**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/FIRST APPEAL NO. 1431 of 2025**

**With**
**CIVIL APPLICATION (FOR STAY) NO. 1 of 2025**
**In R/FIRST APPEAL NO. 1431 of 2025**

**FOR APPROVAL AND SIGNATURE:**

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

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| Approved for Reporting | Yes | No |
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UNITED INDIA INSURANCE COMPANY LIMITED
Versus
CHOTHABHAI SODABHAI RATADIA & ORS.

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Appearance:
MS TANAYA SHAH, EVOLVE LEGAL(17686) for the Appellant(s) No. 1
MR. HEMAL SHAH(6960) for the Defendant(s) No. 1
ORTIS LAW OFFICES(12342) for the Defendant(s) No. 1
RULE SERVED for the Defendant(s) No. 1,3,4
RULE UNSERVED for the Defendant(s) No. 2

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

**Date : 08/12/2025**

**ORAL JUDGMENT**

1) Feeling aggrieved and dissatisfied with the judgment and award dated 10.01.2025 passed by learned Motor Accident Claims Tribunal (Special), Rajkot (hereinafter referred to as "**the Tribunal**" for short), in Motor Accident Claim Petition No.82 of 2018, the appellant – original opponent no.2 – United India Insurance Company Ltd., has preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to

as "**the Act**" for short).

2) Heard Ms. Tanaya Shah, learned Advocate for the appellant – Insurance Company and Mr. Hemal Shah, learned Advocate for respondent no.1 – original claimant. Perused the original record and proceedings.

3) It is the case of the original claimant that on 10.07.2017 the claimant Chothabhai Sodabhai Ratadia (who shall hereinafter be referred to as "**injured**") was going on motorcycle bearing Reg.No.GJ-03-ES-6638, as pillion rider and the motorcycle was driven by another person. At that time one auto-rickshaw bearing Reg. No.GJ.-11-X-2582 who was driving in rash and negligent manner and due to negligent driving of both the drivers the accident occurred and the claimant sustained grievous injuries and also sustained permanent disability. Therefore, the claimant had filed MAC Petition seeking compensation. After appreciating the evidence produced on record the learned Tribunal was pleased to partly allowed the claim petition.

4) The learned Advocate for the appellant has submitted that the learned Tribunal has erred in not considering contributory negligence on the part of motorcyclist which is clearly reveals from the record and even there is error in considering sole negligence of the driver of auto-rickshaw. From the record it appears that the complaint is filed belatedly i.e. after 10 days of accident by one Arjanbhai without any explanation or justification of delay and the complainant was having no personal knowledge about the occurrence of accident. As per the claim petition the claimant was a pillion rider while as per complaint different version is mentioned that at the time of accident the injured was riding the motorcycle.

Even while filing the charge-sheet statements of two witnesses have been recorded, wherein, also stated that the injured was riding the motorcycle. Not only that in his cross-examination he has admitted that he was riding the motorcycle and there is clear contradiction in the petitioner, complaint and evidence, hence, considering the aforesaid as the claimant himself was negligent and he has caused and contributed in the accident hence requested to consider contributory negligence on the part of claimant. Further no explanation is tendered on evidence that the vehicle was driven on wrong side and both the vehicles have contributed the accident and from the cross-examination it reveals that the motorcyclist having no licence and there is no eye witness, hence, from evidence it clearly reveals that the claimant was also negligent as accident is occurred due to negligence of driver of auto-rickshaw as well as the claimant. Hence, the learned Tribunal ought to have appreciated responsibility and liability of both the drivers. Hence, she has requested to allow the present appeal.

5) Learned Advocate for the original claimant has opposed the present appeal on the ground that the learned Tribunal has properly awarded the compensation and rightly considered the negligence. In absence of any material question does not arise to consider contributory negligence on the part of the claimant. To prove contributory negligence no witness is examined or driver of offending vehicle has stepped in the witness box. Hence, he has requested to dismiss the appeal.

6) Having heard both the learned Advocates and going through the record and proceedings it appears that the accident took place between the auto-rickshaw and motorcycle. The respondent no.4 is Insurance Company of the motorcycle and respondent no.3 is the

owner of motorcycle and both were exonerated by the learned Tribunal on the ground that the claimant is not entitled to receive any amount being tortfeasor from its own Insurance Company. Hence, the respondent no.4 ICICI Lombard General insurance Co. Ltd., was exonerated. The learned Tribunal has considered the the evidence of claimant at Exhibit 58, FIR at Exhibit 63, panchnama at Exhibit 64. Admittedly, the charge-sheet is filed against the driver of auto-rickshaw. As quantum is not in dispute and appeal is filed on the ground of contributory negligence this Court is only considering the contributory negligence part. The first version as per the claim petition is that the alleged incident occurred due to negligence of both the vehicles and he was riding as pillion rider on the motorcycle. After 10 days complaint was filed by Arjanbhai against the driver of auto-rickshaw wherein it has been stated that the claimant was riding the motorcycle even in the statements of the two witnesses along with charge-sheet same version is stated. If we discard these two statements or evidence of charge-sheet even though the claimant in his evidence at Exhibit 58, wherein, in his cross-examination he has admitted that in the claim petition he has stated that he was pillion rider but in his deposition he has mentioned that he was riding motorcycle and no pillion rider was there. Further he has admitted that the road was wide enough that two vehicles could easily pass and the accident took place in broad daylight and visibility was there so vehicle coming from opposite side was also visible. He has also admitted that the complaint is filed after 10 days of the accident. In the cross-examination on behalf of opponent no.4 Insurance Company he has admitted the same fact and he has stated that he does not have any driving license and without driving license he was riding the motorcycle and though enough space on road was there he dashed with the

auto-rickshaw. Considering the sizes of both the vehicles and as per the panchnama both the vehicles could easily pass on the road even though he dashed with the auto-rickshaw and considering head on collision and size of the vehicles and variance between the proof and pleadings, contributory negligence is clearly reveals from the record and hence 40% negligence is required to be considered on the part of the claimant and 60% on the part of driver of the auto-rickshaw.

7) So far the arguments of the learned Advocate for the claimant that the driver of auto-rickshaw has not stepped into the witness box is concerned, it is needless to say that the complaint is filed belatedly and from record it reveals that in the petition itself it is stated that driver of both the vehicles are equally negligent and due to that alleged incident took place. The first version was that the claimant was a pillion rider and if we accept the said version then question does not arise for him to consider contributory negligence and if the claimant is pillion rider then for him composite negligence would applicable and question does not arise to exonerate the respondent no.4. Herein the learned Tribunal has exonerated the respondent no.4 - Insurance Company on the ground that the claimant is not entitled as tortfeasor to claim any compensation from the Insurance Company of the motorcycle. Hence, issue of contributory negligence is required to be considered itself. Even otherwise if we peruse the record then there is variance between the pleadings and proof and from complaint and as claimant himself had admitted that he was riding motorcycle and there was enough width of the road which clearly reveals from the papers. Hence, based on preponderance of probabilities which requires no standard of proof and the Court has to consider and draw inference based on the

material produced on record. Perusing the evidence it clearly reveals contributory negligence on the part of claimant. Hence, arguments canvassed by the learned Advocate for the original claimant is not sustainable.

8) In view of above discussion, as there was head on collision of both the vehicles involved in the accident, this Court is of the view that the accident occurred due to negligent driving of both the drivers of the vehicles involved in the accident and therefore contributory negligence is required to be considered. Accordingly, after appreciating the evidence produced on record and discussed as above the claimant is held liable to the extent of 40% towards contributory negligence, whereas, the driver of auto-rickshaw is held liable to the extent of 60% towards contributory negligence in occurrence of the accident.

9) In the wake of above, 40% amount qua contributory negligence of the claimant is required to be deducted from the total amount of compensation awarded by the Tribunal. Hence, amount payable to the claimant is recalculated at **Rs.8,80,860/-** (i.e. 60% of total amount of Rs.14,68,100/-).

10) Hence, present appeal is **allowed**. The judgment and award dated 10.01.2025 passed by learned Motor Accident Claims Tribunal (Special) and 10$^{th}$ Additional District Judge, Rajkot, in MAC Petition No.82 of 2018 stands modified to the aforesaid extent. Rest of the judgment and award remains unaltered.

11) The learned Advocate for the appellant – Insurance Company has stated that 50% amount of total compensation (Rs.7,34,050/-) has already been deposited by the appellant – Insurance Company,

therefore, in view of above admitted fact the appellant is directed to deposit remaining amount of **Rs.1,46,810/-** (Rs.8,80,860/- - Rs.7,34,050/-) along with interest as awarded by the Tribunal, before the Tribunal within a period of **four weeks** from the date of receipt of this order. Record and proceedings be remitted back to the concerned Tribunal forthwith.

12) The learned Tribunal is directed to recover or deduct the deficit court fees on amount of compensation and thereafter disburse the amount accordingly as per award.

13) Accordingly, present appeal is allowed as no order of cost and the Civil Application No.1 of 2025 also stands disposed of.

14) Award to be drawn accordingly.

**(HASMUKH D. SUTHAR,J)**

ANKIT JANSARI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: ANKIT YOGESHBHAI JANSARI(HCW0109), ENGLISH STENOGRAPHER GRADE I, at High Court of Gujarat on 09/12/2025 16:32:48