(2025) 12 GUJ CK 1892

In the Gujarat High Court

Case No : R/First Appeal No. 652 Of 2022

United India Insurance Co Ltd APPELLANT

Vs

Sudhirkumar Ajay Pal & Ors RESPONDENT

Date of Decision : 17-12-2025

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2025) 12 GUJ CK 1892

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Palak H Thakkar

Final Decision : Partly Allowed

Judgement

Hasmukh D. Suthar, J

1. The present appeal under Section 173 of the Motor Vehicles Act, 1988 have been filed challenging the judgment and award dated 26.10.2021 passed by the learned MACT (Main), Surat in MACP No. 705 of 2004.

2. Heard Mr. Palak Thakkar, learned advocate for the appellant. Though served, none appears for the respondent Nos.1, 2, 3, 5 and 6.

3. The brief facts of the present appeal are that on 29.07.2004, deceased Majulaben Chauhan, deceased Hukamchand Patil, claimant Chhotubhai Patil, deceased Ajay Lankushlal Pal, claimant Vijaysing Kentura, claimant Dipak Patil, and deceased Abdulkarim Sopariwala were travelling in Jeep No. GJ-21-2870 from Maroli to village Danti. At about 10:00 a.m., when the jeep reached the outskirts of Maroli village near Koli-Samaj-ni-Wadi, opponent No.1, who was driving the jeep at full speed in a rash and negligent manner and in breach of traffic rules, lost control of the vehicle, causing it to collide with a roadside tree. As a result, all the occupants sustained serious injuries, and Majulaben Chauhan, Hukamchand Patil, Ajay Lankushlal Pal, and Abdulkarim Sopariwala succumbed to the injuries.

4. Mr. Palak Thakkar, learned advocate for the appellant, submits that the learned Tribunal has committed an error in not properly appreciating the fact that the victim was travelling as an unauthorized passenger in a private vehicle. It is submitted that there was a clear breach of the terms of the insurance policy, as the vehicle was being used for hire and reward. Even from the contents of the FIR, it is evident that the vehicle in question was being used for transporting passengers, and the victim was travelling as an unauthorized passenger. Hence, it is urged that the insurance company be exonerated from liability, relying on the judgment of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. v. Premlata Shukla, (2007) 13 SCC 476, and the decision in New India Insurance Co. v. Jaysukhlal Maganlal Dosi, (2013) 3 GLR 2283, wherein similar breaches have been held sufficient to absolve the insurer. It is further submitted that even the claimant has relied upon the contents of the FIR, which clearly support the defence of the insurance company. Hence, the present appeal be allowed.

5. Having heard the learned advocate for the appellant and upon perusal of the FIR at Exhibit 121, it clearly emerges that the vehicle in question was a private vehicle, yet was used for hire and reward, and the claimant/deceased were travelling after paying fare. The said fact is specifically mentioned in the FIR, and even the claimant has relied on the FIR. In view of the law laid down in Jaysukhlal Maganlal Dosi (supra), when such facts are apparent from the FIR itself, no further independent evidence is required to be led by the insurance company. Learned counsel Mr. Modi, learned advocate for the respondent has also not disputed this factual position.

6. In view of the above breach of policy conditions, the insurance company deserves to be exonerated in terms of the ratio laid down in Premlata Shukla (supra). However, since the claimants/deceased were third parties and the insurance policy was in force on the date of the accident, the principle of "pay and recover" is required to be applied. The deceased had no privity of contract with the insurer; the policy is an agreement between the owner and the insurer. The principle of "pay and recover" ensures that victims are not left uncompensated while preserving the insurer's right to recover from the owner who breached the policy conditions. This balanced approach maintains justice for victims and fairness to the insurer.

7. 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, wherein the insurer was exonerated for breach of conditions but the direction of "pay and recover" was upheld, the direction issued by the learned Tribunal in the present case also requires no interference.

8. 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 proper.

9. In view of the above discussion, the appeal is partly allowed. The insurance company is directed to pay the awarded compensation to the claimants and shall thereafter have the liberty to recover the same from the owner of the offending vehicle, i.e., opponent No.2 (respondent No.5 herein).

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