IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 225 of 2023
With
R/CROSS OBJECTION NO. 142 of 2024
In
R/FIRST APPEAL NO. 225 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

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Approved for Reporting	Yes	No

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TATA AIG GENERAL INSURANCE CO LTD
Versus
JAYABEN SANJAYBHAI PARMAR & ORS.

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Appearance:
MS KIRTI S PATHAK(9966) for the Appellant(s) No. 1
MR.HIREN M MODI(3732) for the Defendant(s) No. 1,2
RULE SERVED for the Defendant(s) No. 3,4

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Date : 18/12/2025
ORAL JUDGMENT

1. The present appeal has been preferred under Section 173 of the Motor Vehicle Act, the appellant- Tata AIG General Insurance Company challenging the impugned judgment and award dated 13.10.2022 passed by the Motor Accident Claims Tribunal (Main), Anand, in Motor Accident Claim Petition No. 17 of 2017, whereby the learned Tribunal has awarded compensation of Rs. 4,58,272/– to the claimants.

2. Cross Objection No.142 of 2024 has been preferred by the original claimants claiming that the amount of compensation awarded by the learned Tribunal is on lower side.

3. Heard learned advocates for the respective parties. Though served, none appears for respondent Nos.3 and 4.

4. The brief facts of the case are that on 17.07.2015, the deceased Sanjaybhai, after performing his duties in the company, was travelling in Eicher vehicle No. GJ-23-X-5054. When the said vehicle reached the sim of Andharipur village, it stopped to pick up passengers and at that time, the deceased got down from the said tempo and went to the roadside to urinate. At that moment, an unknown vehicle came and dashed against the Eicher tempo, as a result of which the tempo turned turtle and hit the deceased. Consequently, the deceased sustained serious injuries and succumbed to the same.

5. Ms. Kirti Pathak, learned advocate appearing for the appellant–insurance company submitted that the learned Tribunal has recorded findings which are contrary to and arbitrary in light of the evidence produced on record. It was contended that the Tribunal has materially erred in holding the appellant–insurance company liable to pay compensation and has failed to appreciate, even prima facie, the defence raised by the insurance company that the deceased was travelling in the vehicle as an unauthorised passenger in a goods vehicle. It was further submitted that this fact clearly emerges from the record as well as from the documentary evidence produced at Exhibit 34 and the deposition tendered at Exhibit 35, wherein the officer of the insurance company has proved that the deceased was travelling as an unauthorised passenger. Such unauthorised travel amounts to a fundamental breach of the terms and conditions of the insurance policy, and since the deceased was travelling as an illegal passenger in a goods vehicle, the insurance company is not liable to pay any compensation. It was

therefore argued that the learned Tribunal has grossly failed to consider the proviso to Section 147 of the Motor Vehicles Act. Reliance was placed on the judgment of the Hon'ble Apex Court in **New India Assurance Company Ltd. v. Asha Rani**, reported in **AIR 2003 SC 607**, wherein it has been held that a person travelling in a goods vehicle is neither a third party nor a passenger covered under the policy. Hence, the learned Tribunal failed to consider this settled legal position, and the deceased was neither a "third party" nor a "passenger" covered under the insurance policy.

5.1 It is further submitted that since opponent No.1 – Jayaben Sanjaybhai Parmar has remarried, she does not fall within the definition of a dependent of the deceased and, therefore, is not entitled to compensation. On this ground also, the present appeal deserves interference. Hence, the learned advocate for the appellant has prayed that the present appeal be allowed and that the cross-objections filed by the claimants be rejected.

6. Mr. Hiren Moodi, learned advocate appearing for respondent Nos. 1 and 2—the claimants in the cross-objection—has vehemently opposed the present appeal and submitted that, although Jayaben Sanjaybhai Parmar has admittedly remarried, such remarriage took place after the occurrence of the accident. It was contended that mere remarriage does not automatically extinguish her right to represent the estate of her deceased husband or to claim compensation. In support of this submission, reliance was placed on the judgment of this Court in

Oriental Insurance Company v. Anita Sanjaykumar Patel, reported in 2020 SCJ 1356.

6.1 It is submitted that the learned Tribunal has wrongly attributed 50% contributory negligence to the deceased. Once the learned Tribunal came to the conclusion that the deceased was not travelling as an unauthorised passenger in the goods vehicle, as he had got down from the vehicle to urinate and the alleged accident occurred thereafter, there was no justification for attributing contributory negligence. Merely because the second vehicle was not joined as a party cannot be a ground to reduce the compensation. To that extent, the learned Tribunal has committed an error. It was also contended that the learned Tribunal has assessed the monthly income of the deceased at a meagre amount and failed to consider the prevailing minimum wages applicable at the relevant time. At the very least, the minimum wages prescribed for a semi-skilled worker ought to have been taken into consideration as prevailing on the date of the accident. Accordingly, it was prayed that the present appeal be dismissed and the cross-objections filed by the claimants be allowed.

7. Having heard the learned advocates appearing for the respective parties and upon perusal of the documents on record, it appears that the learned Tribunal has taken into consideration the affidavit-in-chief at Exhibit 18, the examination-in-chief of an eyewitness at Exhibit 34, the panchnama of the scene of offence at Exhibit 26, the post-mortem report at Exhibit 28, and the copy of the FIR at Exhibit 25. The learned Tribunal has also

considered the copy of the judgment in the cognate matter produced at Exhibit 39, the terms and conditions of the insurance policy at Exhibit 38, as well as the deposition of the officer of the insurance company recorded in the cognate matter and produced at Exhibit 37.

8. The principal defence raised by the insurance company with regard to liability was that the deceased was travelling in the goods vehicle as an unauthorised/gratuitous passenger. However, the learned Tribunal did not accept the said defence. As per the case of the claimants and the evidence produced on record, the accident occurred when the deceased had got down from the vehicle and gone to the roadside to urinate, at which time the accident took place.

9. Once the deceased had got down from the vehicle and was present on a public road at a public place, the accident cannot be said to have occurred is proved on record then he cannot not considered as a gratuitous passenger. Therefore, this is not a case where the deceased was travelling as a gratuitous passenger in the vehicle. The learned Tribunal rejected the defence of the insurance company on the ground that it failed to prove that the deceased was travelling as a gratuitous passenger. On the contrary, the evidence on record, including the material produced by the claimants, substantiated that the deceased was not travelling in the vehicle at the time of the accident.

10. The insurance company also failed to elicit any contrary version in cross-examination, as no question was put to disprove the fact that the accident occurred when the deceased had gone to urinate after getting down from the vehicle. The version recorded in the FIR is also consistent with this factual position. In view of the aforesaid circumstances, the learned Tribunal held that the deceased was not a gratuitous passenger, but was a third party at the relevant point of time.

11. Accordingly, this Court is of the considered view that once the Tribunal has come to the conclusion that the deceased was not a gratuitous passenger, the question of exonerating the insurance company from liability does not arise. Consequently, the reliance placed by the learned advocate for the insurance company on the decision of **Asha Rani (supra)** would not render any assistance to the case of the insurance company.

12. In view of the above, it appears that the learned Tribunal has not committed any error in holding that the deceased was not travelling in the goods vehicle as a gratuitous passenger.

13. Now, so far as the liability aspect is concerned, the learned Tribunal has held the driver of the Eicher tempo to be 50% negligent and has accordingly reduced the compensation on the ground that the other offending vehicle was not joined as a party. However, it is well settled that in cases of composite negligence, a third-party claimant has the right to claim the

entire compensation from any one of the tortfeasors, as held by the Hon'ble Supreme Court in **Khenyei v. New India Assurance Co. Ltd. & Ors., reported in (2015) 9 SCC 273**.

14. Even before the Tribunal, the appellant–insurance company neither disputed this settled legal position nor filed any application seeking joinder of the other offending vehicle as a party to the proceedings. Therefore, the learned Tribunal committed an error in reducing the liability by 50% on this ground. To that extent, the learned Tribunal has clearly erred in fastening liability upon the insurance company only to the extent of 50%.

15. In view of the above and considering the settled position of law in cases of composite negligence, the claimant, being a third party, has the right to recover the amount of compensation awarded from any one of the tortfeasors. If one tortfeasor satisfies the award, such tortfeasor is entitled to recover the proportionate amount from the other tortfeasor on whose behalf the payment has been made, as the other tortfeasor is liable to indemnify the paying tortfeasor to that extent. In **Khenyei (supra)**, paragraph 18(iv) reads as under:

> *"(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feasors. In such a case, impleaded joint tort feasor should be left, in case he so desires, to sue the other joint tort feasor in independent proceedings after passing of the decree or award."*

16. Accordingly, this Court is of the considered opinion that the learned Tribunal has committed an error in fastening liability only to the extent of 50%, and that the liability is required to be increased and fastened upon the appellant–insurance company to the extent of 100%.

17. The fact that opponent No. 1 has remarried does not mean that she is not entitled to receive compensation, nor does her remarriage extinguish her right to compensation, as the remarriage took place after the death of the deceased. In this regard, reference may be made to the decision in **Oriental Insurance Company Ltd. v. Anita Sanjaykumar Patel**, reported in **2020 ACJ 1536**, wherein it has been held that the widow of the deceased is entitled to compensation notwithstanding her remarriage. Hence, the argument canvassed by the learned advocate for the appellant is not acceptable. Even while considering the aspect of dependency, the learned Tribunal has taken due care and, while apportioning the compensation amount, has awarded a 30% share to the claimant–widow and a 70% share to the mother of the deceased.

18. Now, turning to the cross-objection, it appears that the learned Tribunal has erred in determining the quantum of compensation. As per the case of the claimants, the deceased was 21 years old and was earning Rs. 12,000/– per month while working with Philips Company. However, the learned Tribunal assessed the monthly income of the deceased at only Rs. 4,000/–, which is on the lower side. This Court is of the

considered view that since the accident occurred in the year 2015, the prevailing minimum wages for an unskilled labourer were Rs. 7,500/– per month, and the same ought to have been taken into consideration. To that extent, the learned Tribunal has committed an error in assessing the income of the deceased.

19. Therefore, upon recalculating the income of the deceased in accordance with the judgment of the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi, reported in (2017) 16 SCC 680**, an addition of 40% towards future prospects is required to be made. Accordingly, by adding 40% (Rs. 3,000/–), the total monthly income comes to Rs. 10,500/–.

Further, in view of the settled principles laid down in **Sarla Verma v. Delhi Transport Corporation, reported in (2009) 6 SCC 121**, 1/3rd of the income is required to be deducted towards personal and living expenses of the deceased, which comes to Rs. 3,500/–. Thus, the net monthly income would be Rs. 7,000/– (Rs. 10,500 – Rs. 3,500). Accordingly, the amount under the head of future loss of income is required to be reassessed as (Rs. 7,000 × 12 × 18) = **Rs. 15,12,000/–**. Therefore, the appellants are entitled to an additional amount of Rs. 15,12,000/– under the head of future loss of income.

20. Further, the learned Tribunal has awarded Rs. 80,000/– towards loss of consortium, Rs. 15,000/– towards loss of estate, and Rs. 15,000/– towards funeral expenses, which are required to be reassessed as under:

Future loss of income	**Rs.15,12,000/-**
Loss of consortium	Rs.48,400/- x 2= Rs.96,800/-
Loss of estate	Rs.18,150/-
Funeral Expenses	Rs.18,150/-
Total	**Rs.16,45,100/-**

21. For the reasons recorded hereinabove, the present appeal is dismissed and the cross-objection filed by the claimants, being Cross-Objection No. 142 of 2024, is allowed. The impugned judgment and award passed by the learned Tribunal is modified and the compensation is enhanced to Rs. 16,45,100/– from Rs. 4,58,272/–. The respondent–Insurance Company shall deposit the enhanced amount of **Rs. 16,45,100/–** along with interest at the rate of 9% per annum before the learned Tribunal within a period of **four weeks** from the date of receipt of this order. Out of the said amount, original claimant No. 1 shall be entitled to 30%, whereas claimant No. 2 shall be entitled to 70%. The record and proceedings shall be remitted back to the concerned Tribunal forthwith. The learned Tribunal is directed to recover or deduct the deficit court fees on the enhanced amount and thereafter disburse the amount in accordance with law.

Award to be drawn accordingly.

(HASMUKH D. SUTHAR,J)

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Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: ISTAYAK ALI(HC01093), PRIVATE SECRETARY, at High Court of Gujarat on 20/12/2025 15:52:25