

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 2747 of 2016****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

Approved for Reporting	Yes	No

STATE OF GUJARAT

Versus

KAMLABEN ASHABHAI PARMAR & ORS.

Appearance:

MR ABHISHEK D JAIN for the Appellant(s) No. 1

MR H M SHAH(3997) for the Defendant(s) No. 1,2,3

MR KUNAL S SHAH(5282) for the Defendant(s) No. 1,2,3

MR PRASHANT MANKAD(2189) for the Defendant(s) No. 4,5

RULE SERVED for the Defendant(s) No. 6

CORAM:HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**Date : 29/06/2026****JUDGMENT**

1. The captioned appeal has been preferred against the impugned judgment and award dated 26.03.2013 passed by the learned Motor Accident Claims Tribunal (Aux.) & Additional District Judge, at Anand, in M.A.C.P. No. 1890 of 2006 (Old M.A.C.P. No.844 of 1995), whereby the learned Tribunal had partly allowed the Claim Petition and awarded a sum of Rs.7,56,100/- along with interest at the rate of 9% per annum, from the date of filing of the claim petition till its realization and held the original opponent No.1/respondent No.4 herein – driver, original opponent No.3/appellant herein – State/Mamlatdar & original opponent No.4/respondent No.6 herein – Election Commission, jointly and severally liable to pay the awarded amount of compensation to the original claimants, while the original opponent No.2/respondent No.5 herein – Owner of the vehicle was exonerated from his liability to satisfy the award.

2. The succinct facts, which led to the filing of the captioned appeal, as narrated in the Claim Petition are summarized as under:-

- i. On 25.11.1994 at about 07:15 p.m., Deputy Mamlatdar - Mr. Ashabhai (hereinafter referred to as the "**deceased**") was returning from Changda to Khambhat after conducting his election duty, by travelling in a jeep bearing registration No.GJ-7A-3337. The said jeep was being driven by original opponent No.1/respondent No.4 herein at very excessive speed and in a rash and negligent manner, resultantly, he lost control over the steering over his jeep and the said jeep turned turtle, thereby causing the vehicular accident. The deceased sustained grievous injuries in the said vehicular accident and he succumbed to the said injuries during treatment.
- ii. It is also the case of the original claimants/respondent Nos.1 to 3 herein before the learned Tribunal that at the time of the vehicular accident, the deceased was aged about 51 years and was working as a Deputy Mamlatdar, thereby earning salary of Rs.5,538/- per month. Therefore, Claim Petition was preferred before the learned Tribunal seeking compensation to the tune of Rs.12,00,000/-.

- iii. Having been served with the notices/summons of the Claim Petition, original opponent No.1/respondent No.4 herein – driver of the jeep involved in the vehicular accident, original opponent No.2/respondent No.5 herein – owner of the jeep involved in the vehicular accident & original opponent No.3/appellant – State/Mamlatdar had filed their respective Written Statements, thereby denying the averments made in the Claim Petition, and in brief, prayed for dismissal of the Claim Petition.
- iv. Having considered the pleadings, evidence on record and the submissions advanced by the learned counsels for the respective parties, learned Tribunal had partly allowed the Claim Petition and awarded a sum of Rs.7,56,100/- along with interest at the rate of 9% per annum, from the date of filing of the claim petition till its realization.
- v. Being aggrieved and dissatisfied with the impugned judgment and award, the original opponent No.3/appellant - State/Mamlatdar has filed the captioned appeal, thereby challenging the impugned judgment and award on the ground of liability attributed to the it by the learned Tribunal.

3. Heard learned counsels for the parties.

4. Mr. Abhishek D Jain, learned AGP appearing on behalf of the appellant – State/Mamlatdar vehemently submitted that at the time of the vehicular accident, the State/Mamlatdar was not the owner of the

vehicle involved in the accident, however, the learned Tribunal has fastened the liability upon the appellant – State/District Mamlatdar to satisfy the award. He submitted that at the time of the vehicular accident, original opponent No.2/respondent No.5 herein – Mr. Dahyabhai Patel was the owner of the vehicle in question. He further submitted that the vehicle stands in the name of original opponent No.2/respondent No.5 herein, as such, argued that no liability can be fastened upon the appellant – State/Mamlatdar to satisfy the award. Therefore, he prayed that the appellant – State/Mamlatdar be exonerated from its liability to satisfy the award and prayed that the impugned judgment and award be modified accordingly.

5. Per contra, Mr. H M Shah, learned counsel appearing on behalf of the original claimants/respondent Nos.1 to 3 herein vehemently submitted that the vehicle in question was requisitioned by the appellant – State/Mamlatdar for the purpose of election duty. He further submitted that at the time of the vehicular accident, the deceased – Deputy Mamlatdar was travelling in the said vehicle for official purpose from Changda to Khambhat. He contended that since the vehicle in question, i.e., jeep bearing registration No.GJ-7A-3337 was requisitioned by the State for a period commencing from 24.11.1993 to 30.11.1994 for the purpose of election duty, the said vehicle at the relevant point of time was under the total control of the appellant -State/Mamlatdar. Therefore, he submitted that the learned Tribunal has rightly fastened the liability upon the original opponent No.3/appellant herein – State/Mamlatdar, original opponent No.1/respondent No.4 herein – driver, & original opponent No.4/respondent No.6 herein – Election Commission to jointly and severally liable to pay the awarded amount of compensation to the original claimants. As such, he contended that there is no infirmity in

the impugned judgment and award. In support of his contentions, learned counsel for the original claimants has placed reliance upon the judgment rendered by the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. v. Deepa Devi*** reported in ***2007 (0) GLHEL-SC-40209*** and ***District Magistrate and District Election Officer and Collector, Gwalior, M.P. v. National Insurance Company Limited*** reported in ***Neutral Citation: 2026 INSC 279***. Having placed reliance upon the aforesaid judgments, learned counsel appearing on behalf of the original claimants contended that the captioned appeal preferred by the appellant -State is liable to be dismissed.

6. Having considered the submissions of the learned counsels for the parties and having gone through the material available on record, it is to be noted that the appellant - State has challenged the impugned judgment and award on the ground of liability attributed to it by the learned Tribunal.

7. It is not in dispute that at the time of the vehicular accident, the vehicle in question was in the possession and control of the appellant – State and the same was requisitioned for the purpose of election duty. The Hon'ble Apex Court in ***Deepa Devi*** (supra), on facts and circumstances similar to the present case, has observed as under : -

"16. In The National Insurance Co. Ltd. v. Durdadahya Kumar Samal and Others [1988 (2) T.A.C. 25] where the vehicle was requisitioned by the Collector for election duty, the High Court of Orissa held:

"In a vehicle requisitioned, the driver remains under the control of the Collector and by such driving the vehicle he can be accepted to have been employed by the Collector. Thus, the Collector would be vicariously liable for the act of the driver in the present case."

See also New India Assurance Co. Ltd. v. S. Ramulamma and others 1989 ACJ 596.

17. *In Chief Officer, Bhavnagar Municipality and another v. Bachubhai Arjanbhai and others [AIR 1996 Gujarat 51], the High Court of Gujarat held:*

"7. The facts on record clearly indicate that the vehicle in question which belonged to the State of Gujarat was entrusted to the Municipality for distribution of water to the citizens. It was implicit in allowing the vehicle being used for such purpose that the State of Gujarat which owned the vehicle also caused or allowed any driver of the Municipality who was engaged in the work of distribution of water to the citizens, to use motor vehicle for the purpose. Therefore, when the vehicle was driven by the driver of the Municipality and the accident resulted due to his negligence, the insurer of the vehicle became liable to pay the compensation under the provisions of the Act. It is, therefore, held that the State, as the owner of the vehicle and the respondent Insurance Company as its insurer were also liable to pay the compensation awarded by the Tribunal"

18. *We, therefore, are of the opinion that the State shall be liable to pay the amount of compensation to the claimants and not the registered owner of the vehicle and*

consequently the appellant herein."

8. Further, recently the Hon'ble Supreme Court in ***District Magistrate and District Election Officer and Collector, Gwalior, M.P.*** (supra), having considered the similar facts and circumstances wherein a vehicle was requisitioned by the government for gram panchayat elections, held that public authority requisitions changes the nature of possession and control entirely and observed in Para 9 as under :-

"9. When a public authority requisitions a privately owned vehicle for public purposes, the nature of possession and control changes entirely. The owner is divested of custody and decision- making power, and the vehicle is placed at the disposal of the State for governmental functions. During this period, the owner neither directs its use nor derives any benefit from it. It only stands to reason that in such circumstances, if an untoward incident occurs, responsibility would properly to rest with the requisitioning authority and not with the insurer engaged by the owner for ordinary, private or commercial use, as the case may be. Once requisitioned, the vehicle is operated under official directions. The authority determines the manner of deployment, the purpose for which it is used, and the conditions under which it is operated. The owner has no say in these matters. Where control is assumed by the State, the legal consequences arising from that control cannot, in fairness, be shifted back to a private insurer whose contractual engagement was premised on a wholly different footing. It is equally important to recognize that a requisition is not a voluntary arrangement, instead it is a command issued under statutory authority, as stated by the judgments referred to supra. The owner does not consent to part with

possession; he is compelled to do so. The insurance policy obtained by him envisions and accounts for the vehicle's regular and lawful use in the ordinary course. Compelled deployment for public functions cannot reasonably be characterised as "regular use" within the 'usual' contemplation. To fasten liability upon the insurer in these circumstances would be to extend the contract beyond the risk that was agreed to be covered. Requiring the insurer to answer for consequences arising from a use neither authorised nor controlled by the insured would be unfair. The insurer assesses and underwrites risk based on the insured's ordinary operations. When the State steps in, assumes control, and deploys the vehicle for its own purposes, it assumes with that control the corresponding responsibility. Further, when statutory power is exercised to requisition private property in the public interest, that power carries with it an obligation to answer for the consequences flowing from such compelled use. To hold otherwise would impose upon private parties and their insurers the burden of risks generated exclusively by governmental action."

9. Now adverting to the facts of the present case, it is not in dispute that at the time of the vehicular accident, the vehicle in question was requisitioned by the appellant – State for the purpose of election duty and the same was in the active control and supervision of the appellant- State. Hence, considering the ratio rendered by the Hon'ble Apex Court in the case of **Deepa Devi** (supra) & **District Magistrate and District Election Officer and Collector, Gwalior, M.P.** (supra), I am of the considered view that the learned Tribunal has rightly fastened the liability upon the original opponent No.3/appellant herein – State/Mamlatdar, original opponent No.1/respondent No.4 herein – driver, & original opponent No.4/respondent No.6 herein – Election Commission to jointly and severally liable to pay the awarded

amount of compensation to the original claimants and has rightly exonerated the original opponent No.2/respondent No.5 herein from his liability to satisfy the award. Thus, I do not find any reason to interfere with the learned Tribunal's findings.

10. Thus, after a thorough examination of the case records, this court finds no merit in the submissions advanced by the learned AGP for the appellant - State. No error or infirmity is evident in the impugned judgment and award passed by the Tribunal. As such, the captioned appeal preferred by the appellant – State stands dismissed.

11. At this stage it has been pointed out that the appellant has deposited some amount with the learned Tribunal in the execution proceedings. That amount shall be disbursed to the original claimants forthwith. Further, any party held liable by the learned Tribunal shall deposit their respective share (if not already deposited) with the learned Tribunal forthwith and after due verification, the learned Tribunal shall disburse the same to the original claimants, after deducting any deficit court-fee, if any.

12. Statutory amount, if any, lying deposited with the Registry of this Court shall be transmitted to the learned Tribunal concerned forthwith. Records & Proceedings, if any be sent to the learned Tribunal concerned. No order as to costs.

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

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(MOOL CHAND TYAGI, J)