IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 2766 of 2025
With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/FIRST APPEAL NO. 2766 of 2025
With

CIVIL APPLICATION (FOR ADDITIONAL EVIDENCE) NO. 2 of 2025
In R/FIRST APPEAL NO. 2766 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR Sd/-

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Approved for Reporting	Yes	No
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KANTI MURJI SIYANI
Versus
L H OF DECD LATE ALIMAMAD MUSAHAI RUKNANI & ORS.

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Appearance:
KULDEEP J MEHTA(8571) for the Appellant(s) No. 1
MR ABHAYKUMAR P SHAH(3093) for the Appellant(s) No. 1
MR DHAIRYAWAN D BHATT(11817) for the Defendant(s) No. 3

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

Date : 04/12/2025
ORAL JUDGMENT

1. Admit. Learned advocates waive service of notice of admission for the respective respondents.

2. This appeal has been preferred by the appellant against the judgment and award dated 28.08.2023 passed by the Motor Accident Claims Tribunal (Main), Kachchh at Bhuj in MACP No. 279 of 2019, whereby the learned Tribunal directed opponent No.2 – the insurance company – to first deposit the amount of compensation in favour of the claimants, with liberty to recover the same from opponent Nos. 1 and 2.

3. Heard learned advocates for the respective parties.

4. The Brief Facts of the case are that on 19.09.2019, the deceased, Shri Alimamad Musahai Ruknani, was riding his Scooty bearing registration No. GJ-12-BH-2487 at a slow and moderate speed on INAL–Kafiaji Hashan Hospital Road near Makdumsha Pir Mosque, Mandvi. At that time, the driver of a Bolero Car bearing registration No. GJ-12-CD-4173, driving in a rash and negligent manner at excessive speed, lost control of the vehicle and collided with the Scooty. The deceased sustained serious injuries and later succumbed to the said injuries.

5. Having heard the learned advocates for the respective parties and having gone through the record it appears that the claimants (respondent Nos. 1.1 to 1.3) filed MACP No. 279 of 2019 seeking compensation. After recording evidence, the learned Tribunal awarded compensation of Rs.13,53,000/- with 9% interest, and held that the owner and driver of the Bolero car were liable, granting a direction to the insurance company to "**pay and recover**" on the ground that the driver did not possess a valid and effective driving licence at the time of the accident. The appellant, being the owner of the offending vehicle, contends that the finding regarding absence of a valid driving licence is erroneous, as the driving licence of opponent No.1 was already produced on record at Exhibit 71, which clearly shows that the licence was valid and effective on the date of the accident. This fact is also reflected in paragraph 6 of the impugned judgment.

6. The record further reveals that although the insurance company filed an application at Exhibit 72 calling upon opponent No.1 to produce the driving licence, the Tribunal drew an adverse inference due to non-production, overlooking that the licence had already been produced at Exhibit 71. Due to inadvertence on the part of the learned advocate for the insurance company, this fact was not pointed out before the Tribunal.

7. In these circumstances, the finding of the Tribunal that the insurance company had proved its defence regarding absence of a valid driving licence is **contradictory to the record**. The licence being already on record, the direction of "**pay and recover**" could not have been passed. Moreover, the insurance company has already deposited the awarded amount, and the claimants have received the same.

8. In view of the peculiar facts and circumstances of the case, the direction of the Tribunal exonerating the insurance company and ordering "**pay and recover" is unsustainable and requires interference to that limited extent**.

9. For the reasons recorded above, The present appeal **is allowed**. The direction issued by the learned Tribunal to opponent No.2 – insurance company – to "**pay and recover**" is **hereby quashed and set aside**. The rest of the judgment and award remains unaltered. **Record and proceedings** shall be

remitted back to the concerned Tribunal forthwith.

10. Since the main matter is disposed of, the present civil applications do not survive. Hence the same is disposed of as do not survive.

Sd/-

(HASMUKH D. SUTHAR,J)

ALI

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 08/12/2025 13:56:04