IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 226 of 2023
With

R/CROSS OBJECTION NO. 143 of 2024
In

R/FIRST APPEAL NO. 226 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
USHABEN GHANSHYAMBHAI SOLANKI & 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. 1,2,3,4
RULE SERVED for the Defendant(s) No. 5,6

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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. 9 of 2017, whereby the learned Tribunal has awarded compensation of Rs. 5,23,400/– to the claimants.

2. Cross Objection No.143 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.5 and 6.

4. The brief facts of the case are that on 17.07.2015, the deceased, Ghanshyambhai, after completing his duty at the company, was travelling in Eicher vehicle No. GJ-23-X-5054. When the vehicle reached near the sim of Andharipura village Patiya on the Jambusar–Vadodara Road, the tempo was stopped by its driver to allow passengers to get down. At that time, some labourers got down and were standing on the road. The deceased moved to the roadside to urinate. Meanwhile, an unknown vehicle coming from the Jambusar side at a high speed dashed into the rear of the stationary tempo, causing it to overturn. As a result, the deceased fell into the roadside drainage and came under the overturned tempo, sustaining fatal injuries and died on the spot.

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. Hence, the learned advocate for the appellant marrhas 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 to 4 the claimants in the cross-objection has vehemently opposed the present appeal and 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 meager 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 24, the complaint at Exhibit 33, the panchnama of the place of offence at Exhibit 34, the post-mortem report at Exhibit 32, the insurance policy at Exhibit 26/6, the deposition of the officer of the insurance company at Exhibit 37, and the terms and conditions of the insurance policy at Exhibit 38.

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. 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 27 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.

18. 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**, 1/4th of the income is required to be deducted towards personal and living expenses of the deceased, which comes to Rs. 2,625/–. Thus, the net monthly income would be Rs. 7,875/– (Rs. 10,500 – Rs. 2,625). Accordingly, the amount under the head of future loss of income is required to be reassessed as (Rs. 7,875 × 12 × 18) = **Rs. 17,01,100/–**. Therefore, the appellants are entitled to an additional amount of **Rs. 17,01,000/–** under the head of future loss of income.

19. 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. 17,01,000/–**
Loss of consortium	Rs.48,400/- x 4= Rs.193600/-
Loss of estate	Rs.18,150/-
Funeral Expenses	Rs.18,150/-
Total	**Rs.19,30,900/-**

20. For the reasons recorded hereinabove, the present appeal is dismissed and the cross-objection filed by the claimants, being Cross-Objection No. 143 of 2024, is allowed. The impugned judgment and award passed by the learned Tribunal is modified and the compensation is enhanced to **Rs.19,30,900/-** from Rs. 5,23,400/–. The respondent–Insurance Company shall deposit the enhanced amount of **Rs.19,30,900/-** 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. 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 22/12/2025 14:01:27