IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 3030 of 2025

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/FIRST APPEAL NO. 3030 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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THE TATA AIG GENERAL INSURANCE CO. LTD.
Versus
HAVABAI DADABHAI GOHEL & ORS.

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Appearance:
MS KIRTI S PATHAK(9966) for the Appellant(s) No. 1
DENISH V MAVADHIYA(9207) for the Defendant(s) No. 5,6
NOTICE SERVED for the Defendant(s) No. 1,2,3,4

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

Date : 04/12/2025
ORAL JUDGMENT

Admit. Mr. Denish Mavadhiya, learned advocate waives service of notice of admission for the respondent Nos.5 to 6. Though served, none appears for respondent Nos.1 to 4.

1. The present appeal under Section 173 of the Motor Vehicles Act, 1988 have been filed challenging the judgment and award dated 01.01.2025 passed by the learned MACT (Main), Surat in MACP No. 107of 2021.

2. Heard Ms. Kirti Pathak, learned advocate for the appellant

and Mr. Denish Mavadhiya, learned advocate appearing for respondent Nos.5 and 6.

3. The brief facts of the present appeal is that on 17.02.2021 at about 8:30 a.m., the deceased was travelling as a passenger in an Atul Shakti Delivery Van bearing registration No. GJ-11-Y-3885, hired for transporting vegetables from Prabhas-Patan to Semerva Village. Near a turn at Govindpara Village, the driver drove the vehicle in a rash and negligent manner, causing it to overturn. The deceased sustained fatal injuries and succumbed on the spot. The claimants have therefore filed the present claim petition under Section 164 of the Motor Vehicles Act, 1988, seeking compensation of ₹5,50,000/- from the opponents.

4. The learned advocate for the appellant submits that the learned Tribunal has committed an error in not properly appreciating the fact that the deceased was travelling as an unauthorized passenger in the insured vehicle, which was a goods vehicle with a seating capacity of only one person. It is contended that the vehicle was a delivery van and carrying such passengers was not permitted under the terms of the insurance policy. Thus, there was a clear violation of the policy terms and conditions, as the insured vehicle was a goods carriage having a seating capacity of one person including the driver, and the risk of a passenger was not covered. Hence, it is urged that the insurance company deserves to be exonerated from liability. It is further submitted that even the claimant has relied upon the FIR, the contents of which support the defence of the insurance

company. Therefore, the present appeal may be allowed.

5. The learned advocate for the respondent opposed the appeal and submitted that the Tribunal has committed no error. The deceased was a third party and had no concern with the terms of the policy. As the policy was valid on the date of the accident, the insurance company is liable to satisfy the award.

6. Having heard the learned advocates for the respective parties and upon perusal of the FIR , it clearly emerges that the vehicle in question was a private vehicle, yet was used for hire and reward, and the claimant/deceased were travelling after paying fare. The said fact is specifically mentioned in the FIR, and even the claimant has relied on the FIR. In view of the law laid down by the Hon'ble Apex Court in ***New India Insurance Co. v. Jaysukhlal Maganlal Gosi*, (2013) 3 GLR 2283**, when such facts are apparent from the FIR itself, no further independent evidence is required to be led by the insurance company.

7. In view of the above breach of policy conditions, the insurance company deserves to be exonerated. However, since the claimants/deceased were third parties and the insurance policy was in force on the date of the accident, the principle of "**pay and recover**" is required to be applied. The deceased had no privity of contract with the insurer; the policy is an agreement between the owner and the insurer. The principle of "pay and recover" ensures that victims are not left uncompensated while

preserving the insurer's right to recover from the owner who breached the policy conditions. This balanced approach maintains justice for victims and fairness to the insurer.

8. In view of the judgments of the Hon'ble Supreme Court in ***Rambabu Tiwari v. United India Insurance Co.*, (2008) 8 SCC 165; *K. Nagendra v. New India Insurance Co. Ltd.*, 2025 SCC OnLine SC 2297; *Parminder Singh v. New India Assurance Co. Ltd.*, (2019) 7 SCC 217; and *Chatha Service Station v. Lalmati Devi*, 2025 INSC 468**, wherein the insurer was exonerated for breach of conditions but the direction of "**pay and recover**" was upheld, the direction issued by the learned Tribunal in the present case also requires no interference.

9. This Court also deems it fit to refer to the order dated 02.12.2025 **passed in *United India Insurance Co. Ltd. v. Minor Shobhaben Madhubhai Patadia & Ors.*, First Appeal No. 3885 of 2025**, wherein the "**pay and recover**" direction was held just and judgment of Hon'ble Apex Court in the case of ***United India Insurance Company Ltd. vs. K.M. Poonam*, (2015) 15 SCC 297.**

10. In view of the above discussion, the appeals are **partly allowed**. The insurance company is directed to pay the awarded compensation to the claimants and shall thereafter have the liberty to recover the same from the driver and owner of the offending vehicle, i.e., opponent Nos.1 and 2.

11. Record and proceedings, if any, be transmitted back to the concerned Tribunal forthwith. Pending civil applications, if any, shall stand disposed of accordingly.

(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 05/12/2025 17:38:54