# IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE SIDE JURISDICTION

## FIRST APPEAL NO. 1449 OF 2006

1. Miraben w/of Kantibhai
Age-42 yrs, Housewife

2. Miss. Urvashi Kantibhai Patel
Age- 21 yrs. Student

3. Miss Dharmishtha Kantibhai Patel,
Age- 22 years, student

4. Aartiben Kantibhai Patel
Age- 20 years student

5. Minor Dharmendra Kantibhai Patel,
Age- 11 years student

6. Minor Yogita Kantibhai Patel,
Age- 9 years, Student

7. Maganbhai Bhagabhai Patel
Age- 70 years, retired

8. Premiben Maganbhai Patel
Age- 65 years Housewife

Appellant No. 1 for herself and for and on behalf of minor Appellant Nos. 5 & 6 being their natural guardian and mother
All above residing at Police Line Ultanfalia, Silvassa, Dadra Nagar Haveli. ….Appellant (Org Petitioners)

**Versus**

1. Shantilal Sajanbhai Gavit

age- adult, driver, residing at Opp-Gayatri Temple,
Amli Dadra and Nagar Haveli

2. Deputy Conservator of Forest (South)
Multistorised building Dharampur Road, Valsad

3. The Oriental Insurance Co. Ltd., Yashkamal Building, Tithal Road, Valsad. … Respondents. (Org. Respondents)

**WITH**
**FIRST APPEAL NO. 1762 OF 2008**

The State of Gujarat
(Through The Deputy Conservator of Forest (Valsad South), Multi storied Building, Dharampur Road, Valsad). ….Appellant (Orig Respondent No. 2).

**Versus**

1. Miraben w/of Kantibhai
Age-42 yrs, Housewife

2. Miss. Urvashi Kantibhai Patel
Age- 21 yrs. Student

3. Miss Dharmishtha Kantibhai Patel,
Age- 22 years, student

4. Minor Aartiben Kantibhai Patel
Age- 20 years student

5. Minor Dharmendra Kantibhai Patel,
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6. Minor Yogita Kantibhai Patel,
Age- 9 years, Student

7. Maganbhai Bhagabhai Patel
Age- 70 years, retired

8. Premiben Maganbhai Patel
Age- 65 years Housewife

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| Respondent No. 1 for herself and for and on behalf of Minor Respondent Nos. 4,5 & 6 being their natural guardian and mother.<br>All above residing at Police Line Ultanfalia, Silvassa, Dadra Nagar Haveli. | (Orig Petitioner No. 1 to 8) |
| 9. Shantilal Sajanbhai Gavit<br>Aged Adult Dirver,<br>Residing Opp. Gayatri Temple, Amli, Dadra and Nagar Haveli. | Orig Respondent No. 1. |
| 10. The Oriental Insurance Co. Ltd., Yashkamal Building, Tithal Road, Valsad. | …<br>(Org. Respondent No. 3)<br>….Respondents. |

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Ms Sunanda Kumbhat a/w Adv. Kunal Kumbhat, Advocate for the Appellant in FA/1449/2006 and for Respondent Nos. 1 to 6 in FA/1762/2008.

Ms. Tanaya Goswami, AGP for State in FA/1762/2008

Mr. Saumen Vidyarthi a/w Adv. Ishita Bhole a/w Mr. Mohit Turakhia i/by Mr. Asim Vidyarthi, Advocate for the Respondent No. 3 in FA/1449/2006 and for the Respondent No. 10 in FA/1762/2008.

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**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 6th FEBRUARY, 2024.**

**ORAL JUDGMENT. :**

1. First Appeal No. 1449 of 2006 is preferred by the Appellant/Claimants against the Judgment and Order passed by the Motor Accident Claims Tribunal, Silvassa, (for short "the Tribunal").

2. The Respondent/State also preferred the Appeal against the same Judgment and Order. As both these appeals are against the same Judgment and Order, I am deciding it by this common Judgment.

3. It is contention of learned Counsel for the Appellant/Claimants that the Tribunal has not awarded future prospects as well as the Tribunal has deducted 1/3rd amount for personal expenses. There are 8 Claimants, it should be 1/5th. The Learned Counsel further submitted that the Tribunal has awarded consortium amount on lower side, it be awarded. Hence requested to allow the appeals.

4. It is contention of learned AGP for State that at the time of accident the offending vehicle was insured with Respondent/Insurance Company. The witness who was examined by

the Respondent/Insurance Company in cross examination has admitted that extra premium was paid but this fact is not considered by the Tribunal and has fixed liability on the Appellant/State, which is erroneous, hence requested to allow the Appeal filed by the State.

5. It is contention of learned Counsel for Respondent/Insurance Company that the Insurance Policy was act only policy and the liability of the Insurance Company was of Rs. 1,00,000/- towards personal accidental benefit. Though extra premium was paid, it was for the personal accidental benefit and it was not covering employees and gratuitous occupants, hence, requested to dismiss the appeal filed by the State.

6. I have heard all learned Counsels, perused the Judgment and order passed by the Tribunal. The Tribunal has considered monthly income of the deceased at Rs. 9,900/- but, while awarding the compensation, the Tribunal has not awarded future prospects. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC),*** the claimant's are entitled for 25% future prospects. The Tribunal has deducted 1/3rd amount for personal expenses. There are 8 Claimants, it should be 1/5th, hence, I am considering 1/5th amount for personal expenses. The

Tribunal has awarded Rs. 22,000/- for funeral expenses and loss of estate. In my view, it is on lower side, as per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC),*** each claimant is entitled for Rs. 48,000/- as consortium amount and Rs. 18,000/- for funeral expenses and Rs. 18,000/- for loss of estate.

Considering above calculations, the Claimants are entitled for following compensation.

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| Monthly Income | Rs.9,900/- |
| Deduction towards personal expenses Rs. 1980/- (1/5th of Income) | Rs. 1980/- (1/5th of Income) |
| Total Annual Income Rs.7,920 x 12 x 13 | Rs.12,35,520/- |
| Multiplier 13 | 13 (Age about 45 years) |
| Future Prospects | Rs. 1,38,600 x 30% = Rs. 3,70,656/- |
| Loss of dependency | Rs. 16,06,176/- |
| Funeral expenses | Rs. 18,000/- |
| Loss of estate | Rs. 18,000/- |
| Loss of consortium for each dependents (8 dependents) Rs. 48,000 x 8 | Rs. 3,84,000/- |
| Total compensation awarded by the Tribunal | Rs. 7,94,200/- |

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| Total Compensation to be paid | Rs.20,26,176/- |
| Amount to be deposited(20,26,176 – 7,94,200) | **Rs. 12,31,976/-** |

7. It is contention of learned AGP that, at the time of accident the offending vehicle was insured with the Respondent Insurance/Company and additional premium was paid. The witness examined by the Respondent/Insurance Company, has admitted in cross examination that additional premium amount was collected but this fact is not considered by the Tribunal.

8. It is contention of learned Counsel for the Respondent/Insurance Company that the policy was act only policy and as per the policy condition, the insurer was liable to pay Rs. 1 lakh for occupant of the said Jeep that too for personal accident component. Learned Counsel further submitted that the additional premium was paid in respect of TPPD i.e. Third Party Property Damage. While dealing with these issues, the Tribunal has observed that the Insurance Policy at exhibit 29, shows, capital sum insured, was Rs. 1 lakh for 8 passengers and it would covered for occupant of the jeep. Hence, liability of the insurer is confined to the liability of the Rs. 1 lakh. I do not find infirmity in it. In my view, the Insurance

policy is at Exhibit 29, which shows, it was act only policy. The premium was paid to pay the compensation of Rs. 1 lakh for 8 occupants. To prove it, Respondent/Insurance Company has examined their Administrative Officer Dhirubhai Patel, at Exhibit 47. He has stated that the policy was act only policy and Insurance Company is liable to pay Rs. 1 lakh only. In cross examination, he has admitted that company has collected additional premium. The Exhibit 29 shows that additional premium was collected for TPPD. The Appellant/State has not produced on record any evidence regarding additional premium was paid for unlimited liability. Hence, I do not see merit in the contention that the Insurance company is liable to pay the compensation.

9. In view of above, I pass following Order.

**ORDER**

**a)** First Appeal No. 1449 of 2006 is allowed.

**b)** The Claimants are entitled for enhanced amount Rs. 12,31,976/- @ 7.5 interest per annum from the date of filing Claim Petition, till the realisation of the amount. Out of this amount Rs. 4,20,000/- is consortium amount, the claimants are entitled for interest at 7.5% per annum on this amount from 1st November 2017, till realisation of the amount.

**c)** The Respondent/State shall deposit the enhanced amount along with accrued interest thereon, within 10 weeks after receipt of the order.

**d)** The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

**e)** First Appeal No. 1762 of 2008 is dismissed.

**f)** The Original Respondent No. 3/Insurance Company shall pay the compensation as fixed by the Tribunal.

10. All pending applications, if any, stand disposed off.

**(SHIVKUMAR DIGE, J.)**