

Reserved On : -
Pronounced On : 14/10/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 41 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J. L. ODEDRA

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Approved for Reporting	Yes	No

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LADUBEN NANABHAI BARIYA WD/O NANBHAI BARIYA & ORS.

Versus

ARVINDBHAI MATHURBHAI PAGI & ANR.

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Appearance:

MR.HIREN M MODI(3732) for the Appellant(s) No. 1,2,3,4,5

MR. ALKESH N SHAH(3749) for the Defendant(s) No. 2

RULE SERVED for the Defendant(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE J. L. ODEDRA

CAV JUDGMENT

1. The present Appeal arises from the judgment and award dated 16th August, 2014 passed by the learned Motor Accident Claims Tribunal (Aux.), Panchmahal at Godhara in respect of the MACP No.713 of 2008.

2. By way of the impugned judgment and award, the Tribunal was pleased to award a compensation to the tune of Rs.1,72,750/- to the claimants with interest at the rate of 9% per annum from the date of filing of the claim petition

till its actual realization with proportionate costs.

3. At the outset, the accident in question may be examined.

From the records, the date of the accident transpires to be of 02.05.2006. It appears that one Nanabhai was going from Bharatpur to Ahmedabad in his relative's Jeep bearing registration no.GJ-9-H-1283. The said Jeep was being driven by one Bhathi bhai. As per the case of the claimants, when the said Jeep was passing by the Village Daraji na Muwada at Kathlal-Ahmedabad Highway Road, a Truck came from the opposite side in rash and negligent manner and collided with a Jeep. As a result, the Jeep turned turtle. The occupant Nanabhai sustained serious injuries and ultimately succumbed to the said injuries. Hence, the claim petition under Section 163A of the Motor Vehicles Act, 1988 (for short, "**the MV Act**").

4. At the outset, it was submitted by the learned advocate for the appellant, Mr. Hiren Modi, that the present appellants are aggrieved only qua two aspects of the impugned judgment and award. First aspect is that, that the Tribunal has erred in deducting 50% amount of the compensation, on the assumption that the Jeep's driver was negligent to

the extent of 50%. It was submitted that in the present case, it has not been proved that the deceased was an unauthorized passenger or was traveling in a capacity of fare paying passenger in a private vehicle. He has thus submitted that the Insurance Company, before the Tribunal, has not been able to demonstrate that a private vehicle was being used for commercial purposes. He further submitted that the Tribunal, after attributing negligence in causing accident to the extent of 50% to the drivers of each of the vehicles, has erred in holding that as the driver, the Insurance Company and the owner of the offending vehicle (truck) had not been impleaded, therefore, that part of the compensation, namely, 50% of the compensation is liable to be deducted. It was submitted that insofar as the appellant – third party was concerned, he was passenger in the vehicle and in respect of such passenger, the negligence would be, what is referred to as, “Composite Negligence”, and not in the nature of “Contributory Negligence”, and therefore, no amount should have been deducted from the compensation, as has been done by the Tribunal. It was submitted that Court may please interfere with the impugned judgment and

award to the extent of the deduction of 50% amount for the reason of non-impleadment of one part of the tort-feasors namely, the driver, owner and the Insurance Company of the Truck involved in the accident. The learned advocate has relied upon the judgment of the Hon'ble Supreme Court in the case of **Khenyei vs New India Assurnace Co.Ltd.& Ors** reported at (2015) 9 SCC 273 to support his contention and for explaining the concept of the composite negligence and contributory negligence and has ultimately urged this Court that in the present case, the negligence would be of a "Composite Negligence", insofar as the passenger of the Jeep is concerned. The learned advocate submitted that as such, a victim is entitled to sue any of the tort-feasors and on this count, no adverse consequence can be attributed to the appellant.

5. He next submitted that recently, i.e. from 22.05.2018, Section 163A of the MV Act has been replaced and provisions have been made in the Act for providing compensation to the tune of Rs.5,00,000/- insofar as the claim of death under Section 164(1) of the Amended MV Act are concerned. It was submitted that the said provision

is a provision of “no fault” liability as Section 164(2) provides that the claimant shall not be required to plead or establish that death, in respect of which claim is made, was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned, or of any other person. It was urged that numerous judgments of this Court and that of the Hon’ble Supreme Court have held that the said provision would be retrospective in operation and, therefore, in the present case also, aggregate compensation to the tune of Rs.5,00,000/- may kindly be awarded. It was submitted that post the amendment, it would be Section 164, which would govern the situations akin to those arising in the present matter and that the said provision is in a beneficial piece of legislation and that it is procedural in nature. For buttressing the said contentions, the learned advocate has relied upon the judgment of the Hon’ble Supreme Court in the case of **SLP (Civil) No.6260 of 2019** being the decision in the case of **New India Assurance Company Limited Vs. Urmila Halder** dated **08.02.2024**. That apart, two decisions of this Court being the judgments in the case of **First Appeal No.250 of 2022** dated **16.04.2024** and that in **First**

Appeal No.3582 of 2013 dated 22.09.2025, have been relied by the learned advocate for the appellants, to buttress the aforesaid arguments.

6. Learned advocate for the respondent – Insurance Company has argued that in the policy, the premium of the passenger has not been paid, and therefore, the Insurance Company should have been exonerated. In this respect, it was contended that the Insurance Company had examined his officer, who has deposed that the premium of the driver has not been paid. She has, therefore, submitted that insofar as the deceased was concerned, the policy does not cover the deceased, who would not construe as a third party. As regards the other issues raised hereinabove by the learned advocate for the appellant, the learned advocate for the respondent has merely raised formal objections, i.e. she has not seriously pressed into service any contentions against the same.

7. None has appeared for other respondents.

8. Having heard the learned advocates of the respective sides, this Court proceeds to decide the present Appeal in terms

appearing hereinafter.

9. The following points of determination arise before this Court while deciding the present Appeal:

1. Whether the Tribunal has erred in deducting 50% compensation computed in the impugned judgment and award on the count that the driver, owner and the Insurance Company of the Truck, involved in the accident, not having been impleaded? And;
2. Whether the amount of Rs.5,00,000/- as indicated under the Amended Section 164 of the MV Act is liable to be awarded in the facts and circumstances of the present case? And;
3. Whether the Insurance Company was liable to be discharged, despite there being no appeal preferred by the Insurance Company, more particularly, for the reason that the premium in respect of the driver was allegedly not paid in the insurance policy at Exhibit-33?

10. At the outset, it may be noted that the manner in which the accident had happened, was a result of a Truck smashing into a Jeep. At that time, the deceased was a

passenger in the Jeep. The Tribunal has attributed 50% negligence to each the drivers of each of the vehicles. But then, insofar as the passenger (victim of the accident) was concerned, the negligence would be a composite negligence and not contributory negligence, as has been explained by the Hon'ble Supreme Court in the case of **Khenyei (*supra*)**. Further, in the said judgment, the Hon'ble Supreme Court has been pleased to observe that insofar as the cases of composite negligence are concerned, the victim (and consequently, the heirs of the victim, where the victim does not survive the accident) of such accident would be entitled to sue any of the joint tort-feasors and for suing to such limited extent, he cannot be visited with any consequences, much less the deduction of an portion equivalent to the negligence attributed to the driver of the vehicle (driver, owner and the Insurance Company) not so impleaded. It was further held by the Hon'ble Supreme Court that apportionment of compensation between joint tort-feasors for making payment to claimants is impermissible, as the claimants have the right to recover the entire amount from the easiest targets/solvent dependents. Of course, where all of the offending vehicles have been impleaded,

apportionment is only for the purpose of enabling a joint tort-feasor to recover from other joint tort-feasors, such amount of compensation that the former has paid to the victim, which otherwise was to be satisfied by such other joint tort-feasors. The victim, it is specified, has nothing to do with such apportionment. On this count, the said finding in the impugned judgment and award namely, the deduction of compensation to the tune of 50% is liable to be interfered with. Accordingly, the said finding is done away. Thus, it is held that the heirs of the deceased Nanabhai are entitled to complete compensation that may be computed in the facts and circumstances of the present case; and further that no amount of deduction of compensation, from that payable to the victim, is permissible, merely for the fact that the owner, driver or the Insurance Company of the offending truck were not impleaded before the Tribunal.

11. Insofar as the retrospective applicability of Section 164 of the Amended MV Act post publication of amendment in the Official Gazette dated 22.05.2018 is concerned, the Hon'ble Supreme Court in the case of **Urmila Halder (*supra*)** and

this Court in **First Appeal No.250 of 2022** and **First Appeal No.358 of 2013** unequivocally held that the said Section 164 of the MV Act is beneficial legislation and that it would necessarily entail the benefit to be passed on to the claimant retrospectively, in absence of any specific bar to the same. Accordingly, this Court, in the aforesaid First Appeals, was pleased to hold, in accordance with the judgment of **Urmila Halder (supra)**, that the said Section applies retrospectively and thereafter proceeded to award aggregate compensation to the tune of Rs.5,00,000/-. Hence, in deference to the aforesaid judgment, i.e., **Urmila Halder (supra)**, this Court also is inclined to hold that the appellant is entitled to an aggregate compensation to the tune of Rs.5,00,000/- in terms of Section 164 of the MV Act. This obviates the need to compute compensation afresh, or to scrutinise the manner in which the compensation was computed by the Tribunal.

12. Finally, the issue as raised by the learned advocate for the respondent - Insurance Company. It has been argued that without an appeal, the Insurance Company is entitled to raise a plea, as regards its exoneration, on the ground that

the driver of the Jeep concerned did not pay a premium of the driver of the vehicle. This Court has perused the policy at Exhibit-33 in the present case. On perusal of the same, it is apparent that a sum of Rs.292.5/- has been paid towards personal accident cover to passengers. Thus, the said contention that the passenger was not covered, only on account of the premium of the driver not having been paid is negated. It may also be noted that, in any case, no appeal has been preferred by the Insurance Company agitating the ground on which it is required to be exonerated, and therefore, insofar as the Insurance Company is concerned, the finding as regards its liability has attained finality. Hence, on this count too, the said contention is also liable to be negated.

13. All in all, this Court holds that the impugned judgment and award passed by the Tribunal is liable to be modified. The aggregate compensation liable to be awarded for the heirs of the deceased Nanabhai Bhurabhai Bariya would be to the tune of Rs.5,00,000/- as indicated hereinabove. As the Tribunal has already awarded a sum of Rs.1,72,750/-, therefore, **the enhancement** would be to the tune of

Rs.3,27,250/- (i.e. Rs.5,00,000/- less Rs.1,72,750/-). The said enhancement of compensation would carry interest at the rate of 9% per annum from the date of filing of the claim petition till its actual realization.

14. The Insurance Company is directed to deposit the aforesaid enhanced amount to the Tribunal within a period of eight weeks from the date of availability of the signed copy of this Judgment. On deposit of the aforesaid amount by the Insurance Company to the Tribunal, the amount shall forthwith be disbursed to the appellant without need of creating any further FDRs. Applicable court fees shall be paid by the appellant to the extent that it has not been paid so far.

15. The First Appeal stands disposed of, as allowed to the aforesaid extent. Consequently, civil application if any preferred in the Appeal, shall stand disposed of.

16. The R&P shall forthwith be remitted back to the concerned Tribunal.

(J. L. ODEDRA, J)

JIGAR J RABARI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: JIGAR RABARI(HCD0067), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 14/10/2025 18:48:47