

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 602 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

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Approved for Reporting	Yes	No

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THE UNITED INDIA INSURANCE COMPANY LIMITED

Versus

MUNISHABEN W/O IRFANBHAI MUSABHAI KANKROLIYA & ORS.

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Appearance:

MR RATHIN P RAVAL(5013) for the Appellant(s) No. 1

HARSH A VYAS(9330) for the Defendant(s) No. 8

MR VISHVAJITSINH D CHAUHAN(10160) for the Defendant(s) No. 1,2,3,4,5

RULE SERVED for the Defendant(s) No. 9

RULE UNSERVED for the Defendant(s) No. 7

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**Date : 17/12/2025****ORAL JUDGMENT**

1) Feeling aggrieved and dissatisfied with the judgment and award dated 16.09.2021 passed by learned Motor Accident Claims Tribunal (Main), Aravalli, (hereinafter referred to as "the Tribunal" for short), in Motor Accident Claim Petition No.1661/2023, the appellant – Insurance Company preferred present appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" for short).

2) Heard Mr. Rathin P. Raval, learned counsel for the appellant – Insurance Company, Mr. Vishwajit D. Chauhan, learned counsel for respondent Nos.1 to 5

and Mr.Harsh Vyas, learned counsel for respondent No.8. Though served, none appears for respondent No.7 and 9. Perused the original record and proceedings.

3) It is the case of the claimants that, on 17.08.2010, the deceased was coming towards Bhilwada from Ajmer by driving his truck bearing No.GJ-09-Y-9570 and when he was passing through Chittod- Bhilwada-Ajmer National Highway, at that time, one dumper bearing No.RJ-14- GB-8164 came in rash and negligent manner and dashed with the truck of the deceased. As a result, the deceased fall on the road and sustained fatal injuries and succumbed to it. Therefore, the claimants have filed MAC Petition seeking compensation. After appreciating the evidence produced on record, the Tribunal was pleased to partly allow the claim petition and awarded compensation of Rs.7,27,600/- along with interest at the rate of 8 %.

4) Learned counsel for the appellant has submitted that the Insurance Company is not liable to pay compensation as there is no nexus between the accidental injury and death of the deceased. Alleged incident took place on 17.08.2010 and deceased died after approx. two months i.e. on 06.10.2010 and reason of death is not proved. Hence, the appellant Insurance Company is not liable to pay any compensation. There is clear gap between the accident and death i.e. approximately 50 to 51 days, which clearly reveals that no any critical injury sustained by the deceased due to which he died. No PM report nor any inquest panchnama is produced on record. He has also submitted that, when the death occurs in mysterious circumstances, this is bound to create doubts. Hence, there is no nexus between the death of deceased with accidental

injuries of the deceased. Cause of death was to swept under the carpet. It is also submitted that, the Tribunal has erred in considering 100 % negligent on the part of the truck driver as two bigger vehicles of equal size dashed with each other and therefore, contributory negligence of another vehicle is required to be considered. However, the tribunal has exonerated the insurance company of Dumper bearing No.RJ-14-GB-8164.

5) Mr. Vyas, learned counsel for the respondent No.8- Insurer of Dumper has submitted that, the Tribunal has not committed any error as the deceased was driving a truck from wrong side and he dashed with another vehicle. Hence, question does not arise to hold contributory negligence on the part of driver of Dumper. Therefore, he has requested to dismiss the present appeal.

6) Mr. Chauhan, learned counsel for respondent Nos.1 to 5- original claimants has supported the judgment of the Tribunal and submitted that, it is an undisputed fact that the alleged incident took place on 17.08.2010, in which, the deceased sustained serious injuries. Copy of FIR, Panchnama, Medical Certificate, cause of death certificate etc. were produced on record and based on those material, the Tribunal has rightly awarded compensation. Hence, he has requested to dismiss the appeal.

7) Having heard learned counsel for the respective parties and perusing the material placed on record, it appears that in order to prove the factum of death, no evidence is produced on record. Admittedly, incident occurred on 17.08.2010 and deceased died on 06.10.2010 and there was gap of 50 – 51 days. The deceased was not died in hospital during treatment which is also admitted

fact. No inquest panchnama or PM report is produced on record, hence, no cause of death or no any proof to prove the nexus between the injury and death of the deceased is there. Admittedly, the deceased had sustained injury of fracture. Perusing the medical certificate, he had sustained fracture on Libia on the left leg, except this, no any material or evidence to prove the factum of death is produced on record. As after discharge, the deceased was died and therefore, factum of death is not proved. In absence of any proximate cause, this Court is of considered view that the Tribunal has committed an error to consider the factum of death. No doctor or medical expert is examined to prove the nexus between the injury and death.

8) In view of the above, the matter may be required to be remanded back for fresh consideration qua the aspect of nexus between the injury and death. But the the same time, this Court is of considered view that as alleged incident took place in the year 2010 and after passage of 15 years, availability of doctors and medical papers to prove the nexus which would turn into rigmarole. Complaint is registered below Exh:41, copy of panchnama at Exh:42 and injury certificate is produced at Exh:42 and 43. Involvement of the vehicle is not in dispute. Coverage of vehicle and policy of vehicle bearing No.GJ-09-Y-9570 is also covered the accident.

9) Considering the aforesaid facts and taken into consideration the documentary evidence, it is expedient to award just compensation to the victim of alleged incident of motor accident. Therefore, this case is required to be considered as injury case rather to fatal case and just compensation is required to be awarded.

10) So far contributory negligence is concerned, chargesheet is filed against the driver of offending vehicle and perusing the evidence produced on record, driver of Truck bearing No.GJ-09-Y-9570 drove his truck on the wrong direction and dashed with the Dumper bearing No.RJ-14-GB-8164. Considering the same, the Tribunal has not committed any error in exonerating Insurance Company of Dumber and in this regard, reference is required to be made on the decision of ***Shrikrishna Kanta Singh Vs. The Oriental Insurance Company Ltd., and Ors., Neutral Citation – 2025 INSC 394.***

11) As per the law laid down by the Hon'ble Supreme Court in the case of ***Govind Yadav Vs. National Insurance Co. Ltd., reported in 2012(1) TAC 1 (SC)***, that if no proof of income is produced on the record then Tribunal has to consider prevalent minimum wages. In the present case, the accident occurred in the year 2010 and during that time, minimum wage prevailed in the year 2010 is Rs.4,200/-. Considering medical certificate, no disability is assessed by the Tribunal, but considering the fracture injury and victim was driver, with a view to award just compensation, 30% functional disability is considered. Therefore, for calculating future loss of income, monthly salary of deceased is considered as Rs.4,200/- + Rs.1680/- (40% future prospective) = Rs.5,880/-. Now total income under the head of future loss of income is required to be considered as Rs.5,880/- x 12 months x 17 multiplier x 30 % = **Rs.3,59,856/-**.

12) As observed in earlier part, this case is considered as injury case and considering prolonged hospitalization, Rs.50,000/- under the head of Pain, shock and sufferings, Rs.50,000/- under the head of medical expenditure

and Rs.20,000/- under the head of special diet, transpiration and attendance charges are required to be awarded.

13) Considering the case on hand as a injury case, the claimants are entitled to get compensation as under :

Heads	Awarded by this Court
Future loss of income	Rs.3,59,856/-
Pain, shock and sufferings	Rs.50,000/-
Special diet, attendant and transportation	Rs.20,000/-
Medical expense	Rs.50,000/-
Total compensation	Rs.4,79,856/-

- 14) In view of above, as the Tribunal has awarded total compensation of Rs.7,27,600/-, however, as discussed above, the appellant - Insurance Company would be entitled to get refund an amount of **Rs.2,47,744/-** with proportionate costs and interest as awarded by the learned Tribunal.
- 15) The judgment and award dated 16.09.2021 passed by learned Motor Accident Claims Tribunal (Main), Aravalli, (hereinafter referred to as "the Tribunal" for short), in Motor Accident Claim Petition No.1661/2023 stands modified to the aforesaid extent. Rest of the judgment and award remains unaltered.
- 16) As the appellant Insurance Company has already deposited the entire awarded amount before the tribunal, the Tribunal is directed to refund an amount of **Rs.2,47,744/-** to the appellant –

insurance company alongwith accrued interest at the rate of 8% per annum on the said amount within a period of **six weeks** from the date of receipt of this order. While making the payment, the Tribunal shall deduct the courts fees, if not paid. Record and proceedings, if any, be sent back to the concerned Tribunal, forthwith. Record and proceedings, if any, be sent back to the concerned Tribunal, forthwith.

- 17) It is made clear that, considering peculiar facts of the case and this Court deems fit to take holistic view in the matter, this order shall not be treated as precedent.

(HASMUKH D. SUTHAR,J)

SUCHIT

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: PATEL SUCHIT JAYESHBHAI(HC01083), Private Secretary, at High Court of Gujarat on 22/12/2025 17:21:39