IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 2272 of 2022
With
R/FIRST APPEAL NO. 2449 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 NEW INDIA ASSURANCE COMPANY LTD
Versus
SEJALBEN RAJESHBHAI TIMBADIYA & ORS.

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Appearance in FA No.2272/2022:
MR KRUTIK A PARIKH(7268) for the Appellant(s) No. 1
MR ANAND R PATEL(7352) for the Defendant(s) No. 6
MR HEMAL SHAH(6960) for the Defendant(s) No. 1,2,3,4,5
Appearance in FA No.2449/2022
MR HEMAL SHAH(6960) for the Appellant(s) No. 1 -3, 4
MR KRUTIK A PARIKH(7268) for the Defendant(s) No. 2
MR ANAND R PATEL(7352) for the Defendant(s) No. 1

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

Date : 06/03/2026

COMMON JUDGMENT

[1.0] Since both these appeals are filed assailing the impugned judgment and award arising from a common accident, they are being heard, decided and disposed of by this common judgment and for the sake of convenience and brevity, facts from First Appeal No.2272 of 2022 are taken.

[2.0] By way of First Appeal No.2272/2022 under Section 173 of the Motor Vehicles Act, 1988 (for short “MV Act”), the original opponent No.2 – insurance company and the original claimants by way of First Appeal No.2449/2022 have assailed the

impugned judgment and award dated 28.01.2022 passed by the learned Motor Accident Claims Tribunal (Auxi.), Rajkot (for short "learned Tribunal") in Motor Accident Claim Petition No.644/2019, whereby the learned Tribunal held the driver of Truck to be negligent to the extent of 60% and deceased motorcyclist to the extent of 40% for the accident and directed the original opponent No.2 – insurance company to pay compensation of Rs.31,66,032/- to the original claimants after deducting 40% (Rs.21,10,688/-) from total compensation of Rs.52,76,720/- towards contributory negligence of the deceased motorcyclist with interest at the rate of 9% per annum from the date of claim petition.

[3.0] The brief facts leading to filing of present appeals are as follows:

[3.1] On 18.04.2019, deceased Rajeshbhai Hemrabhai Timbadiya (hereinafter referred to as "deceased motorcyclist") was riding his Motorcycle with slow speed on the correct side of the road and when he reached at the place of accident, the driver of Truck No.GJ-10-TT-5084 came driving his Truck in rash and negligent manner with excessive speed and dashed his truck with motorcycle of the deceased as a result of which the accident occurred and deceased motorcyclist having sustained serious injuries died on the spot. Therefore, the original claimants – legal heirs and representatives of the deceased filed the claim petition seeking compensation of Rs.75 lakh.

[3.2] After considering the evidence produced on record by the respective parties, learned Tribunal has been pleased to hold

the driver of Truck negligent to the extent of 60% and deceased motorcyclist 40% contributory negligent for the accident and awarded compensation of Rs.31,66,032/- to the original claimants after deducting 40% (Rs.21,10,688/-) from total compensation of Rs.52,76,720/- towards contributory negligence of the deceased motorcyclist with interest at the rate of 9% per annum from the date of claim petition. Hence, First Appeal No.2272/2022 is filed by the insurance company on the ground of negligence and liability and First Appeal No.2449/2022 is filed by the original claimants challenging 40% negligence held on the part of the deceased motorcyclist as well as for enhancement of compensation.

[4.0] Learned advocate Mr. Krutik Parikh appearing for the insurance company has disputed the liability of insurance company on the ground that on date of accident there was no permit to ply the offending vehicle and there was statutory breach of the policy and hence, insurance company is not liable to pay the compensation. If in any event it is proved that there was a breach of policy even then the learned Tribunal ought to have passed an order of pay and recover. He has further submitted that there is clear breach of section 149(2)(a) & (c) of the MV Act. The permit was valid for the period from 06.11.2013 to 05.11.2018 and then from 04.06.2019 to 05.11.2018. Thus, as on the date of accident i.e. 18.04.2019, the insured vehicle was not having valid permit to drive the vehicle on road. Hence, the insurance company is required to be exonerated. Not only that, goods' permit of the insured vehicle is produced at Exhs.26 and 27 and even it is admitted and undisputed fact that on 18.04.2019, insured vehicle was

not having valid permit however, on 04.06.2019, to avoid the liability the same is subsequently got renewed. Hence, there is clear cut violation and the breach of statutory conditions of the insurance policy. Hence, he has requested to exonerate the insurance company by relying on the decision of Hon'ble Supreme Court in the case of **Amrit Paul Singh and Another vs. TATA AIG General Insurance Company Limited and Others** reported in **(2018)7 SCC 558**.

[4.1] Further, he has argued that though there was head on collision, learned Tribunal has committed an error in saddling the appellant with 60% negligence and deceased at 40% which ought to have been atleast 50% on the part of deceased motorcyclist considering the fact that there was head on collision based on panchnama and evidence produced on the record.

[5.0] Learned advocate Mr. Anand Patel appearing for the opponent No.1 (original owner) of the vehicle has submitted that the vehicle was having valid permit and is subsequently got renewed as per sub-Section (5) of Section 81 of the MV Act to cover the period. After the accident, permit is renewed is not a ground to exonerate the insurance company from its liability. The coverage of policy is not in dispute. Hence, the decision in the case of ***Amrit Paul Singh (Supra)*** would not be applicable more particularly in light of sub-Section (5) of Section 81 of the MV Act and he has submitted that if permit is not renewed then the owner will have the risk of having to pay maximum tax and also the penalty and except this, it does not affect the coverage of third party risk and would not amount to

fundamental breach of policy as sub-Section (5) of Section 81 of the MV Act permits subsequent renewal and during the pendency of renewal to ply the vehicle on route is permissible and in this regard, he has also relied on the decision of the Karnataka High Court in the case of **United India Insurance Co. Ltd. vs. Smt. Yasmin Begum @ Yasmin W/o. Late Mohammed Jilan @ Mohammed Jilani**. Hence, he has requested to dismiss the appeal.

[6.0] Learned advocate Mr. H.M. Shah appearing for the original claimants adopting the arguments canvassed by learned advocate Mr. Anand Patel has further submitted that claimant is a third party who has nothing to do with any breach of policy and even as per section 81(5) of the MV Act renewal of such policy after the date of expiry of the permit is permissible.

[6.1] Further, he has submitted that learned Tribunal has committed an error in considering 40% contributory negligence on the part of the deceased motorcyclist though charge-sheet is filed against the truck driver and accident took place on the middle of the road. He has further submitted that no any witness is examined to prove or rebut the presumption of negligence on the part of the truck driver and even otherwise the driver did not step into the witness box and requested to hold the truck driver solely negligent in causing the accident.

[6.2] Further, he has submitted that the learned Tribunal has committed error in considering the average income of the deceased for three years and has not considered the latest income of the deceased. Hence, he has requested to dismiss

First Appeal No.2272/2022 and allow First Appeal No.2449/2022 filed by the original claimants.

[7.0] Having heard learned advocate for the appellant – insurance company, learned advocate appearing for the original owner of offending truck and learned advocate for the original claimants and perused the record.

NEGLIGENCE:

[8.0] It appears that the learned Tribunal has considered the evidence produced and adduced by both the parties including the affidavit of the claimant No.4 (Exh.21), complaint (Exh.28), panchnama of scene of accident (Exh.29), charge-sheet (Exh.34), which is filed against the driver of offending truck as well as the decisions of the Hon'ble Supreme Court in the case of **Bimla Devi vs. H.R.S.T.C.** reported in **AIR 2009 SC 2819** and **Parmeshwari Devi vs. Amir Chand** reported in **(2011) 11 SCC 635,** wherein it is held that it is settled law that negligence is required to be proved in claim petition under section 166 of the MV Act only on the touchstone of the preponderance of probability and not beyond doubt. Perusing the evidence of claimant No.4 (Exh.21), it appears that he was not the eye-witness of the accident however, as per his say, the driver of Truck No.GJ-10-TT-5084 came from opposite direction with excessive speed in rash and negligent manner.

[8.1] Further, perusing the panchnama of place of accident (Exh.29), it appears that the motorcycle No.GJ-05-ER-5122 was lying in damaged condition on the left side of the road but the accident took place on the middle of the road as brake marks of the truck tyre of about 10 feet are found at the place of

accident and also the marks showing dragging of motorcycle were found on the middle of the road. Even, the charge-sheet (Exh.34) is filed against the driver of offending truck and he fled away leaving the truck on the place of accident. It seems that there was head on collision between the two vehicles however, at the same time, driver of offending truck is not examined and hence, no option left for the learned Tribunal but to draw adverse inference based on evidence produced on record i.e. panchnama and keeping in mind the principle of *res ipsa loquitur*.

[8.2] Further, it appears that the truck was in excessive speed and alleged accident took place on the highway road and there was a 40 feet width of the road. On the highway road, high speed of vehicle is expected but at the same time, if the driver intended to stop his vehicle, he is responsible to take extra care of expected and unexpected events and he ought to have been in control of the vehicle. Herein, the accident took place on the middle of the road and there was sufficient chance to avoid the accident and motorcyclist could have otherwise taken his motorcycle from side to the middle of the road to avoid the accident. Upto that extent, the deceased motorcyclist has contributed in the accident and contributory negligence reveals on the part of the deceased motorcyclist. At the same time, it is worth to mention that the truck driver applied brakes and tried to avoid the accident and therefore, the learned Tribunal has apportioned 40% contributory negligence on the part of deceased motorcyclist, which in the considered opinion of this Court, is somewhat on higher side and while driving heavy vehicle, degree and standard of care

and caution is required to be more and therefore, considering the size of the vehicle i.e. motorcycle, 20% contributory negligence on the part of deceased motorcyclist is required to be considered. Upto that extent, the learned Tribunal has committed an error. Hence, after re-appreciating the evidence, the driver of offending truck is held to be **80%** negligent and deceased motorcyclist is held to be **20%** contributory negligent for the accident.

QUANTUM:

[9.0] In order to prove the income of the deceased, original claimant No.4 deposed at Exh.28 and even the original claimants had produced written arguments at Exh.32 wherein it has been claimed that the deceased was doing job work of diamond and used to earn Rs.30,000/- per month and to prove the said claim, the original claimants have produced income tax returns of the deceased at Exhs.35 to 37 for the assessment years 2016-17, 2017-18 and 2018-19 respectively alongwith computation of income statements, which show gross yearly income of the deceased for AY 2016-17 at Rs.2,81,039/-; for AY 2017-18 at Rs.3,09,776/- and for AY 2018-19 at Rs.3,10,386/-. However, perusing the impugned judgment, it appears that though the learned Tribunal has observed that as per the judgment of the Hon'ble Supreme Court in the case of **Malarvizhi and others vs. United India Insurance Co. Ltd. and Anr.** reported in **2020 ACJ SC 526,** the highest income declared in various income tax returns may be taken as annual income of deceased however, it is always apt, appropriate and safe to take average income and therefore, the learned Tribunal has taken the average income from the three income

tax returns produced on record at Exhs.35, 36 and 37 i.e. Rs.3,00,400/-.

[9.1] This Court is of considered view that there is no thumb rule that Tribunal ought to have considered the average income. In this regard, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **Nidhi Bhargava v. National Insurance Co. Ltd.** reported in **2025 SCC OnLine 872,** wherein the Hon'ble Supreme Court in **paragraph 12** has observed and held as under:

> *"12. Just because on the date of the accident i.e., 12.08.2008, the Return for the Assessment Year 2008-2009 had not been filed, cannot disadvantage the appellants, for the reason that the period for which the Return is to be submitted covers the period starting 1 st of April, 2007 and ending 31st March, 2008. Thus, for obvious reasons, the Return would be only for the period 01.04.2007 to 31.03.2008, and date of submission would be post-31.03.2008. No income earned beyond 31.03.2008 would reflect in the Income Tax Return for the Assessment Year 2008-2009. To reject the Return on the sole ground of its submission after the date of accident alone, in our considered view, cannot be legally sustained.*
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> *13. ... In K Ramya v. National Insurance Co. Ltd., 2022 SCC OnLine SC 1338, after taking note of, inter alia, Ningamma v. United India Insurance Co. Ltd., (2009) 13 SCC 710, the Court held that the '…Motor Vehicles Act of 1988 is a beneficial and welfare legislation that seeks to provide compensation as per the contemporaneous position of an individual which is essentially forward-looking. Unlike tortious liability, which is chiefly concerned with making up for the past and reinstating a claimant to his original position, the compensation under the Act is concerned with providing stability and continuity in peoples' lives in the future. …'*

Relying on the said decision, in the case of **Sayar Ram vs. Ram Kara** rendered in **SLP (Civil) No. 24501/2025,** the

Hon'ble Supreme Court in paragraph 12 has observed and held as under:

> *"12. What flows from Nidhi Bhargava (supra) is that the Income Tax Returns filed after the accident/death can also be taken into consideration for calculation of income to award compensation. However, having due regard for the Tribunal's well-placed doubts, in so far as returns filed for the relevant year, we take a different approach. In the instant case, it cannot be simply assumed that there is no profit accruing from the business of the deceased at the time of the accident. To adopt such a presumption would be contrary to the settled principles guiding the assessment of compensation.* ***Rather, the returns for the preceding year or years must be taken as a foundational benchmark, subject to careful judicial examination, recognizing that business profits are seldom static and often exhibit a progressive growth trajectory. The exercise thus calls for a fair and reasonable assessment, grounded in available evidence, of the financial benefits that the deceased would have justifiably earned but for the untimely accident****. In our considered view, in order to award just and fair compensation, the annual income of the deceased is re-assessed at Rs.3,50,000/- per annum."*

Hence, in considered view of this Court and in view of the decision of the Hon'ble Supreme Court in the case of ***Malarvizhi & Ors (Supra)*****,** as income tax return is a statutory document, considering Exh.37 i.e. Income Tax Return for the AY 2018-19, annual income of the deceased is required to be assessed at Rs.3,10,000/- to award just and fair compensation.

[9.2] Herein, the original claimants have produced driving license of the deceased at Exh.38 which shows birth date of deceased as 24.04.1984 and accident took place on 18.04.2019 and therefore, at the time of accident, the deceased was aged 35 years and considering the age group of 31 to 35 years, multiplier of 16 is rightly applied by the learned Tribunal in

view of decision in the case of **Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation & Anr.** reported in **(2009)6 SCC 121** and as per the decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Pranay Sethi and Ors.** reported in **2017 ACJ 2700,** addition of 40% i.e. Rs.1,24,000/- (40% of Rs.3,10,000/-) towards future prospects is required to be taken into consideration and therefore, yearly income of deceased would come to **Rs.4,34,000/- (Rs.3,10,000 + Rs.1,24,000)**. Further, the learned Tribunal has rightly deducted 1/4 towards dependency and personal expenses of the deceased and therefore, deducting Rs.1,08,500/- (1/4 of Rs.4,34,000/-) towards personal expenses of the deceased, the learned Tribunal ought to have considered **Rs.3,25,500/- [Rs.4,34,000 – Rs.1,08,500]** towards annual loss of dependency. Further, applying multiplier of 16, compensation under the head of future loss of dependency ought to have been awarded at **Rs.52,08,000/- (Rs.3,25,500 x 16)**. To that extent the impugned judgment and award is required to be modified.

[9.3] So far as compensation under the conventional heads of loss of consortium, loss of estate and funeral expenses is concerned, under the head of loss of estate and funeral expenses, the original claimants are entitled to Rs.18,150/- each and in view of the decision of the Hon'ble Supreme Court in the case of **Magma General Insurance Co. Ltd. vs. Nanu Ram** reported in **(2018) 18 SCC 130** and **Janabai Wd/o Dinkarrao Ghorpade & Ors. vs. M/s ICICI Lambord Insurance Company Ltd.** reported in **2022 LiveLaw (SC) 666,** the original claimant No.1 is entitled to Rs.48,400 towards spousal

consortium, original claimant Nos.2 and 3 are entitled to Rs.48,400/- each towards filial consortium and original claimant Nos.4 and 5 are entitled to Rs.48,400/- each towards parental consortium.

[9.4] Hence, the original claimants are now entitled to get the reassessed compensation as under:

Heads	**Awarded by Tribunal**	**Reassessed by this Court**
Future loss of dependency	Rs.50,46,720/-	**Rs.52,08,000/-** including additional amount of Rs.1,61,280/-
Loss of Estate	Rs.15,000/-	Rs.18,150/-
Funeral Expenses	Rs.15,000/-	Rs.18,150/-
Spousal Consortium (Rs.40,000 x 1)	Rs.40,000/-	Rs.48,400/-
Filial Consortium (Rs.40,000 x 2)	Rs.80,000/-	Rs.96,800/- (Rs.48,400 x 2)
Parental Consortium (Rs.40,000 x 2)	Rs.80,000/-	Rs.96,800/- (Rs.48,400 x 2)
Total Compensation	**Rs.52,76,720/-**	**Rs.54,86,300/-** including additional amount of Rs.2,09,580/-

Hence, the original claimants are entitled to get Rs.54,86,300/- but as discussed hereinabove, as the deceased motorcyclist is held contributory negligent to the extent of 20% for the occurrence of accident, 20% i.e. Rs.10,97,260/- is required to be deducted and therefore, the original claimants are entitled to get of **Rs.43,89,040/- [(Rs.54,86,300 – Rs.10,97,260 (20% of Rs.54,86,300)]** towards just compensation with interest at the rate of 9% per annum and therefore, the impugned judgment and award passed by the

learned Tribunal is required to be modified to the aforesaid extent.

LIABILITY:

[10.0] So far as liability to pay compensation is concerned, appellant – insurance company has disputed the liability by filing written statement at Exh.15 wherein defence is raised *qua* existence of route permit on the date of accident but said issue is not addressed or answered by the learned Tribunal. The issue raised before the learned Tribunal to avoid liability was only *qua* license and learned Tribunal has appreciated the evidence produced on record at Exh.25 i.e. insurance policy of offending truck which shows that as on the date of accident i.e. 18.04.2019, the insurance policy was in force as period of policy was from 12.10.2018 to 11.10.2019 and hence, coverage of risk is not in dispute. The driving license of opponent No.1 – driver of offending truck is also produced at Exh.33 and in evidence also, claimant No.4 has stated that deceased was having driving license to drive the motorcycle and same is also produced at Exh.38.

[10.1] Now, coming back to the issue raised by the insurance company as regards permit, it is the case of the insurance company that the permit of offending truck (Exh.26) was issued for all Districts of Gujarat State and goods permit for offending truck is produced at Exh.27 which shows validity period from 06.11.2013 to 05.11.2018 while document (Exh.26) shows validity period of permit from 04.06.2019 to 03.06.2024 and accident took place on 18.04.2019 and thus, obviously, the said permit was renewed after seven months of

the accident. Hence, there was no any permit to ply the vehicle and hence, insurance company is not liable to pay the compensation and in this regard, the appellant – insurance company has relied on the decision of Hon'ble Supreme Court in the case of ***Amrit Paul Singh (Supra)***.

[10.2] It is undisputed and admitted fact that aforesaid both the documentary evidences at Exhs.26 and 27 are produced by the insurance company which shows that permit is renewed for the period from 04.06.2019 to 03.06.2024. If we peruse the provision of sections 2(28), 2(31), 2(47) and 81 of the MV Act, same read as under:

> *"2(28) "**motor vehicle**" or "**vehicle**" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres;*
>
> *2(31) "**permit**" means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle;*
>
> *2(47) "**transport vehicle**" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;*
>
> ***81. Duration and renewal of permits**.—*
>
> *(1) A permit other than a temporary permit issued under section 87 or a special permit issued under sub-section (8) of section 88 shall be effective 2[from the date of issuance or renewal thereof] for a period of five years:*
>
> *Provided that where the permit is countersigned under sub-section (1) of section 88, such counter signature shall remain effective without renewal for such period so as to synchronise with the validity of the primary permit.*

(2) A permit may be renewed on an application made not less than fifteen days before the date of its expiry.

(3) Notwithstanding anything contained in sub-section (2), the Regional Transport Authority or the State Transport Authority, as the case may be, may entertain an application for the renewal of a permit after the last date specified in that sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified.

(4) The Regional Transport Authority or the State Transport Authority, as the case may be, may reject an application for the renewal of a permit on one or more of the following grounds, namely:—

(a) the financial condition of the applicant as evidenced by insolvency, or decrees for payment of debts remaining unsatisfied for a period of thirty days, prior to the date of consideration of the application;

(b) the applicant had been punished twice or more for any of the following offences within twelve months reckoned from fifteen days prior to the date of consideration of the application committed as a result of the operation of a stage carriage service by the applicant, namely:—

(i) plying any vehicle—

(1) without payment of tax due on such vehicle;

(2) without payment of tax during the grace period allowed for payment of such tax and then stop the plying of such vehicle;

(3) on any unauthorised route;

(ii) making unauthorised trips:

Provided that in computing the number of punishments for the purpose of clause (b), any punishment stayed by the order of an appellate authority shall not be taken into account:

Provided further that no application under this sub-section shall be rejected unless an opportunity of being heard is given to the applicant.

(5) Where a permit has been renewed under this section after the expiry of the period thereof, such renewal shall have effect from the date of such expiry irrespective of whether or not a temporary permit has been granted under clause (d) of

section 87, and where a temporary permit has been granted, the fee paid in respect of such temporary permit shall be refunded."

Herein, in the case on hand, no evidence is available *qua* temporary permit was issued during interregnum period or date of permit renewal application. The Regional Transport Authority has also not rejected the application for renewal of permit. Once permit is renewed then as per sub-section (5) of Section 81 of the MV Act, after expiry of the period of permit, the renewal of such permit having effect from the date of such expiry irrespective of whether or not a temporary permit has been granted.

[10.3] Perusing the provision of sub-section (5) of Section 81 of the MV Act, it clearly reveals that sub-section (5) of Section 81 of the MV Act having a deeming *proviso* to effect renewal of permit retrospectively and which is governed by the doctrine of "***Relation Back***". The doctrine of "Relation Back" is the principle that an act done at a later time is deemed by law to have occurred at a prior time. In practice, in certain scenarios the present act of the party will relate back to the earlier time for the purpose of determining the cause of action. The *Black's law* dictionary defines the term "*Relation Back*" to mean that an act done at a later time is, under certain circumstances, treated as though it occurred at an earlier time. According to the Law Lexicon the term "*Relation Back*" is where a thing or act constructively relates back to an antecedent thing or act. The doctrine of "*Relation Back*" is a legal fiction where a later act such as renewal of permit deemed to have taken effect from an earlier date, which prevents break and such renewal

having retrospective effect which is bridging the gap and such subsequent permit renewal in light of sub-Section (5) of Section 81 of the MV Act having effect of continuity.

[10.4] In view of above, since there is no any evidence brought on record except production of documents at Exhs.26 and 27 by the insurance company, no oral or other evidence is tendered or no any dispute raised before the Tribunal *qua* permit hence, there is nothing on record which suggests as to whether during interregnum period, temporary or otherwise permit does exist. However, even relying on the documents produced at Exhs.26 and 27 produced by the appellant – insurance company, even if for the sake of argument it is accepted that as on date of accident the offending vehicle was not having permit then also, subsequent renewal of permit under sub-Section (5) of Section 81 of the MV Act having retrospective effect of renewal and such act is also recognized under the doctrine of "*Relation Back*". Hence, the argument canvassed by learned advocate Mr. Parikh *qua* fundamental breach of terms and conditions of insurance policy is not acceptable.

[10.5] Learned advocate Mr. Parikh has also relied on the decision of the Hon'ble Supreme Court in the case of ***Amrit Paul Singh (Supra)***. Going through the record, it becomes clear that in the case on hand, the permit was already issued at the first instance and it was effective for the period initially from 06.11.2013 to 05.11.2018 and subsequently, from 04.06.2019 to 03.06.2024. Hence, merely delay in making application for renewal of permit does not make any difference in light of sub-Section (5) of Section 81 of the MV Act as discussed in

earlier part and hence, argument *qua* renewal application was made after the expiry of such period only with a view to cover the accident period to avoid the liability is not acceptable in light of sub-Section (5) of Section 81 of the MV Act, which is a deeming *proviso* and which takes care of situation where pending application for renewal of permit, if transport vehicle is plying on the road and subsequently permit is renewed then it covers the aforesaid period considering the doctrine of "Relation Back" as well as deeming provision of sub-section (5) of Section 81 of the MV Act. This is not a case wherein the vehicle was plying without permit. Initially, the permit was issued and during the interregnum period it was not in existence and under sub-section (4) of section 81 of the MV Act, application for renewal of permit is not rejected by the authority. Considering the aforesaid fact, the decision in the case of ***Amrit Paul Singh (Supra)*** is distinguishable on the facts of the present case. In the case of ***Amrit Paul Singh (Supra)***, there was no permit at all and herein, permit was issued but it was renewed subsequently and during the interregnum period accident took place.

[10.6] Further, to substantiate the aforesaid view, it would be in profit to refer and rely upon the decisions of the Andhra Pradesh High Court and Karnataka High Court in the case of **C. Lakshman Reddi vs. The State Transport Authority** reported in **AIR 1977 AP 299** wherein, the Andhra Pradesh High Court was considering section 58(4) of the Motor Vehicles Act, 1939, which is a provision similar to section 81 of the MV Act and wherein it was observed that once the renewal of permit is granted, it has retrospective effect and if the vehicle is run on

temporary permit, the fee paid in respect of such temporary permit is liable to be refunded. So once renewal has been granted, it has retrospective effect from the date of expiry of the permit and the vehicle must be deemed to be having a valid permit from the date of expiry of the permit. Even, in a case where the permit has not been renewed, the operator will take the risk of having to pay the maximum tax and also penalty. But, in the case of third party, if vehicle runs without permit, it does not make any difference and policy does not make any difference.

Further, relying on the aforesaid pronouncement, the Karnataka High Court in the case of **Smt. Yasmin Begum @ Yasmin W/o. Late Mohammed Jilan @ Mohammed Jilani (Supra),** has held that under sub-section (5) of Section 81 of the MV Act, there is no fundamental breach of terms and conditions of policy in case the permit is subsequently renewed and owner and insurance company of the offending vehicle are jointly and severally liable to satisfy the award in favor of third party. Subsequently, said decision of Karnataka High Court came to be challenged before the Hon'ble Supreme Court (3 Judges' Bench) by way of Special Leave to Appeal (C) D. No.14303/2020, which came to be dismissed vide order dated 14.10.2020.

[10.7] In view of aforesaid discussion and distinguishable facts, the case of ***Amrit Paul Singh (Supra)*** relied on by the learned advocate for the insurance company would not avail any assistance to the learned advocate appearing for the insurance company. Even, in the case of **K. Nagendra vs. New India Insurance Co. Ltd.** reported in **AIR 2025 SC 5281, the Hon'ble**

Supreme Court has held that the purpose of an insurance policy in the present context is to shield the owner/operator from direct liability when such an unforeseen/unfortunate incident takes place. To deny the victim/dependents of the victim compensation simply because the accident took place outside the bounds of the permit and, therefore, is outside the purview of the insurance policy, would be offensive to the sense of justice, for the accident itself is for no fault of his. Then, the Insurance Company most certainly ought to pay. Thus, for the reasons recorded hereinabove, the insurance company is liable to pay the compensation to the original claimants.

[11.0] In wake of aforesaid conspectus, (i) **First Appeal No.2272/2022** filed by the insurance company is **dismissed** and (ii) **First Appeal No.2449/2022** filed by the original claimants is **partly allowed** and impugned judgment and award dated 28.01.2022 passed by the learned Motor Accident Claims Tribunal (Auxi.), Rajkot in Motor Accident Claim Petition No.644/2019 is modified and it is held that original claimants are entitled to get **Rs.43,89,040/- after deducting Rs.10,97,260 towards contributory negligence of the deceased from total entitlement of Rs.54,86,300/-** from the respondents jointly and severally. As the insurance company has already deposited Rs.31,66,032/- with the learned Tribunal, the insurance company is directed to deposit the remaining amount i.e. **Rs.12,23,008/-** [(Rs.43,89,040 – Rs.31,66,032 (earlier deposited)] alongwith interest as awarded by the learned Tribunal, with the learned Tribunal

within a period of **four weeks** from the date of receipt of this judgment.

[11.1] After deposit of the aforesaid amount of **Rs.12,23,008/-**, the Tribunal shall disburse the entire amount of compensation with accrued interest thereon, if any, to the original claimants, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure and strictly in accordance with the apportionment made by the learned Tribunal.

[11.2] While making the payment, the Tribunal shall deduct the courts fees, if not paid.

[12.0] Record and proceedings, if any, be sent back to the concerned Tribunal, forthwith.

Pending civil application, if any, stands disposed of.

Sd/-
(HASMUKH D. SUTHAR, J.)

Ajay

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: AJAY CHANDRAN MENON(HC00939), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 06/03/2026 15:36:47