

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 2376 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

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Approved for Reporting	Yes	No
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UNITED INDIA INSURANCE COMPANY LIMITED.

Versus

MALTIBEN BHUPENDRABHAI SHAH & ORS.

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Appearance:

MR R G DWIVEDI(6601) for the Appellant(s) No. 1

MR.HIREN M MODI(3732) for the Defendant(s) No. 1,2,3

O I PATHAN(7684) for the Defendant(s) No. 6

RULE SERVED for the Defendant(s) No. 4

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CORAM:HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**Date : 18/11/2025****ORAL JUDGMENT**

1. The captioned appeal has been preferred against the impugned judgment and award dated 08.05.2014 passed by the learned Motor Accident Claims Tribunal (Aux.), Kheda at Nadiad in M.A.C.P. No. 928 of 2010, whereby the learned Tribunal has partly allowed the claim petition and awarded a sum of Rs.8,00,000/- (Rupees Eight Lakhs Only) along with interest at the rate of 7.5% per annum, from the date of filing of the claim petition till its realization, as compensation.

2. The succinct facts, which led to the filing of the instant appeal are summarized as under:-

- i. On 16.03.2010, at about 8:45, at night, Mr. Vallabhbhai Somalal Shah (hereinafter referred to as "the deceased") was travelling by pickup Car No. GJ-7-UU-1857 and was sitting for protection of goods and coming to Antarsumba. At that time, the said vehicle was being driven by respondent no.1 herein at excessive speed, in a rash and negligent manner, endangering human life and resultantly, he lost control over the steering, as a result thereof vehicle turned turtle. In the said vehicular accident, the deceased sustained serious injuries and was taken to J.B. Mehta Government Hospital, Kapadwanj for treatment and during the treatment he succumbed to the injuries.
- ii. Upon being served the notices/summons of the Claim Petition, the appellant - Insurance Company filed its Written Statement at Exh. 16, wherein it denied the age, income, facts and averments made in the claim Petition and in brief, prayed for dismissal of the Claim Petition.
- iii. Having considered the pleadings of the parties and the material available on record, the learned

Tribunal framed the following issues at Exh.19:-

- i. Whether the applicants proves that Deceased died due to rash and negligent driving of the driver of the vehicle involved in the vehicular accident as contended ?*
 - ii. Whether the applicants are entitled to get compensation ? If yes, what amount and from whom ?*
 - iii. What order and award?*
- iv. Having considered the oral as well as documentary evidences on record and after considering the submissions of the learned counsels for the parties, the learned Tribunal partly allowed the claim petition and awarded a sum of Rs.8,00,000/- (Rupees Eight Lakhs Only) along with interest at the rate of 7.5% per annum, from the date of filing of the claim petition till its realization, as compensation and Original opponents were held jointly and severally liable to pay awarded amount of compensation to the claimants.
- v. Being aggrieved and dissatisfied with the impugned judgment and award passed by the learned Tribunal, the original opponent No.2/appellant herein - Insurance Company

preferred the captioned appeal, thereby challenging the findings returned by the learned Tribunal.

3. Heard learned counsels for the parties.

4. Mr. R.G. Dwivedi, learned counsel for the appellant-Insurance Company vehemently submitted that the deceased was traveling in the goods vehicle as a gratuitous passenger, therefore the liability to satisfy the award cannot be fastened upon the Insurance Company/appellant herein. He placed reliance on the panchnama proved at Exh.61 and submitted that no goods were found at the place of accident, therefore, it has been proved on record that the deceased was travelling in goods vehicle as a gratuitous passenger, therefore, the learned Tribunal has committed illegality in fastening the liability on the Insurance Company. No other plea was raised by the learned counsel for the appellant-Insurance Company.

5. On the other hand, Mr. Hiren M Modi, learned counsel appearing for the Original Claimants/respondent nos.1 to 4 vehemently contended that there is no infirmity in the impugned judgment and award. He further submitted that the learned Tribunal has rightly saddled the liability on the appellant herein - Insurance Company to satisfy the award at the first instance and thereafter to recover the same from the original opponent no.1-owner and driver of the vehicle. In support of his contentions, learned counsel appearing for the Original Claimants/respondent nos.1 to 4 placed reliance on

the common judgment rendered by the coordinate bench of this Court in **First Appeal No. 619 of 2016 with First Appeal No. 618 of 2016 (Nuetral Citation : 2025:GUJHC:1292)** decided on **06.01.2025**. He further submitted that the case of the original claimants is squarely covered by the rationof the aforesaid judgment. He further contended that instant appeal is devoid of any merits and is liable to be dismissed.

6. Having considered the submissions of the learned counsels for the parties and having regard to the facts and circumstances of the present case, it is to be noted that the deceased was travelling the goods vehicle at the time of accident. It is the say of the Original Claimants/respondent nos.1 to 4 herein that the deceased was travelling in the goods vehicle for the protection of the goods. The learned Tribunal after considering the material on record observed in paragraph nos. 7.3 to 7.7 of the impugned judgment as under:-

7.3 The first question, which this tribunal is required to be decided is as to whether the vehicle, in which claimant was traveling was goods vehicle or not. Deposition of the claimant No.1 and deposition of witness no.2 are recorded at Exh.28 and Exh.48. In their cross examination they have stated that the deceased was traveling in the Pickup car with goods but nowhre it is mentioned that he has paid any fare to travel in the said offending vehicle. therefore, from the deposition it becomes clear that deceased was traveling in the above referred car as passenger and not as the

labourer and, therefore, deceased is held to gratuitous passenger.

7.4 Above referred discussion, leads me to second point I.e. the insurance company can be directed to pay amount of compensation on the basis of 'Avoidance Clause', contained under the insurance policy or not. Bare reading of insurance policy depicts (Exh.60) the fact that there is 'Avoidance Clause' in the policy.

*7.5 Now, the question, therefore, is in view of such avoidance clause, can the Insurance Company avoid the indemnification of a third party to the full extent and claim their restricted liability in terms of the insurance policy under the statutory provisions. I have read the Judgments in the case of **Vimal Devi (supra) 2010 ACJ 2878**, it was a case wherein the Insurance Company had appealed to the Supreme Court. The High Court had accepted the limited liability of the Insurance Company to the extent of Rs.50,000/, but still directed it to pay the entire amount along with interest to claimants and then to recover the amount beyond the liability of Rs.50,000/- from the owner of the vehicle involved in the accident. The policy under consideration in the said case also contained an avoidance clause. Hon'ble Apex Court relying on the decisions in the cases of **Amrit Lal Sood v/s Kaushalya Devi Thapar, reported in 1998 (3) SCC page No.744** and **New India Assurance Co. Ltd. v. C.M. Jaya, reported in 2002 (2) SCC page No.278** has held that in view of avoidance clause, the Insurance Company would be liable to meet the claim of the claimant and satisfy the award passed by*

the Tribunal. Hon'ble Full Bench of Hon'ble Gujarat High Court in the case of Shantaben Vankar V/s Yakubbbhai Patel, reported in 2012 (3) G.L.R 1985 has held in Para No. 39 in face of avoidance clause contained in the insurance policy, limited liability must in so far as third party is concerned, satisfy the entire award of the Claims Tribunal. The Insurance Company, of course, would be entitled to recover the amount in excess of Rs.50,000/- which is the statutory limit of liability, from the owner of the vehicle insured which was involved in the accident."

7.6 In view of the above referred discussion, it becomes clear that wherever the insurance policy contains an 'Avoidance clause' providing that nothing in the policy shall affect the right of any person indemnified by the policy or any other person by recovering amount under or by virtue of provisions of Motor Vehicle Act, but further requires insured to repay to the Insurance Company all such sums paid by the company which the company would not have been liable to pay, but for this provision, the Insurance Company cannot press in service the statutory limit of liability under the Motor Vehicles Act insofar as the claimants are concerned. But the insured would have to repay to the company all the sums paid by the company which is in excess of its liability under the policy of insurance.

7.7 So far as liability is concerned, in the present case due to sole negligence of the driver of the offending vehicle the accident occurred and deceased died. Opponent no.1 is the driver and owner of the offending Pickup

Car. It is pertinent to note that the said vehicle was insured with opponent no.2, insurance Company and the opponent no.2 has produced Insurance Policy vide Exh.60 and the said policy is covered on the date of incident. Therefore, opponent nos. 1 & 2 are jointly and severally liable to pay the compensation awarded to the claimants."

7. The learned Tribunal considered the ratio of the judgment rendered in the case of **Vimal Devi** (supra), **Amrit Lal Sood** (supra) and the judgment of coordinate bench of this Court in the case of **Shantaben Vankar** (supra) and having placed reliance upon the aforesaid judgments, the learned Tribunal came to the conclusion that original opponents are liable to satisfy the award.

8. Learned counsel appearing for the Original Claimants/respondent nos.1 to 4 herein placed reliance on the judgment rendered by the coordinate bench of this Court in **First Appeal No. 619 of 2016 with First Appeal No. 618 of 2016** (Nuetral Citation : 2025:GUJHC:1292) decided on **06.01.2025**, wherein at paragraph nos. 6 to 10, the learned coordinate bench has observed as under:-

"6. In para 17 and 18 of the impugned judgment and award, the learned Tribunal has addressed this issue as under:-

"17. As against this, LA for the Insurance Company has argued that on plain reading of FIR filed by Mr.Pareshbhai Bhurabhai

Baria of Nari, the accident has taken place on 17.6.2010 when the Truck No.GJ 1 BV 1133 loaded with iron plates which were 11 feet long and 1.5 inch thick. The truck was plying on Bhavnagar Talaja road. When the truck reached near village Nari road all the family members and neighbours including injured applicant boarded the truck and they all were travelling in the truck sitting in loaded area near cabin in the lorry. The iron plates were kept on the back portion of the lorry. All the persons were going to attend the function of "Shrimant". There were 14 unauthorized passengers traveling in the goods vehicle. It is further argued that when the offending vehicle truck reached near Chandan Salt area, on applying the brake by the driver, the iron plates were slipped towards the unauthorized goods vehicle, including the injured applicant and they sustained injuries. It is further argued that none of the persons were traveling along with goods and the truck was not hired for transporting the goods and the applicant and others were traveling to attend social function known as "Shrimant". It is further argued that offending vehicle truck is a heavy goods vehicle which does not cover the risk of the unauthorized passengers. It is also argued that as per pleading the applicant was traveling with goods but merely traveling with beddings and/or bag cannot be construed as passenger traveling along with goods. On all these grounds, it is argued that applicant and

other 13 persons were traveling in offending vehicle truck (already loaded with iron plates) without any goods and as unauthorized passengers which is sheer breach of the terms and conditions of the policy and hence the Insurance Company cannot be held liable or cannot be saddle with the liability to pay compensation.

18. LA for the Insurance Company has relied on an unreported judgment of Hon. Gujarat High Court given in the case of United India Insurance Company vs. Vasantiben Karshanbhai Makwana (Coram: Hon. Mr. Justice K.S. Jhaveri Saheb) given in First Appeal No.4003 to 4009 of 1999 on dated 3.2.2012. In the above judgment of Hon. High Court of Gujarat, relying on the judgment of Hon. Supreme Court in the case of National Insurance Company v. Cholleti Bharaatamma & Ors, reported in AIR 2008 SC 484, the Insurance Company was exonerated from its liability to pay compensation to the applicants as the deceased in that case was traveling in goods vehicle without any goods. In the present case also, as many as 12 to 14 persons, including injured applicant, were traveling in goods vehicle i.e. offending vehicle truck. The applicant has pleaded that he was traveling with bedding and/or bag but no goods were found and the panchanama of place of accident is silent about the goods alleged to have been carried by the applicant. Even the bedding and/or bag cannot be construed as goods

as argued by the LA for the Insurance Company. Moreover, the offending vehicle truck was already loaded with iron plates and injured applicant and others boarded the loaded truck. Hence, in view of the principles laid down in the above referred authority of Hon. Supreme Court in the case of National Insurance Company v. Cholleti Bharaatamma & Ors, reported in AIR 2008 SC 484, the Insurance Company is required to be exonerated from its liability to pay compensation to the applicant and the authorities relied on by the LA for the applicant cannot be made applicable in this case in view of above decision of Hon. Supreme Court."

7. To find fault with the abovesaid finding, learned advocate Mr. Modi unsuccessfully tried to submit that the claimants were travelling with the goods in the errant vehicle. Rather what is established that the claimants along with other persons were travelling in the goods vehicle to attend the function of baby shower. Learned advocate Mr. Modi has failed to point out that 14 persons travelling in the errant vehicle were along with their goods. On perusal of the evidence all that can be held that the claimants along with 12 persons boarded the errant vehicle from Nari Cross Road in the outskirt of Bhavnagar to travel in a goods vehicle and while they were travelling, on applying sudden truck, the iron plates were slipped and thereby, the claimants were injured. So, it is the truck being the goods vehicle is used for the purpose of transporting goods vehicle and that being the brand, the claimants were gratuitous passengers. I see no error in the findings of the learned Tribunal to exonerate

the insurance company as it is established that the claimants were travelling as gratuitous passengers in the goods vehicle and that breaches the terms and conditions of the policy.

8. Evidence on record indicates that the claimants were travelling as gratuitous passengers along with their goods. In the fact situation, Co-ordinate Bench of this Court in the case of United India Insurance Co. Ltd. v/s. Fatmaben Ismailbhai and Ors. [First Appeal No.1915 of 2006], refereed judgment of Shamanna v. Oriental Insurance Co. Ltd., (2018) 9 SCC 650, Manuara Khatun v. Rajesh Kr. Singh, (2017) 4 SCC 796 and Shivaraj V/s Rajendra and another reported in 2018 ACJ 2755 to pass order of pay and recover. The issue raised in this appeals are governed by said judgments. Out of above judgments, let refer judgment in the case of Shamanna v. Oriental Insurance Co. Ltd., (2018) 9 SCC 650, it is held in paragraphs 12 to 14 as under:

“12. The above reference in Parvathneni case [National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785 : (2009) 3 SCC (Civ) 568 : (2009) 3 SCC (Cri) 943] has been disposed of on 17-9-2013 [National Insurance Co. Ltd. v. Parvathneni, (2018) 9 SCC 657] by the three-Judge Bench keeping the questions of law open to be decided in an appropriate case.

13. Since the reference to the larger Bench in Parvathneni case [National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785 : (2009) 3 SCC (Civ) 568 : (2009) 3 SCC (Cri) 943] has been

disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in Swaran Singh case [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] followed in Laxmi Narain Dhut [National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700 : (2007) 2 SCC (Cri) 142] and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and Laxmi Narain Dhut [National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700 : (2007) 2 SCC (Cri) 142] cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment [Shamanna v. Laxman, 2016 SCC OnLine Kar 6928] of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored.

14. So far as the recovery of the amount from the owner of the vehicle, the

insurance company shall recover as held in the decision in Oriental Insurance Co. Ltd. v. Nanjappan [Oriental Insurance Co. Ltd. v. Nanjappan, (2004) 13 SCC 224 : 2005 SCC (Cri) 148] wherein this Court held that : (SCC p. 226, para 8) "8. ... For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer."

9. With profit I may refer judgment in the case of *Manuara Khatun v. Rajesh Kr. Singh*, (2017) 4 SCC 796, it is held in paragraphs 15 to 16 as under:

"15. This question also fell for consideration recently in National Insurance Co. Ltd. v. Saju P. Paul [National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41 : (2013) 1 SCC (Civ) 968 : (2013) 1 SCC (Cri) 812 : (2013) 1 SCC (L&S) 399] wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the insurance company by reversing the judgment [Saju P. Paul v. National Insurance Co., 2011 SCC OnLine Ker 3791 : 2012 ACJ 1852] of the High Court, it was held on facts that since the

victim was travelling in offending vehicle as “gratuitous passenger” and hence, the insurance company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the insurance company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of “pay and recover”. 16. R.M. Lodha, J. (as his Lordship then was and later became CJI) speaking for the Bench held in paras 20 and 26 as under : (Saju P. Paul case [National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41 : (2013) 1 SCC (Civ) 968 : (2013) 1 SCC (Cri) 812 : (2013) 1 SCC (L&S) 399] , SCC pp. 52 & 55) “20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein). 26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur [National Insurance Co. Ltd. v Baljit Kaur, (2004) 2 SCC 1 : 2004 SCC (Cri) 370] and Challa Upendra Rao [National Insurance Co. Ltd. v. Challa Upendra Rao, (2004) 8 SCC 517 : 2005 SCC (Cri)

357] should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 [National Insurance Co. Ltd. v. Saju P. Paul [National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41, 55 (footnote 14)]] and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in Challa Upendra Rao [National Insurance Co. Ltd. v. Challa Upendra Rao, (2004) 8 SCC 517 : 2005 SCC (Cri) 357] .”

10. However, noticeably, the claimants are third party and were travelling as gratuitous passengers along with their goods in the errant vehicle truck. Goods vehicle was used for the purpose of carrying passengers which would be antithetical to the terms of insurance policy, since the claimants were third party, the claimants cannot suffer on such technicalities to pay compensation whether by owner or insurance company. The contract of policy on record is comprehensive policy and insured the vehicle, risk of the owner of vehicle is covered. Thus it is case to follow law laid down in the case of Shamanna (supra) and Manuara Khatun (supra) to pass order pay and recover.”

9. In the case on hand, it is not in dispute that the deceased was travelling in goods vehicle. The case of the claimants is squarely covered by the ratio of the judgment rendered by the coordinate bench in the aforesaid First Appeal. Therefore, in view of the ratio of the said judgment, I am of the considered view that the impugned judgment and award is required to be modified to the extent that at the first instance, the Insurance Company shall satisfy the award and thereafter, recover the same from the owner & driver of the vehicle.

10. If the awarded amount is not deposited by the Insurance Company, the same shall be deposited within a period of four weeks from today. Upon depositing the said amount, original claimants shall be at liberty to withdraw the entire awarded amount along with interest, after due verification and after deducting Court fee, if any, as per Rules.

11. Any amount of compensation, or any statutory amount, lying deposited with the Registry of this Court shall be transmitted to the learned Tribunal concerned, in accordance with the applicable Rules. Records & Proceedings, if any be sent to the learned Tribunal concerned. No order as to costs.

12. Pending application, if any, stands disposed of, accordingly.

ARUN

(MOOL CHAND TYAGI, J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: ARUN B(HC02368), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 19/11/2025 12:49:52