

(1980) 05 GUJ CK 0001
In the Gujarat High Court
Case No : First Appeal No. 629 of 1976

Harshvardhatiya Rudraditya and Others	APPELLANT
Vs	
Jyotindra Chimanlal Parikh and Another	RESPONDENT

Date of Decision : 02-05-1980

Acts Referred:

Constitution of India, 1950 — Article 14
Motor Vehicles Act, 1988 — Section 95(2)

Citation : (1981) ACJ 277 : (1981) 22 GLR 555

Hon'ble Judges : M.P. Thakkar, J;D.C. Gheewala, J

Bench : Division Bench

Judgement

Thakkar, J.—Who was driving the car when the tragic accident occurred, the owner-driver from whom compensation is claimed, or his friend and co-traveller, Ranvir, who died on the spot and whose dependants claim compensation ? The owner-driver admits that he was no doubt at the wheel on the ill-fated day at the commencement of the trip but says that he got down from the car and made over the steering wheel to the deceased just before the accident occurred. The Motor Accident Claims Tribunal has believed this theory and denied compensation. Hence this appeal by the dependants of the deceased which arises in the circumstances outlined hereafter.

2. An application for compensation, claiming a sum of Rs. 75,000, was made by the parents, a 24 year widow, and a posthumous child of one Rudratiya alias Ranvir, aged about 24, who died in the course of a motor car accident which occurred on the night of November 22, 1974, at about 10-30 or 10-45 p.m. when he was travelling in a Ford Cotina car (No. DLX 942) belonging to respondent No. 1 - Jyotindra Chimanlal Parikh. They were going towards Viramgam and the accident occurred on account of the fact that the rear portion of the car dashed against a neem tree and the car turned turtle. The defence of the car owner, respondent No. 1, was that at the time of the accident the car was being driven by the deceased himself and that as the accident was occasioned on account of his negligence, the widow and the child were not entitled to any compensation.

The insurance company, respondent No. 2 herein, the Oriental Fire and General Insurance Co. Ltd., filed a joint written statement and supported the stand of respondent No. 1.

3. The learned trial judge upon an appreciation of the evidence came to the conclusion that the car which was involved in the accident was being driven by the deceased, Ranvir himself, and that the accident occurred on account of his negligence. In this view of the matter, the learned judge rejected the claim petition by his judgment and order dated March 29, 1976. The widow and the posthumous child feeling aggrieved by the order of the learned trial judge rejecting their claim petition, have approached this court by way of the present appeal. (It may be stated that, initially, the widow was impleaded as respondent No. 3, but, at the time of hearing of the appeal, she prayed for her name being transposed as a co-appellant. The request was granted and that is how the widow and the minor child of the deceased as also the parents of the deceased have been impleaded as appellants herein).

4. The central issue in this appeal is as to who was driving the vehicle at the relevant time. If the finding recorded by the trial court on this point is unexceptionable, this appeal cannot succeed. If, on the other hand, the appellants are able to establish that the vehicle was not being driven by the deceased, Ranvir, but was being driven by the owner of the car, respondent No. 1 Jyotindra Chimanlal Parikh, the claimants would be entitled to succeed in the claim petition. If they are able to successfully establish this point, the next question would be as regards the quantum of damages and the extent of liability of the insurance company. We, must, therefore, address ourselves at once to the crucial question as to who was driving the vehicle on the fateful night.

5. The following facts emerge from the evidence :

(1) That the car involved in the accident was a Ford Cotina Car, an imported car, valued at about Rs. 25,000.

(2) That car belonged to respondent No. 1, Jyotindra Chimanlal Parikh, who used to drive the car himself.

(3) On the date of the incident, respondent No. 1 was driving the car from Viramgam towards Ahmedabad in the company of five of his friends, one of whom was the deceased, Ranvir, with whom he had formed a new friendship about a month back through his friend, Bipinkumar Dhanjibhai Parikh.

(4) When the car was proceeding towards Ahmedabad, respondent No. 1, Jyotindra, was driving the car and his friend, Kirtikumar, was sitting near him in the front seat. Admittedly, the other four friends of respondent No. 1, including the deceased, Ranvir, were on the rear seat.

(5) Though they were heading towards Ahmedabad, after they had travelled a distance of about 15 kms., Jyotindra, who was at the driving wheel, changed his mind and decided to return to Viramgam by reason of the fact that a snake

crossed the path and this was considered as a bad omen.

(6) The car took a full and was rearing back in the direction of Viramgam.

(7) Between 10-30 p.m. and 10-45 p.m. when they were at a distance of about 2 kms. from Viramgam, the rear half of the car dashed against a neem tree in the dark and the car turned turtle.

(8) Deceased, Ranvir, sustained very serious injuries and died on the spot. His body was found near the car which had overturned.

(9) The rest of the inmates of the car, barring Rashmikumar Ambalal, who has not been examined as a witness, sustained only minor injuries.

(10) Neither Jyotindra Chimanlal Parikh, respondent No. 1 nor any other inmate of the car, who escaped with minor injuries, contacted Govindbhai G. Parmar, father of the deceased, to apprise him as regards the fatal accident which resulted on the death of his son, Ranvir. The information in this behalf was conveyed on the next day at 8-30 a.m. or 9-00 a.m. by a constable from Vasna Police Chowki, since Kirtikumar Baldevdas had lodged a report regarding the accident about 2-30 a.m. in the night at the Viramgam Town Police Station.

(11) A panchnama made on the next day at the scene of accident Ex. 82, revealed that the right hand rear portion of the vehicle had dashed against a neem tree on the right hand side. There were signs of impact on the neem tree on the right hand side. The steel sheet of the rear part of the car was torn, the rear was torn, there were stains of blood on the rear seat, but there were no marks of blood stains on the front seat. The dead body of Ranvir was lying at a distance of about 2 ft. and his head was amidst a pool of blood.

(12) The evidence of Dr. P. B. Patel (P.W. 5), and the post mortem notes made by him, Ex. 75, show that there was a crushed lacerated wound and partly incised wound on the scalp (right side) and the face (right side) of the size of approximately 8" x 1/2" and it was deep up to the fosse of the scalp and bone deep on the face region. The wound was oblique extending from posterior parietal region of the scalp, near occiput, and then extending on the right side frontal region lateral area and then cutting (incised wound) the forehead region, eye brows and eye region, and then extending downwards, on the middle area of the face lateral to the nose cutting the maxillary bone, eye ball, etc. Compound fracture of the right side parietal bone, frontal bone and the maxillary bones were detected. There were several other contusions and five abrasions.

6. By the very nature of things, the oral evidence bearing on the question as regards the accident and in regard to the question as to who was driving the vehicle can be expected only from the inmates of the car. Three of the inmates of the car, namely, Rashmikumar, Bipinkumar and Kirtikumar Kanubhai, have not been examined as witnesses. Barring Jyotindra, respondent No. 1, who was driving the vehicle before it was turned back in the direction of Viramgam, and his friend, Kirtikumar Baldevdas, no other witness has been examined. The

evidence of Jyotindra Baldevdas, no other witness has been examined. The evidence of Jyotindra as also that of Kirtikumar Baldevdas is to the effect that, though the vehicle was initially being driven by Jyotindra, towards Ahmedabad, after they left Viramgam in order to go to Ahmedabad, when they turned back, the deceased, Ranvir, had taken over the driving wheel. None of them is able to say whether Ranvir took over the driving wheel just before or just after full turn was taken on the road in order to go back in the direction of Viramgam. Both of them merely say that Ranvir expressed a desire to drive the vehicle on their return trip and he took over the driving wheel. This evidence has been accepted by the learned trial judge merely on the ground that there is no other evidence to the contrary. Now, it must be realised that respondent No. 1, Jyotindra, owner of the car, was interested in saying that the deceased, Ranvir, was driving the car at the point of time when the accident took place. He was interested in saying so because the driver of the car, whoever he was, facing the risk of litigation including a criminal case. In fact, a criminal case was instituted against respondent No. 1, Jyotindra Chimanlal Parikh, on the premise that he was driving the car and the accident occurred on account of his rash and negligent driving. It appears that, ultimately, he was acquitted. What is of importance is to realise that the police initiated the prosecution on the premise that Jyotindra was driving the car and not the deceased, Ranvir. The point that requires to be stressed is that respondent No. 1, Jyotindra, was vitally interested in saying that he was not driving the car and that someone else was at the steering wheel. His evidence, on this point, therefore, requires to be closely scrutinized. It cannot be taken at its face value. Now, in order to take a full turn to go in reverse direction, one has to slow down the vehicle and manoeuvre the vehicle so that it can take a full turn and then proceed in a reverse direction. In fact it would have become necessary to stop the vehicle and several other manoeuvres would also have to be necessarily made.

(1) Jyotindra would have to climb down from the seat.

(2) Ranvir who was in the rear seat would have to climb down.

(3) Jyotindra would have to go to the rear seat.

(4) Ranvir would have to go to the front seat and take over the steering wheel.

7. All this would have taken some time. Jyotindra could not have, therefore, forgotten as to exactly when the steering wheel was made over to Ranvir. It is, therefore, surprising that his evidence discloses that he is unable to say whether all these operations took place "before" a full turn was made and the car was taken in the reverse direction or "thereafter". If it was before the turn, he would have climbed down and would have been replaced by Ranvir before the car was taken in full turn. He could not have, therefore, failed to remember as to at what point of time the steering wheel was made over to Ranvir. He could not fail to remember whether he himself manoeuvred the car to take a full or somebody else did so. Thus his reluctance to speak on this point created a suspicion about

his version. Again, the evidence of Jyotindra is to the effect that since Ranvir expressed a desire to drive the car, he inquired from him as to whether he had a driving licence. It is stated that Ranvir replied in the affirmative and then Jyotindra handed over the driving wheel to Ranvir. Unless one is obliged to accept this evidence at its face value, it is required to be tested on the touch-stone of probabilities. It is an admitted position and it is the say of both the witnesses, namely, Jyotindra and Kirtikumar, that they were proceedings to Ahmedabad initially, but they changed their mind because a snake crossed the road which they considered to be a bad omen. Both the witnesses are ad idem on this point. Is it conceivable that Jyotindra would have handed over the driving wheel to Ranvir merely because the latter expressed his desire to drive the car at about 10.30 in the night in the wake of this ill-omen ? Would Jyotindra have handed over the driving wheel to Ranvir, even otherwise in disregard of the safety of his imported car as also the safety of himself and other inmates of the car, when he did not know whether Ranvir knew how to drive a car ? That Jyotindra did not know is clear from the evidence that he made an enquiry from Ranvir whether he had a driving licence. What is more, the conversation which is said to have taken place, appears to us to be extremely artificial. Would he think of a driving licence at such a time ? Would his anxiety be on the score of a police case against Ranvir for driving a vehicle without licence or in regard to the safety of his car and himself ? The car was a Ford Cotina Car, an imported car valued at about Rs. 25,000. Would Jyotindra hand over the driving wheel to Ranvir when he did not know whether Ranvir knew how to drive a car ? He would not have done so even if there was no ill-omen. After the snake crossed his path and he decided to return he was much less likely to do so. Besides normally one is not expected to be over keen to hand over the driving wheel of a vehicle to another person at night time, particularly when such a person has no past experience of driving the particular vehicle. One can understand an owner of a car agreeing to hand over the driving wheel of his car to a friend in day time. He would, however, be extremely reluctant to do so at night time when several vehicles would be coming from opposite direction with dazzling head lights. One reads of accidents on the road almost every day. Would it be a natural conduct on the part of Jyotindra to make over the driving wheel at about 10-30 p.m. particularly in the wake of crossing of the snake which was considered to be an ill-omen ? And pray, what was the extent of their friendship ? Jyotindra says that the friendship was formed about a month back. He does not even say that the friendship was formed about a month back. He does not even say that it was an intimate friendship. Be it realised that Jyotindra and his other friends were the residents of Viramagam, whereas Ranvir was residing at Ahmedabad. By the very nature of things, therefore, they would not have been meeting very often. Be that as it may, even Jyotindra himself does not say that Ranvir was his intimate friend. In fact, his friendship developed through Bipin. The story narrated by Jyotindra and Kirtikumar, therefore, does not appear to accord with probabilities. But the matter does not rest there. The evidence clearly shows that the accident occurred on account of a dashing of the right hand side rear part of the car with

a neem tree. Evidence also shows that various injuries were sustained by Ranvir on the right hand side of his head. It is also an admitted position that the impact took place with the neem tree on the right hand side as one proceeds from Ahmedabad to Viramgam. The impact and the injuries were such that it would lead to the inference that the right hand side of the head of Ranvir had made an impact with the tree on the right hand side. There were incised wounds. One of the injuries was on the face (right side) of the size of 8" x 1/2" fosse deep. Such an injury could have been caused by the torn sheet of the body of the car (the sheet on the right hand side was torn). The injury was on the head. The injury was so serious that the brain tissues had come out from the skull. This circumstances also indicates that there was a very serious impact on the right hand side of the head of Ranvir. There were signs of impact on the right hand side of the tree on the road. On probabilities, therefore, there is no escape from the conclusion that the right hand side of the head of Ranvir had dashed against the tree with great force. The circumstance that blood stains were also shows that Ranvir was sitting on the rear seat and not on the front seat at the point of time of the accident. The fact that no blood stains were found on the front seat would also strengthen this inference. That Ranvir was sitting on the rear side initially is admitted by both Jyotindra as well as Kirtikumar. The fact that only the rear part of the car was damaged (it was damaged to such an extent that the rear sheet of the car was torn) and there were serious injuries on the right hand side of the head of Ranvir go to show that Ranvir must have been sitting on the extreme right on the rear seat when the rear part of the car dahsed against the tree on the right hand side of the road. On no other theory the salient features adumbrated hereinabove can be explained. That the rear part of the car on the right hand side was damaged, that serious injuries were caused on the right hand side of the head of Ranvir, that blood was found on the rear seat, that no blood was found on the front seat, are all circumstances which cannot be explained by any other theory. If Ranvir was at the driving wheel, having regard to the probabilities he would not have sustained these injuries. The person on the driving wheel would sustain serious injuries on account of dashing against the steering wheel if there is a head-on collision. But the front part of the vehicle has not been damaged at all. It is not capable of being disputed and it has not been disputed that the impact took place with the rear part of vehicle. If, therefore, Ranvir was driving the vehicle and there was no head-on collision, he could not have sustained the serious injuries he did. Now, on the other hand, as the impact admittedly took place on the rear part of the right hand side of the car, the person who was sitting on the rear seat on the right hand side, must have sustained serious injuries. The rear part of the car had dashed against the neem tree. One who was, therefore, sitting on the extreme right on the rear seat must have sustained serious injuries. And the only person who had sustained such injuries was Ranvir. There is, therefore, no escape from the conclusion that Ranvir was sitting on the rear seat, on the right hand side of the car, when the accident in question occurred. If in this context we now glance back at the evidence, the conclusion will be reinforced. Admittedly, Ranvir was sitting on the

rear seat when the party left Viramgam in order to go to Ahmedabad. The story regarding switching over of the driver is not at all convincing as discussed earlier. The fact cannot be over emphasised that neither Jyotindra not Kirtikumar is able to say exactly when the switching over took place. As discussed earlier, several operations were involved in the process of switching over. None of them is able to recall at what stage exactly the switching over took place. The suspicion arising in the context of this aspect of the evidence lends further strength to the inference that the story regarding switching over has been invented. At the cost of repetition, it may be stated that Jyotindra was very much interested in inventing this story to save his skin. It is no doubt true that witness, Kirtikumar, has supported Jyotindra on this point but, admittedly, they are close friends. Both of them belong to Viramgam and both of them belong to the same community (Kadua Patidars). There is also another circumstances which points in the same direction. Jyotindra himself has sustained injuries on his knee and nose. These injuries were not very serious injuries. These injuries are consistent with the theory that he was sitting at the driving wheel. Under the circumstances, we are of the opinion that the evidence of Jyotindra and Kirtikumar does not accord with the probabilities.

8. It has been argued that there is no other direct evidence to show as to who was driving the vehicle and there is no reason to disbelieve the evidence of Jyotindra with regard to the switching over that took place on the driving seat. Now the oral evidence cannot be accepted merely at its face value. It has to be tested on probabilities. Since the circumstantial evidence outlined earlier goes to show that it was the person who was sitting on the rear seat who sustained the injuries and not the driver of the vehicle. We cannot accept the evidence of Jyotindra and his friend, Kirtikumar, both of whom are interested witnesses. The circumstantial evidence is complete and convincing. There is no missing link in the chain. Even if it was a criminal case in which a finding was required to be recorded only provided the prosecution established its case beyond reasonable, doubt, a finding could have been recorded that Jyotindra must have been driving the vehicle. In a civil case the burden is much lighter. On preponderance of probabilities the court has to record the finding as to who was driving the vehicle and who was guilty of rash and negligent driving which occasioned the accident. We, therefore, fell no hesitation in reversing the finding recorded by the learned Tribunal and in holding that Jyotindra was driving the vehicle at the material time and not the deceased, Ranvir. It may be stated that having regard to the circumstances in which the accident occurred it has not been disputed that the doctrine of *res ipsa loquitur* is attracted and whoever was driving the vehicle must be held guilty of rash and negligent driving. Under the circumstances, we must now negotiate the question as regards the quantum of damages and the extent of liability of the insurance company.

9. The claimants has made a claim for compensation to the tune of Rs. 75,000 before the learned Tribunal. However, at the appellate stage, the claim has been restricted to Rs. 55,000 under the following heads :

Rs. 50,000 is claimed under the head "economic loss" to the dependants.

Rs. 5,000 is claimed for loss of expectancy of life.

10. There can be no dispute, and none has been raised, as regards the claim of Rs. 5,000 by way of compensation amount for loss of expectancy of life. The dispute has centred round the quantum of economic loss. Now, the evidence shows that Ranvir was aged about 24 years at the material time. He had taken a degree in arts with economics in 1973. It appears that he had contracted a marriage with appellant No. 4, Bhanuben, who was a Bhatia. As it was an inter-caste marriage, the parents did not like it. He was, therefore, living separate. The evidence shows that he was a good cricketer and had also obtained proficiency in photography. He was a healthy, well built youth with a height of about 5' 11 1/2". Being a sportsman, possessing good health, being the son of the Deputy Police Commissioner, he had fairly good chances of securing a job in the police force or in some other establishment. It would be reasonable to proceed on the assumption that he would have earned at least Rs. 400 per month. He would have spent Rs. 150 p.m. on himself. The net dependency benefit can thus be worked out at Rs. 250 p.m. which, to our mind, is a very moderate figure which errs on the low side. Be it realised that this figure takes into account his future increments, and future prospects as well. If we take these factors into consideration, the dependency benefit would work out at Rs. 250 p.m. at the minimum on the most servative estimate. He was only 24 years of age and evidence shows that there was longevity in the family. Under the circumstances, it would be reasonable to take the multiple of 17. In such a case even a multiple of 20 would have been fully justified. We are, however, making a very cautious and conservative assessment by taking a multiple of 17. Even on such a conservative assessment the claimants would be entitled to Rs. 51,000 ($\text{Rs. } 250 \times 12 \times 17 = 51,000$). As, however, only a sum of Rs. 50,000 has been claimed under this head, the claim under this head must be fully allowed. Thus, the claimants would be entitled to Rs. 55,000 (Rs. 50,000 by way of economic loss to the dependants and Rs. 5,000 by way of compensation for loss of expectancy of life).

11. The question that arises for consideration now is regarding the extent of liability of the insurance company. The insurance company has filed a joint written statement and has adopted the defence raised by the car owner and has not pleaded any special defence. It is, however, contended by the learned counsel for the insurance company that notwithstanding the fact that there is no pleading the insurance company should be permitted to raise the defence that Ranvir was a gratuitous passenger and in view of the decision of the Supreme Court in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, , the insurance company was not liable in regard to this claim. The learned counsel for the claimant as also the learned counsel for the car owner, have opposed the request made by the counsel for the insurance company in this behalf. The point sought to be raised by learned

counsel for the insurance company does not involve any mixed question of law and facts. On admitted facts it is established that Ranvir was travelling in the car in his capacity as a friend of Jyotindra. It is, therefore, clear that he was a gratuitous passenger. Since the law on the point has been settled it would not be proper on our part to refuse the permission sought by the insurance company to raise this point. Of course this plea was not raised in the trial court and it does not arise out of the pleadings. But then there is no point in insisting on a formal amendment of the plaint in view of the fact that admittedly Ranvir was a gratuitous passenger and the legal position is also not in dispute. Under the circumstances, we are of the opinion that the insurance company cannot be prevented from advancing this point at the stage of appeal. It, however, does not mean that the insurance company is wholly absolved of the liability. Learned counsel for the claimants and learned counsel for the car owner have relied on *Oriental Fire & General Insurance Co. Ltd. v. Ganchi Ramanlal Kantilal* [1979] 20 GLR 134, in support of their contention that the case would be covered by s. 95(2)(c) of the Motor Vehicles Act and the liability of the insurance company to the extent of Rs. 15,000 as stipulated in the policy of insurance would remain. The insurance policy is a comprehensive policy as per Ex. 145. Clause I (of policy form) M.T. 5 provides :

In consideration of the payment of an additional premium it is hereby understood and agreed that the company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by any passenger other than the insured and/or his paid driver, attendant or cleaner and/or a person in the employ of the insured coming within the scope of the workmen's Compensation Act, 1923, and subsequent amendments of the said Act and engaged in and upon the service of the insured at the time such injury is sustained whilst mounting into, dismounting from or travelling in but not driving the motor car and caused by violent accidental external and visible means which independently of any other cause shall within three calendar months of the occurrence of such injury result in -

Scale of compensation (1) Death ... Rs. 15,000."

12. The aforesaid clause is precisely in the same terms as the policy in the case of the *Oriental Fire & General Insurance Co. Ltd.* [1979] 20 GLR 134, and in view of the ratio of the said decision the liability of the insurance company to this extent cannot be disputed. Under the circumstances, we hold the insurance company liable to the extent of Rs. 15,000. But the matter does not rest there. The learned counsel for the claimants has placed on record a communication issued by the Tariff Advisory Committee, Bombay Regional Committee, to the insurers carrying on general insurance business in the Bombay region only. It is in the following terms :

"TARIFF ADVISORY COMMITTEE BOMBAY REGIONAL COMMITTEE Circular M.V. No. 1 of 1978 Bombay, 17th March, 1978 INSURANCE COMPANY'S LIABILITY IN RESPECT OF GRATUITOUS PASSENGERS CONVEYED IN A PRIVATE CAR -

STANDARD FORM FOR PRIVATE CAR COMPREHENSIVE POLICY - SECTION II -
LIABILITY TO THIRD PARTIES.

I am directed to inform insurers that advices have been received from the Tariff Advisory Committee to the effect that since the industry had all these years been holding the view liability (sic) the same practice should continue.

In order to make this intention clear, insurers are requested to amend clause 1(a) of s. II of the Standard Private Car Policy by incorporating the following words after the words "death of or appearing therein : "including occupants carried in the motor car provided that such occupants are not carried for hire or reward."

I am accordingly to request insurers to make the necessary amendment on sheet 38 of the Indian Motor Tariff pending reprinting of the relevant sheet.

All existing policies may be deemed to incorporate the above amendment automatically as the above decision is being brought into force with effect from 25th March, 1977.

Sd. Regional Secretary."

13. It is argued by counsel that in view of this policy decision the insurance company should make full payment in the present case also, in disregard of the fact that the deceased was a gratuitous passenger. Taking by the Tariff Advisory Committee all the insurers would be expected to adhere to the policy decision in its true spirit. The policy decision had to be evolved by reason of the fact that for years the insurers were considered to be liable even in cases of gratuitous passengers. The situation came to be altered by virtue of the decision in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, , rendered on 25th March, 1977. The insurance business having been nationalised it is but reasonable to expect the insurers not to take advantage of the altered situation and to continue to discharge their obligation as hitherto. No doubt, the aforesaid instructions cannot be enforced in an M.A.C.T. proceeding in the sense that we cannot direct that the insurance company shall reimburse the insured fully or that the full decree against the insured may be executed against the insurance company as if it was a decree passed against it. We are given to understand that the insurance companies are discharging their obligation as hitherto notwithstanding Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, . If such is the policy that being followed in other cases no discrimination can be made on principle in the present case. There cannot be a selective application of the policy embodied in the aforesaid resolution. If such a selective application were to be countenanced, it would violate the mandate of art. 14 of the Constitution of India. We have, therefore, no doubt that the insurance company will follow the same policy uniformly and will not clutch at this defence in the present case if the policy decision contained in the aforesaid communication is being adhered to in other cases. In case of necessity, learned counsel for the claimants will be at

liberty to apply to the insurance company and make a request for implementing the aforesaid policy decision in the present case. It will be open to him to forward a copy of this judgment in support of this request.

14. Now, it remains to consider the question of apportionment between the claimants inter se. The parents, widow and the posthumous child of Ranvir have joined as claimants in the original petition and they are appellants before this court. Having regard to all the circumstances of the case we are of the opinion that the amount awarded including interest but excluding costs be divided into three equal parts and should be apportioned equally amongst the dependants as under :

One part (1/3rd of the amount) be awarded to the widow (appellant No. 4, Smt. Bhanuben).

One part (1/3rd of the amount) be awarded to the parents (appellants Nos. 2 and 3).

One part (1/3rd of the amount) be awarded to the minor (appellant No. 1).

15. We are happy to record that learned counsel for the parents under express authority from the parents, i.e., claimants Nos. 2 and 3; states that they do not want any share for themselves but pray that their share may be allotted to their grandson, minor, Harshvardhatiya, son of deceased, Ranvir, appellant No. 1. By consent, therefore, it is directed that 1/3rd of the total amount computed as per the aforesaid formula shall be paid to the widow of Ranvir (appellant No. 4) and the remaining 2/3rds shall be paid to Harshvardhatiya, the minor son of Ranvir. The amount payable to the minor child shall be deposited in a fixed deposit with a nationalised bank. The fixed deposit receipts shall be encashable on appellant No. 1 attaining the age of 21 years. Till then, the amount of interest accruing in that account may be paid from time to time whosoever is the guardian of the minor child at the material time. At present the child is in the lawful custody of appellant No. 4, Bhanuben, and she would be entitled to withdraw the amount of interest time to time. The trial court will, therefore, direct the nazir to deposit the amount, payable to the minor child, in a fixed deposit account, in a nationalised bank and to comply with the direction to pay the interest accruing in the aforesaid account to the guardian of the minor. In case in future some one else is appointed as a guardian of the minor, the nazir will have to pay the interest as it accrues in the aforesaid account to such guardian. The amount payable to the widow shall be deposited by her in a fixed deposit account for 63 months in a nationalised bank of her choice. The nazir of the trial court shall satisfy himself that the directions in this behalf are fully and faithfully complied with.

16. In the result, the following order is passed :

(1) The judgment and order passed by the Tribunal is reversed and set aside.

(2) Respondent No. 1, Jyotindra Chimanlal Parikh, shall pay to the appellants-claimants Rs. 55,000 by way of damages along with costs and with 6% interest,

from the date of the institution of the petition.

(3) (i) Respondent No. 2, Oriental Fire and General Insurance Company Ltd., shall be liable to satisfy the decree to the extent of Rs. 15,000 with proportionate costs on the said amount with interest at the rate of 6% from the date of the deposit till the date of payment.

(ii) The claimants will be entitled to execute the decree against respondent No. 2 directly and to recover the amount of Rs. 15,000 with proportionate costs awarded on the valuation of Rs. 15,000 in both the courts with interest at 6% from the date of the institution of the petition till the date of realization.

(iii) In case the amount as indicated in clause (2) is recovered directly from the Oriental Fire and General Insurance Company Ltd. (respondent No. 2), the award as the against respondent No. 1 shall be executed only in respect of the remaining amount after making adjustment for the amount directly recovered from the insurance company (respondent No. 2).

(4) The amount so awarded shall be apportioned in the manner directed hereinabove and the disbursement shall be made strictly in accordance with the aforesaid direction given hereinbefore.

(5) By consent of all, it is directed that from out of the costs the amount recovered in respect of the court fees will be payable to appellant No. 2, Govind D. Parmar, father of the deceased, Ranvir.

(6) By consent of all, it is directed that from out of the costs, advocate's fees, as may be taxed in the trial court and in this court, may be paid to appellant No. 4, Bhanuben, widow of the deceased, Ranvir.