(2025) 12 GUJ CK 1908

In the Gujarat High Court

Case No : R/First Appeal No. 1037 Of 2022

The New India Assurance Co Ltd — APPELLANT

Vs

Minor Mahenoor Asifbhai Shaikh & Ors. — RESPONDENT

Date of Decision : 16-12-2025

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149, 173

Citation : (2025) 12 GUJ CK 1908

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Kirti S Pathak, Amit C Nanavati, Nishit A Bhalodi

Final Decision : Dismissed

Judgement

Hasmukh D. Suthar, J

1. The present appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed by the appellant-insurance company challenging the judgment and award dated 20.01.2022 passed by the Motor Accident Claims Tribunal (Main), Ahmedabad (Rural) at Mirzapur in Motor Accident Claim Petition Nos. 585 of 2016, whereby the learned Tribunal has allowed the claim petition.

2. Heard learned advocates for the respective parties. Though served, none appears for the respondent No.6.

3. The brief facts of the present claim petitions are that the deceased was proceeding towards Sarkhej on his motorcycle bearing No. GJ-1-MH-5329, driving at a moderate speed and with due care. At about 2:45 p.m., on the Baherampura to Suej Farm road, opposite Lucky Restaurant, respondent No.1, the driver of truck No. GJ-11-W-2898, drove the vehicle at a high speed and in a rash and negligent manner and dashed into the motorcycle from behind. As a result, the deceased sustained serious injuries and died on the spot. It is further pleaded that at the time of the accident, the deceased was about 29 years old and was working at Gold Edward Dry Cleaning Shop, earning Rs.6,000/- per

month. Due to his untimely death, the petitioners have lost their sole breadwinner and have therefore claimed compensation from the respondents.

4. Learned advocate for the appellant–insurance company has preferred the appeal on the ground that the learned Tribunal has committed an error in passing the impugned judgment and fastening the liability upon the insurance company as the driver of the offending vehicle was not holding a valid and effective driving licence. However, the learned Tribunal ignored this material evidence and awarded the compensation to the claimant and pass an order of "Pay and recover". Therefore, the present appeal may be allowed.

5. The learned advocates for the respective respondents have opposed the appeal and submitted that the Tribunal has committed no error. The deceased was a third party and had no concern with the terms of the policy. As the policy was valid on the date of the accident, the insurance company is liable to satisfy the award.

6. Having heard the learned advocates for the respective parties, it clearly emerges that the appeal has been filed on a limited ground, namely that the learned Tribunal committed an error in fastening liability upon the insurance company on a "pay and recover" basis, despite the insurance company having proved its defence that, on the date of the accident, the driver of the offending truck did not possess a valid and effective driving licence.

7. Upon perusal of the evidence, it appears that the accident occurred on 13.09.2015. The driving licence produced at Exhibit 47 reveals that the driver of the offending truck held a licence for a heavy goods vehicle. The transport licence was valid from 16.08.2010 to 15.08.2013, and thereafter an endorsement for PSV Bus and transport vehicle was issued for the period from 07.10.2015 to 06.10.2018. Thus, on the date of the accident, the transport licence was not renewed.

8. The main contention of the learned advocate for the insurance company is that on 13.09.2015, the driver did not possess a valid and effective driving licence. However, this is not a case where the driver lacked driving skill. The licence had lapsed for a limited interregnum period and was subsequently renewed. Mere non-renewal of the licence within the permissible period of 30 days cannot be a ground to hold that the driver had no driving skill. Even otherwise, the owner of the vehicle is not expected to approach from one to another different RTO offices to verify the genuineness of the driving licence. The owner is only required to satisfy himself about the driving skill and competence of the driver.

9. In view of the above, this Court is of the considered view that the learned Tribunal has not committed any error in fastening the liability upon the insurance company on a "pay and recover". In this regard, this Court deems it fit to refer to the law laid down by the Hon'ble Supreme Court in Shamanna vs. Oriental Insurance Co. Ltd., (2018) 9 SCC 650, wherein, considering Sections 147 and

149 of the MV Act, it has been held that in the case of a third-party victim of a motor accident, it is the duty of the insurer to satisfy the award, and the principle of “pay and recover” has been summarized. It is held that even if the driver had no valid driving licence and there was a breach of policy condition, the High Court ought not to interfere with the Tribunal’s order of “pay and recover”. If the insurance company pays any amount, the mode of recovery is also provided, giving the insurer liberty to initiate proceedings before the executing Court concerned for recovery from the owner. The claimant being a third party has nothing to do with the terms and conditions of the policy.

10. This Court deems it fit to refer to the decisions of the Hon’ble Supreme Court in K. Nagendra vs. New India Insurance Co. Ltd., 2025 SCC OnLine SC 2297, and Rama Bai vs. Amit Minerals, 2025 INSC 1162, the learned Tribunal has not committed any error in applying the principle of “pay and recover”. This principle ensures that the victim is not deprived of compensation due to disputes between the owner and insurer, and at the same time, preserves the right of the insurer to recover the excess amount from the owner, thereby maintaining fairness and accountability in the Motor Accident Compensation system.

11 In view of the judgments of the Hon’ble Supreme Court in Rambabu Tiwari v. United India Insurance Co., (2008) 8 SCC 165; K. Nagendra v. New India Insurance Co. Ltd., 2025 SCC OnLine SC 2297; Parminder Singh v. New India Assurance Co. Ltd., (2019) 7 SCC 217; and Chatha Service Station v. Lalmati Devi, 2025 INSC 468, Rama Bai vs. Amit Minerals, 2025 INSC 1162, the learned Tribunal has not committed any error in applying the principle of “pay and recover”. This principle ensures that the victim is not deprived of compensation due to disputes between the owner and insurer, and at the same time, preserves the right of the insurer to recover the excess amount from the owner, thereby maintaining fairness and accountability in the Motor Accident Compensation system.

12. This Court also deems it fit to refer to the order dated 02.12.2025 passed in United India Insurance Co. Ltd. v. Minor Shobhaben Madhubhai Patadia & Ors., First Appeal No. 3885 of 2025, wherein the “pay and recover” direction was held just and judgment of Hon’ble Apex Court in the case of United India Insurance Company Ltd. vs. K.M. Poonam, (2015) 15 SCC 297.

13. It is needless to state that if the insurance company satisfies the award, it will not be required to file a separate suit or independent proceedings for recovery, as it may recover the excess amount from the owner of the vehicle in the same execution proceedings. In this regard, reference may be made to Oriental Insurance Co. Ltd. vs. Nanjappan, (2004) 13 SCC 224 .

14. In view of the above, the submissions advanced by the learned advocate for the appellant are not sustainable, and the learned Tribunal has not committed any error. Therefore, no interference is called for by this Court and hence, the present First Appeal stands dismissed.

15. As the entire awarded amount of compensation has already been deposited, the same shall be disbursed in favour of the claimants and/or their guardians through RTGS, after proper verification. The bank account details shall be furnished by the learned advocate for the claimants to the Nazir Department of the concerned Tribunal. The court fees, if any, payable by the claimants shall be deducted from the said amount, and the remaining compensation shall be disbursed in favour of the claimants on due verification within a period of two weeks thereafter.

16. Record and proceedings, if any, be sent back to the concerned Tribunal forthwith. Pending civil applications, if any, shall stand disposed of accordingly.

