

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 1040 of 2022**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR Sd/-

Approved for Reporting	Yes	No
	✓	

BAJAJ ALLIANZ GENERAL INS CO LTD
Versus
SANJAY TULSIDAS BHATTER & ORS.

Appearance:

MR VIBHUTI NANAVATI(513) for the Appellant(s) No. 1
MS POOJA M PANCHAL for MR DHARMESH V SHAH(1050) for the
Defendant(s) No. 2,3,4
RAHUL S SHAH(9701) for the Defendant(s) No. 1

CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

**Date : 18/02/2026
ORAL JUDGMENT**

1. This appeal has been preferred by the appellant against the judgment and award dated 13.12.2021 passed by the Motor Accident Claims Tribunal (Aux.), Navsari in MACP No.171 of 2014.

2. Heard Mr. Vibhuti Nanavati, learned advocate for the appellant, Mr. Dharmesh V. Shah, learned advocate for respondent Nos.2 to 4 and Mr. Rahul Shah, learned advocate appearing for respondent No.1.

3. Brief facts of the case are that on 14.01.2014 at about 4:30 p.m., the deceased minor, Mehulbhai Thakorbhai Patel, was standing on the opposite side of a petrol pump at Patel Fadiya, Village Tankal, when opponent No. 1, driving a motor car bearing

Registration No. GJ-05-CK-6509 in a rash and negligent manner and at excessive speed, dashed against him. The deceased sustained serious head and bodily injuries and was initially treated at the Primary Health Centre, Tankal, thereafter at Kharel and D.N. Mehta Hospital, Navsari, and subsequently at Alipore and Surat Hospitals. Despite treatment, he succumbed to the injuries on 26.02.2014.

4. Mr. Vibhuti Nanavati, learned advocate for the appellant, has submitted that the vehicle in question was not involved in the alleged accident at all. He submitted that the First Information Report was registered after a delay of two days from the date of the accident. It is submitted that the vehicle has subsequently been planted and its registration number has been introduced falsely. It is further submitted that there was no eyewitness to the alleged accident who was aware of the registration number of the vehicle. The information in the FIR was given on the basis of one Dharmeshbhai, who has not been examined. The first informant had no personal knowledge of the incident. It is also contended that the driver of the alleged offending vehicle has been acquitted by the learned Criminal Court. Though documentary evidence was produced and the owner of the alleged offending vehicle was examined at Exhibit 54, the learned Tribunal has, without assigning any reasons, wrongly fastened the liability upon the Insurance Company. It is further submitted that even the Investigating Officer has admitted that no eyewitness was found during the course of investigation, and that the complaint was lodged only on the basis of the statement of the father of the deceased, who reached

the spot upon receiving information from his brother, the first informant. No vehicle was found at the spot which was allegedly involved in the accident. Learned advocate for the appellant has further submitted that on the date of the alleged accident, opponent No. 1 was flying a kite on the occasion of the Makar Sankranti festival and, therefore, was not involved in the alleged incident. It is submitted that opponent No. 1 had also filed an affidavit before the Insurance Company stating the said fact. It is further submitted that opponent No. 1 has deposed before the learned Tribunal, and an officer of the Insurance Company has also stated about the non-involvement of the vehicle. Statements of witnesses were recorded in support of the said contention; however, the learned Tribunal has ignored the said evidence while fastening the liability. Therefore, on the ground of non-involvement of the vehicle and the belated filing of the complaint, he has requested that the present appeal be allowed.

5. Learned advocates for the respondents have opposed the appeal on the ground that the learned Tribunal has properly appreciated the evidence and, after taking note of the evidence produced on record, has rightly held that there is clear evidence suggesting the involvement of the offending vehicle. It is submitted that a charge-sheet was filed against opponent No. 1, and he has never challenged the said complaint or the charge-sheet and had participated in the criminal proceedings. It is further submitted that merely because he has been acquitted in the criminal case, the same cannot be a ground to conclude that the vehicle was not involved in the alleged accident. The learned Tribunal has appreciated the evidence on the basis of the

principle of preponderance of probabilities, as the standard of proof in a claim petition is different from that in a criminal case. The claimants are only required to bring on record the involvement of the vehicle and that the alleged accident took place due to rash and negligent driving by the opponent. It is therefore submitted that the learned Tribunal has properly appreciated the evidence and rightly saddled the Insurance Company with liability. The involvement of car No. GJ-05-CK-6509 is proved on record. Hence, it is requested that the appeal be dismissed.

6. Having heard the learned advocates for the respective parties and having gone through the documents produced on record, it appears that the main issue raised by the appellant is with regard to the involvement of the offending vehicle bearing No. GJ-05-CK-6509 in the accident. The Insurance Company has pleaded non-involvement of the said vehicle in order to exonerate itself from liability.

7. It appears that before the Tribunal, the claimant led evidence at Exhibit 23, which is required to be appreciated in light of the law laid down by the Hon'ble Apex Court in ***Bimla Devi v. H.R.T.C., AIR 2009 SC 2819, and Parmeshwar(i) Devi v. Amir Chand, (2011) 11 SCC 635.*** The claimant has categorically stated about the involvement of the motor car driven by opponent No. 1. In the cross-examination, nothing has come on record to suggest that there was no negligence on the part of opponent No. 1.

8. It is the case of the Insurance Company that opponent No. 1 was not involved in causing the accident; however, a charge-sheet was filed against opponent No. 1 in respect of the said vehicle, and he faced the trial. Merely because the Criminal Court has acquitted the accused, the same cannot be a ground to discard the case of the claimant. The judgment in Criminal Case No. 436 of 2014, registered for the offences under Sections 279, 337, 338, and 304A of the IPC read with Sections 177, 184, and 134 of the Motor Vehicles Act, is produced on record. The said charge-sheet was never challenged before any authority. The involvement of the vehicle and negligence on the part of opponent No. 1 were found during investigation.

9. The Insurance Company has relied upon the judgment rendered by the Criminal Court. It is needless to say that the evidence led before the Tribunal is required to be appreciated independently in light of the principles laid down by the Hon'ble Apex Court in the case of ***National Insurance Company Ltd. v. Chamundeshwari***, reported in 2021 ACJ 2558 and in ***Jana Bai, Wd/o Dinkarrao Ghorpade & Ors. v. ICICI Lombard Insurance Company Ltd.***, reported in (2022) 10 SCC 512, wherein it has been held as under:

"We find that the rule of evidence to prove charges in a criminal trial cannot be used while deciding an application under Section 166 of the Motor Vehicles Act, 1988 which is summary in nature. There is no reason to doubt the veracity of the statement of appellant No. 1 who suffered injuries in the accident. The application under the Act has to be decided on the basis of evidence led before it and not on the basis of evidence which

should have been or could have been led in a criminal trial. We find that the entire approach of the High Court is clearly not sustainable.”

10. In view of the above law laid down by the Apex Court, it appears that the findings of the Criminal Court are not binding on the learned Tribunal. Even for the sake of argument, if the said judgment is perused, nothing reveals that the vehicle was not involved in the accident or that the acquittal was recorded on the ground of non-involvement of the vehicle. The acquittal appears to have been recorded merely on the ground of non-identification of the accused. Therefore, the acquittal recorded by the learned Judicial Magistrate First Class and the judgment rendered in the criminal case would not render any assistance to the appellant.

11. So far as the appreciation of the evidence of opponent No. 1 is concerned, he has tendered his evidence at Exhibit 53, wherein he has stated that on 14th January, 2014, he was flying a kite and that his vehicle was not involved in the alleged accident, and that he has been wrongly dragged into the litigation. He has further stated that an officer of the Insurance Company approached him and that he submitted an affidavit to that effect. However, to prove the said fact, no witness has been examined either before the learned Tribunal or before the Criminal Court. In his cross-examination, he has admitted that from January 2014 till 31st July 2018, he had never raised any objection nor filed any petition or initiated any litigation before any District Court or the High Court challenging the complaint

or the proceedings. He has further admitted that for the first time before the Tribunal he stated that his vehicle was not involved in the alleged accident and that a false case had been lodged against him.

12. Further, the Insurance Company has relied upon the evidence of Ankur Ramubhai Mistry, examined at Exhibit 57. He is a Legal Officer of Bajaj Allianz Insurance Company. He has deposed that the vehicle of opponent No. 1 was not involved in the alleged accident and that on 14th January, 2014, opponent No. 1 was flying a kite. He has further stated that a notarized affidavit to that effect was produced before him. In his cross-examination, he has admitted that he has no personal knowledge about the alleged accident and that he has deposed before the Tribunal only on the basis of the record. He has further admitted that no proceedings have been filed till date to challenge the FIR.

13. Considering the aforesaid facts, no sufficient or clinching evidence has been produced before the learned Tribunal to disprove the involvement of the vehicle. It is needless to say that the burden of proof lies on the person who asserts a fact. Before the learned Tribunal, the Insurance Company failed to rebut the presumption or to lay any cogent evidence to disprove the involvement of the vehicle in the accident.

14. It is true that the complaint was filed after two days of the accident; however, there is no bar that merely because the complaint is filed belatedly, the claim petition is required to be

rejected. Before the learned Tribunal, opponent Nos. 1 and 2 remained absent, and their right to file a reply was closed. The evidence laid by opponent No. 1 regarding non-involvement of the vehicle was disclosed for the first time before the Tribunal, and the same has not been accepted by the Tribunal. In the reply to the claim petition, the Insurance Company denied its liability and raised a contention on behalf of opponent No. 1 that he was doing business in Surat and that his car was being used only within Surat city and nearby areas. However, the Insurance Company failed to prove the said contention or to establish that the vehicle was not involved in the alleged accident.

15. It was further argued before the Tribunal that opponent No. 1 was not holding a valid and effective driving licence at the time of the accident and that there was a breach of the conditions of the policy. Hence, according to the Insurance Company, it was not liable to indemnify the loss caused to the claimants. However, such a defence is contradictory to the primary contention of non-involvement of the vehicle. Even otherwise, no evidence has been led to substantiate the alleged breach of policy conditions.

16. So far as the driving licence is concerned, the same was issued by the RTO, Surat, and is produced on record at Exhibit 34. On the date of the accident, the licence was valid. The insurance policy, produced at Exhibit 35, was in force from 13th October, 2013 to 12th October, 2014. It is an undisputed fact that the accident occurred on 14th January, 2014. Therefore, the insurance policy was valid and in force at the time of the

accident, and the Insurance Company has failed to prove any fundamental breach of the policy conditions.

17. It is needless to state that the mere acquittal in a criminal case is not a ground to dismiss a claim petition. In this regard, reference may be made to the decision in ***Asha Devi v. HRTC***, reported in **(2015) ACJ 883**. The learned Tribunal has rightly relied upon FIR and Charge-sheet papers filed against opponent No.1, to determine negligence and involvement of vehicle. Hence, argument qua police papers are prepared subsequently in connivance of police is not accepted in light of the decision of **ICICI Lombard General Insurance Company Ltd. Vs. Rajani Sahoo, 2025 INSC 6**.

18. Lastly, learned advocate Mr. Nanavati has submitted that the Tribunal ought not to have concluded about the involvement of the vehicle in the absence of examination of the Investigating Officer or the so-called eyewitness, Dharmeshbhai, who allegedly had personal knowledge of the incident. However, once the charge-sheet filed by the police was not challenged and, upon filing of the same, opponent No. 1 participated in the criminal trial, the question of examining the Investigating Officer before the learned Tribunal does not arise.

19. So far as evidence of witness Dharmeshbhai is concerned, it appears that the complaint was lodged based on the information given by him, but Dharmeshbhai expired on 18th June, 2015, and his death certificate has been produced at Exhibit 78. Thus, approximately one and a half years after the

alleged accident, he passed away. The involvement of the vehicle was disputed before the learned Tribunal for the first time by opponent No. 3 (the present appellant) by filing a written statement at Exhibit 51 in the year 2018. The evidence of the claimant had already been tendered before the learned Tribunal on 9th December, 2016, and the said witness was cross-examined on 27th October, 2017. Therefore, the evidence of the claimant was recorded prior to the filing of the written statement. Admittedly prior to relevant dates of both stages, Dharmeshbhai was no more. Hence, the question of to examine Dharmeshbhai does not arise. Mere delay in filing the FIR is not, by itself, a ground to dismiss the claim petition in view of the decision in ***New India Assurance Co. Ltd. v. Velu & Anr.***, after a holistic consideration of the facts and appreciation of the evidence produced on record. There is no reason to believe that the vehicle was not involved in the accident. Therefore, the argument canvassed by learned advocate Mr. Nanavati is not accepted. Hence, the appellant has failed to prove that vehicle No. GJ-05-CK-6509 was not involved in the alleged accident.

20. So far as the quantum of compensation is concerned, the factum of death has been duly proved. The deceased was a minor aged eight years, and no cross-objection has been preferred challenging the quantum. The appeal is mainly restricted to the issue of involvement of the vehicle, and therefore, the question of quantum does not arise for consideration beyond the limited ground urged in the present appeal.

21. On overall appreciation of the evidence on record, the judgment and award passed by the learned Tribunal appears to be proper, which calls for no interference by this Court. Accordingly, the appeal, being devoid of merits, deserves dismissal and is hereby **dismissed**. If any amount is lying deposited before this Court, the same shall be transmitted to the learned Tribunal forthwith. No order as to costs. The Registry is directed to return the Record & Proceedings, if any, to the learned Tribunal forthwith.

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 19/02/2026 12:42:31