(2026) 01 GUJ CK 1461

In the Gujarat High Court

Case No : R/First Appeal No. 3415 Of 2024, R/Cross Objection No. 12 Of 2025

New India Assurance Company Ltd APPELLANT

Vs

Geetaben Nanlabhai Rathva & Ors RESPONDENT

Date of Decision : 29-01-2026

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149, 149(2), 149(2)(a)(ii), 149(5), 149(7), 150, 163A, 165, 166, 168, 168(3), 173, 174

Citation : (2026) 01 GUJ CK 1461

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Dimple A Thaker, Mohsin M Hakim

Final Decision : Allowed

Judgement

Hasmukh D. Suthar, J

ORDER IN FIRST APPEAL

1. Admit. Mr. Mohsin Hakim, learned counsel waives service of notice of admission for respondent Nos.1 to 5.

2. With consent of learned counsel for the respective parties and considering the issue involved in the appeal as well as in Cross-Objection, the same were heard together and are hereby disposed of by this common judgment.

2.1 Being aggrieved and dissatisfied with the judgment and award dated 28.03.2024 passed by the Motor Accident Claims Tribunal (Main), Chhotaudepur, in Motor Accident Claim Petition No. 83 of 2021 filed under Section 166 of the Motor Vehicles Act, 1988 (for short, “the MV Act”), the appellant – Insurance Comapny prefers appeal under Section 173 of the Motor Vehicles Act, 1988, whereby, the Tribunal has been pleased to partly allow the claim petition and awarded compensation of Rs.15,82,000/-. While, the claimants have preferred Cross- Objection on the ground of inadequate compensation.

2.2 Heard Ms. Dimple A. Thaker, learned advocate for the appellant-Insurance Company and Mr. Mohsin Hakim, learned advocate appearing for the original claimants.

3. Ms. Thaker, learned counsel for the appellant has submitted that the Tribunal has committed error in passing the order of ‘pay and recover’ though the insurance company is able to prove the defense that the son of owner of vehicle was driving a motorcycle without holding a valid and effective license and owner knew that his son was not holding license though he has handed over the vehicle to his son. Therefore, this is a clear cut breach of the terms and conditions of the insurance policy and violation of the Motor Vehicles Act. Hence, fundamental breach is proved and owner himself was found within the knowledge that his son having no license. Therefore, she has requested to exonerate the insurance company. The Tribunal has also awarded exorbitant compensation. The Insurance Company has taken a defense, which is already coming out from the evidence. Even the appellant has examined witness Nareshbhai Bhikhabhai Patel, who was Asst. Motor Vehicle Inspector at Exh:13 and Insurance Company has proved defense. Hence, she has requested to allow the appeal as prayed for.

4. Per contra, Mr. Mohsin Hakim, learned counsel for the original claimants has opposed the present appeal and contended that the Tribunal has not committed any error in fastening the liability on the insurance company as the claimants are the third party and have nothing to do with the breach of the policy. He has further submitted that the alleged incident occurred in the year 2020 and at least minimum wage prevailing at the time of accident is required to be assessed and therefore, the Tribunal ought to have considered monthly income of the deceased as Rs.9340/- and future prospective is also required to be considered. However, the Tribunal has not considered the said aspect and meager amount is awarded. Mr. Hakim has relied on the decision of Jawahar Singh Vs. Bala Jain, reported in 2011 (6) SCC 425 and Chandranben & Ors. Vs. Yogeshbhai Kalambhai Vasava & Ors. reported in 2024 (0) ACJ 437 and requested to dismiss the appeal and allow the cross-objection.

5. Having heard learned counsel for the respective parties, it appears that after appreciating the evidence produced on record, the Tribunal held the offending vehicle sole negligent relying on the decisions of the Bimla Devi Vs. HRTC reported in AIR 2009 SC 2819 and Parmeshwari Devi Vs. Amir Chand, reported in 2011 (11) SCC 635. Further, as the issue of negligence is not discussed, appeal is to be decided in narrow compass qua liability. Factum of accident and coverage of policy is not in dispute. Admittedly, the claimants are third party. In order to prove the claim, the claimants have produced affidavit at Exh:19, FIR at Exh:21, Panchnama at Exh:22, PM report at Exh:24, RC Book at Exh:25 and opponent No.3 Insurance Company has examined witness Nareshbhai Patel and he has produced information about non-availability of driving license of Srikant Ashokbhai Solanki, who was driver of motorcycle.

6. The insurance company has assailed the judgment and award on the ground

of breach of the conditions of the insurance policy, contending that it is liable to be exonerated since, on the date of the accident, the driver of the offending vehicle was not holding an effective and valid driving licence. It is further contended that opponent No.2, being the father of opponent No.1, was well aware of the fact that his son was not holding a valid driving licence and yet permitted him to drive the vehicle on a public road. In this regard, the witness examined at Exh.30 has categorically stated that, as per the computer data and record available with the RTO office, opponent No.1 was not holding an effective and valid driving licence on the date of the accident. Thus, the breach of the conditions of the insurance policy stands proved on record. However, the Tribunal has rightly come to the conclusion that merely because there was a breach of the policy conditions, the insurance company cannot be exonerated from its statutory liability, as the claimants are third parties. The Tribunal has, therefore, rightly passed an order of "pay and recover", holding that it is the duty of the insurance company to first satisfy the award under Section 149 of the Motor Vehicles Act, 1988, and thereafter recover the same from the owner and driver of the offending vehicle in accordance with law.

7. Having heard learned counsel for the respective parties and perusing material placed on record, it appears that the Insurance Company has submitted that on the ground of violation of the terms and conditions of the insurance policy, it is required to be exonerated from its liability. However, an insurance policy is a statutory contract entered into between the insurer and the insured for the benefit of third parties. The aforesaid ratio has also been followed by the Hon'ble Apex Court in Shamanna vs. Oriental Insurance Co. Ltd., (2018) 9 SCC 650, wherein, while considering Sections

147 and 149 of the Motor Vehicles Act, it has been held that the victim of a motor vehicle accident is a third party, and it is the statutory duty of the insurer to satisfy the award. The principle of "pay and recover" has been reiterated, holding that if the driver had no valid driving licence and there was a breach of policy conditions, the High Court ought not to interfere with the order of "pay and recover" passed by the Tribunal. If the Insurance Company has paid any amount, the mode of recovery is also provided, and the insurer has the liberty to initiate proceedings before the executing Court concerned, if the dispute is between the insurer and the owner. In the present case, the claimants are third party and has no concern with the inter se terms and conditions of the insurance policy. Hence, in view of the decisions of the Hon'ble Supreme Court in Anu Bhanvara & Ors. vs. IFFCO Tokio General Insurance Co. Ltd. & Ors., (2020) 20 SCC 632; Sunita & Ors. vs. United India Insurance Co. Ltd. & Ors.; and Rama Bai vs. M/s. Amit Minerals, 2025 INSC 1162, the learned Tribunal has not committed any error in awarding compensation.

8. As per Section 150, which pertains to the duty of insurers to satisfy judgments and awards against persons insured in respect of third-party risks, and keeping in mind the aforesaid facts, the Hon'ble Supreme Court, in National Insurance

Co. Ltd. vs. Swaran Singh, reported in (2004) 3 SCC 297 , has in paragraphs 83 and 102 observed as under:

"83. Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with sub-section (1) thereof. The right to avoid liability in terms of sub- section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading."

102 the summary of our findings to the various issues as raised in these petitions are as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal.

Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.

9. Keeping in mind the aforesaid provision, more particularly paragraph 102(x), the Hon’ble Supreme Court has held that where, upon execution of the claim, the Tribunal concludes that the insurer has satisfactorily proved its defence, the Tribunal may direct that the insurer is entitled to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party. Paragraph 102(xi) further provides that the provisions contained in sub-section (4) with the proviso thereunder, and sub-section (5), are intended to cover the specified contingencies mentioned therein so as to enable the insurer to recover the amount.

10. Further, this Court deems it fit to refer to the judgment of the Hon’ble Apex Court in Sadhna Tomar v. Ashok Kushwaha, 2025 SCJ 414, wherein the Tribunal was pleased to pass an award of compensation in favour of the claimant, holding that the Insurance Company shall pay the amount of compensation to the claimant and thereafter recover the same from the driver and owner of the offending vehicle, who were held jointly and severally liable, relying on the decision in Swaran Singh (supra). The said view was affirmed by the High Court, and the order of “pay and recover” was also upheld by the Hon’ble Apex Court. In view of the above, the learned Tribunal has not committed any error in passing the order of “pay and recover”.

11. The Hon’ble Supreme Court in the cases of Shamanna (supra), Rama Bai (supra), and Swaran Singh (supra) has consistently held that the insurer must first pay the compensation amount to the third party and may thereafter recover the same from the insured. Even though the insurer is entitled to raise a valid defence regarding the driver not possessing a valid driving licence under Section 149(2)(a)(ii) to avoid liability, and even if the conditions of law are satisfied to absolve the insurer from paying the compensation, the doctrine of “pay and recover” continues to apply.

12. In view of the judgment of the Hon'ble Supreme Court in Rambabu Tiwari vs. United India Insurance Co., (2008) 8 SCC 165, wherein the Court exonerated the Insurance Company from liability for breach of policy conditions but refused to interfere with the order of "pay and recover", the direction issued by the learned Tribunal in the present case also does not warrant any interference.

13. In view of the reliance placed by the learned advocate for the appellant, no assistance can be derived by the appellant–Insurance Company, as the Hon'ble Supreme Court has reaffirmed the social welfare intent underlying the Motor Vehicles Act. The principle or order of "pay and recover" embodies judicial empathy, ensuring that victims are not left uncompensated due to disputes between the owner and the insurer. At the same time, considering contractual accountability, an owner who breaches the conditions of the policy cannot escape financial responsibility, as insurers retain the right to recover the amount paid to the claimant. This dual balance justice to the victim and fairness to the insurer strengthens the integrity of the Motor Vehicles accident compensation system.

14. As regards the authority relied upon by the learned advocate for the appellant, in view of several judgments wherein the Hon'ble Apex Court has passed order in the case of Shamanna (supra), Parminder Singh v. New India Assurance Company Limited, (2019) 7 SCC 217, the learned Tribunal has not committed any error. The authorities relied upon by the learned advocate for the appellant nowhere refer to the case of Samanna (supra).

15. In view of the above, the Hon'ble Apex Court has already decided the issue in Swaran Singh (supra). Considering the subsequent pronouncements discussing the scope of the 'pay and recover' order and the benevolent object of the legislation, as earlier explained in paragraph 14 of this order, the principle of 'pay and recover' reflects judicial empathy ensuring that victims are not left uncompensated due to disputes between the owner and the insurer. Therefore, the argument canvassed by the learned advocate for the appellant regarding contractual accountability is not acceptable and Tribunal has not committed any error in passing the order of "pay and recover".

16. The appellant–Insurance Company is directed to pay the amount of compensation determined by the Tribunal, with liberty to recover the same from the owner of the offending vehicle in accordance with law. In view of the law laid down by the Hon'ble Apex Court in Oriental Insurance Co. Ltd. v. Nanjappan, (2004) 13 SCC 224, it is always open for the Insurance Company to recover the amount from owner by initiating appropriate proceedings before the Executing Court, without being required to file a separate suit. While passing the order of "pay and recover", the Tribunal shall issue appropriate directions to protect the interest of the Insurance Company, as directed by the Hon'ble Apex Court in Nanjappan (supra), subject to suitable conditions and safeguards..

17. In view of the above conspectus, no interference is called for in order passed by the learned Tribunal of "pay and recover". The present First Appeal stands

dismissed.

ORDER IN CROSS OBJECTION

1. The applicants are the original claimants have preferred present Cross Objection against the judgment and award dated 28.03.2024 passed by the Motor Accident Claims Tribunal (Main), Chhotaudepur, in Motor Accident Claim Petition No. 83 of 2021 filed under Section 166 of the Motor Vehicles Act, 1988 (for short, "the MV Act") on the ground of inadequate compensation.

2. Heard Mr. Mohsin Hakim, learned advocate appearing for the applicants - original claimants and Ms. Dimple A. Thaker, learned advocate for the respondent No.1- Insurance Company.

3. Having heard learned counsel for both the sides and perusing the evidence produced on record, it appears that as per the say of the claimants, the deceased was earning Rs.12,000/- p.m, however, the Tribunal has considered Rs.8,000/- p.m income. But perusing the fact that the alleged accident took place on 09.11.2020 and minimum wage prevailing at that time was Rs.8,637/- p.m. for unskilled person. Even if, no proof of income is produced on the record, then Tribunal has to consider prevalent minimum wages in absence of evidence of monthly income of the deceased. In the present case, the accident occurred in the year 2020 and during that time, the deceased was doing agriculture work and as per the minimum wages, the minimum income is required to be considered as Rs.8,637/-. Hence, the income of the deceased is reassessed as Rs.8,600/- per month. Further, the Tribunal has considered future prospective income of the deceased at 40 % which is proper. As the deceased having 5 dependents, 1/4th deduction as personal expenditure and living of the deceased and multiplier of 15 were considered by the learned Tribunal as per the judgment of the Apex Court in the case of Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation & Anr. [2009 (6) SCC 121] are just and proper.

4. Therefore, calculating the income of the deceased as Rs.8,600/- and future prospect of 40% = Rs.3,440/- which comes to Rs.12,040/- and 1/4th amount is required to be deducted as personal expenditure and living of the deceased which comes to Rs.3,010/- and the net amount comes to Rs.9030/-. In view of above, the amount under the head of loss of future dependency is required to be reassessed as Rs.9,030/- x 12 months x 15 multiplier = Rs.16,25,400/-. Therefore, the appellants are entitled to get additional amount of Rs.1,13,400/- under the head of future loss of dependency.

5. Further, the Tribunal by relying on the judgment of Pranay Sethi (supra) has awarded total Rs.70,000/- under conventional heads, however, this Court is of the view that amount is required to be reassessed as Rs.18,150/- towards loss of estate and Rs.18,150/- towards funeral expenses.

6. Further, in view of ratio laid down by the Hon'ble Supreme Court in the case of Magma General Insurance Co. Ltd., Vs. Nanu Ram, reported in (2018) 18 SCC

130 and Janabai Wd/o Dinkarrao Ghorpade & Ors., Vs M/s ICICI Lambord Insurance Company Ltd., reported in 2022 LiveLaw (SC) 666 , the amount towards loss of consortium is reassessed as Rs.2,42,000/-(Rs.48,400/- x 5 dependents).

7. As discussed above, the applicants – original claimants are entitled to get compensation computed as under:-

Heads

Awarded by the

Tribunal

Reassessed by this

Court

Future loss of dependency

15,12,000/-

Rs.16,25,400/-

Loss of Estate, Funeral

70,000/-

Rs.18,150/-

expenses and loss of

Rs.18,150/- Rs.2,42,000/-

consortium

Total compensation

15,82,000/-

19,03,700/-

8. As Rs.15,82,000/- is already awarded by learned Tribunal, the applicants – original claimants are entitled to get additional amount of Rs.3,21,700/- (Rs.19,03,700 – Rs.15,82,000/-) with proportionate costs and interest as awarded by the learned Tribunal.

9. Hence, present Cross-Objection is allowed. The judgment and award dated 28.03.2024 passed by the Motor Accident Claims Tribunal (Main), Chhotaudepur, in Motor Accident Claim Petition No. 83 of 2021 stands modified to the aforesaid extent. Rest of the judgment and award remains unaltered. It is provided that respondent No.1 shall deposit such additional amount of Rs.3,21,700/- along with interest as awarded by the Tribunal, before the Tribunal within a period of four weeks from the date of receipt of this order. Record and proceedings be

remitted back to the concerned Tribunal forthwith.

10. The Tribunal is directed to recover or deduct the deficit court fees on enhanced amount and thereafter disburse the amount accordingly. Award to be drawn accordingly.

