GJ-01-CY-4418 was holding valid and effective license and perusing the deposition produced at Exh:44, it appears that the license was obtained by respondent No.3. Hence, he has requested to allow the Cross- Objection as prayed for.

6) As only the aspect of liability and the order of “pay and recover” are challenged, no other issues have been challenged by the parties.

7) Upon perusal of the complaint, it is evident that respondent No.1 has been chargesheeted under Sections 279, 304-A, 337 and 338 of the Indian Penal Code, as well as Sections 177 and 184 of the Motor Vehicles Act. The Tribunal has considered the evidence produced on record and has found that respondent No.3, who was driving Piaggio rickshaw bearing registration No. GJ-01-CY-4418, was not holding a valid and effective driving licence at the time of the accident, and that this defence has been

duly proved. In the written statement, a specific defence to this effect was raised. The RTO Officer was examined at Exh:42, and an extract of the driving licence was produced on record, which shows that the licence was issued subsequent to the alleged accident. The licence was issued on 01.05.2013, whereas the accident occurred on 25.01.2013, i.e., approximately four months earlier. Hence, it stands proved that on the date of the accident, respondent No.1 was not holding a valid and effective driving licence. As per the insurance policy produced at Exh:47, there was clear breach of the terms and conditions of the policy. The Tribunal has accepted this defence and, in view thereof, has exonerated the Insurance Company. However, so far the claimant is concerned, he is a third party, and under Section 150 of the Motor Vehicles Act, it is the duty of the Insurance Company to satisfy the award.

8) For the foregoing reasons and observations as well as the observations made by the Supreme Court of India in case of **Rama Bai v. Amit Minerals & Others, 2025 INSC 1162,** this Court is of considered view that the Tribunal has not committed any error in exonerating the insurance company due to breach of policy and passing an order of "pay and recover". Hence, present appeal fails and is hereby dismissed. Cross-Objection stands also dismissed.

(HASMUKH D. SUTHAR,J)

SUCHIT