

**(2012) 02 GUJ CK 0130**  
**In the Gujarat High Court**

**Case No :** First Appeal No. 1796 of 2002 to First Appeal No. 1824 of 2002

Oriental Insurance Co Ltd.

APPELLANT

Vs

Dursingbhai Konjubhai Malvia and 2

RESPONDENT

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**Date of Decision :** 27-02-2012

**Acts Referred:**

**Citation :** (2012) 02 GUJ CK 0130

**Hon'ble Judges :** K. S. Jhaveri, J

**Bench :** Single Bench

**Advocate :** Rajni H. Mehta 1, for the Appellant; Joy Mathew for Defendant 1, Unserved-Expired (R) for Defendant 3 and Rule Not Recd Back for Defendant 3.2.1, 3.2.2, for the Respondent

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**Judgement**

Honourable Mr. Justice K.S. Jhaveri

1. Since all these appeals are arises out of the common judgement and award of the tribunal, therefore, they are decided by this common judgement. The appellant Insurance Company has preferred these appeals against the common judgment and award dated 07.01.2002 passed by the Motor Accident Claims Tribunal, (Main), Valsad (for short, "the Tribunal") in M.A.C.P. Nos. 136 to 139 of 1993, 141 to 144 of 1993, 149 to 151 of 1993, 163 to 178 of 1993, 180 and 181 of 1993 whereby, the tribunal has awarded compensation in the sum of Rs. 24,000/- each of the claimants of M.A.C.P. Nos. 136 to 139 of 1993 and M.A.C.P. Nos. 141, 142, 143 of 1993, Rs. 12,000/- to the claimants of M.A.C.P. No. 144 of 1993, Rs. 72,000/- to the claimant of M.A.C.P. No.149 of 1993, Rs. 20,000/- to the claimant of M.A.C.P.150 of 1993, Rs. 24,000/- to the claimant of M.A.C.P. No. 151 of 1993, Rs. 72,000/- to the claimant of M.A.C.P. No.163 of 1993, Rs. 1,06,000/- to the claimants of M.A.C.P. No.164 and 165 of 1993, Rs. 72,000/- to the claimants of M.A.C.P. No.166 and 167 of 1993, Rs. 1,48,000/- to the claimant of M.A.C.P. No.168 of 1993, Rs. 1,30,000/- to the claimants of M.A.C.P. No.169 and 170 of 1993, Rs. 94,000/- to the claimant of M.A.C.P. No.171 of 1993, Rs. 1,30,000/- to the claimant of M.A.C.P. No.172 of 1993, Rs. 1,37,200/-

to the claimant of M.A.C.P. No.173 of 1993, Rs. 24,000/- to the claimants of M.A.C.P. Nos. 174 to 176 of 1993, Rs. 20,000/- to the claimants of M.A.C.P. No. 177 of 1993, Rs. 15,000/- to the claimant of M.A.C.P. No.178 of 1993, Rs. 72,000/- to the claimant of M.A.C.P. No.180 of 1993 and Rs. 12,000/- to the claimant of M.A.C.P. No.181 of 1993 respectively, with interest at the rate of 10% per annum from the date of filing of the petition till realization.

2. The facts in brief are that on 14.10.1992, some labourers alongwith their family were travelling in a Truck bearing registration No. GTT- 4058, insured with appellant - Insurance Company with Sugar-cane, the said Truck gained speed on account of which the driver of the truck lost control over the truck and it turtled. As a result of which several labourers sustained injuries and several labourers sustained severe bodily injuries and due to which some of them died. Therefore, the claim petitions came to be filed by claimants before the Motor Accident Claims Tribunal(Main), Valsad, for compensation.

2.1. The Tribunal after hearing learned advocates for both the parties and after perusing the record decided the claim petitions and passed the award as stated hereinabove, against which the present appeals are filed by the appellant-Insurance Company.

3. The appellant-Insurance Company has preferred the present appeals mainly contending that the vehicle in which the deceased were travelling was a "goods vehicle" and therefore, it could not be saddled with any liability in view of the principle laid down by the Apex Court in the case of National Insurance Co. Ltd. Vs. Rattani and Others, .

4. Heard learned counsel for the respective parties. It is not in dispute that the vehicle in question in which the labourers were travelling was a "goods vehicle". Under the circumstances, the appellant-Insurance Company could not be held liable in view of the principle laid down in National Insurance Company Limited (Supra). Hence, the appeals of the Insurance Company deserve to be allowed. For the foregoing reasons, the appeals are allowed. The impugned judgment and award passed by the Tribunal is quashed only qua the extent of imposition of liability on the appellant-Insurance Company to make payment of compensation. It is, however, observed that if the amount deposited before the Tribunal is already withdrawn by the original claimants, the same shall not be recovered from the original claimants and the Insurance Company shall be at liberty to recover the same from the owner of the vehicle. But, if the amount has not been withdrawn by the original claimants, the same shall be refunded to the Insurance Company. The appeals stand disposed of accordingly. No order as to costs.