

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 3942 of 2023

**FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Approved for Reporting	Yes	No
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MEGHVILAL NARAYANLAL SHARMA
Versus
ASUBA JASWANTSINH ZALA & ORS.

Appearance:

MR NISHIT A BHALODI(9597) for the Appellant(s) No. 1
MR RATHIN P RAVAL(5013) for the Defendant(s) No. 5
RULE SERVED for the Defendant(s) No. 1,2,3
RULE UNSERVED for the Defendant(s) No. 4

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

**Date : 19/01/2026
ORAL JUDGMENT**

[1.0] This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "MV Act") has been preferred by the appellant–original respondent No.1 – owner of Car bearing No.RJ-27-CD-4506 against the judgment and award dated 19.12.2019 passed by the learned Motor Accident Claims Tribunal (Main), Gandhinagar (for short referred to as "learned Tribunal") in Motor Accident Claim Petition No.209/2016 under Section 166 of the Motor Vehicles Act, 1988 (for short referred to as "MV Act") wherein the learned Tribunal has partly allowed the claim petition of respondent Nos.1, 2 and 3 and awarded compensation of Rs.4,74,844/- with interest at the rate of 8% per annum from the date of the claim petition to be paid by present appellant – original respondent No.1.

[2.0] Though served, respondent Nos.1, 2 and 3 have chosen not to appear before this Court. Heard learned advocate Mr. Nishit Bhalodi

appearing for the appellant and learned advocate Mr. Rathin Raval appearing for respondent No.5.

[3.0] The brief facts of the present appeal are that the accident took place on 21.10.2015, when the deceased Jasvantsinh Zala was sitting beside the driver seat of Tractor bearing No.GJ-18-H-2962 being driven by driver of the Tractor namely Pratapsinh and were going to village Lavarapur. At the time and place of accident, car bearing No.RJ-27-CD-4506 came from opposite direction being driven by its driver in a careless manner and while overtaking on going vehicle, the car dashed against the tractor as a result of which deceased Jasvantsinh Zala (hereinafter referred to as "deceased") fell from the tractor and sustained fatal head injuries and died. In this regard, a complaint was lodged with Dabhoda Police Station. The legal heirs and representatives of deceased – original claimants filed the claim petition and after appreciating the evidence, the claim petition against original opponent Nos.2 and 3 was dismissed and appellant herein – original opponent No.1 was directed to pay the compensation of Rs.4,74,844/- to the original claimants. Being aggrieved and dissatisfied with the impugned judgment and award, the present appellant – original owner of Car bearing No.RJ-27-CD-4506 has filed the present appeal.

[4.0] Learned advocate Mr. Nishit Bhalodi appearing for the appellant has submitted that the learned Tribunal has committed gross error in holding the present appellant liable to pay the compensation though it was proved on the record that on the date of accident, present appellant was not the owner of the Car No.RJ-27-CD-4506. He has submitted that earlier the present appellant was the owner of the said car but said vehicle was damaged in flood on 26.07.2015 and hence, the then insurance company of the Car No.RJ-27-CD-4506 – Bharti AXA General Insurance Co. Ltd. had declared the said car as total loss and accordingly,

paid the claim amount to the appellant. Subsequently, the purchaser or buyer of salvage executed a contract of sale dated 16.10.2015 with the present appellant and thereafter the present appellant was not in possession or control of the said car and the buyer of salvage i.e. one Mr. Mohammed Saied Nattekha Sheikh, resident of Udaipur, Rajasthan made the said car pliable on the road. Hence, present appellant was neither the owner nor in control or possession of the said car and hence, not liable to pay the compensation. Hence, he has requested to allow the present appeal.

[5.0] Learned advocate Mr. Rathin Raval appearing for the respondent No.5 – New India Assurance Co. Ltd. has opposed the appeal on the ground that the learned Tribunal has already exonerated the respondent No.5 – original opponent No.3 as well as the original opponent No.2 and hence, learned Tribunal has not committed any error in saddling the present appellant with the liability to pay the compensation to the original claimants.

[6.0] Having heard learned advocate appearing for the respective parties and perusing the evidence on record as well as the impugned judgment and award, it appears that while fixing the liability the learned Tribunal has come to the conclusion that present appellant – original opponent No.1 is the owner of the involved car bearing No.RJ-27-CD-4506 which was uninsured. Relying on the ground that the car was uninsured, it was held by the learned Tribunal that the present appellant being the owner of the car is liable to pay the compensation to the original claimants. If we peruse the written statement (Exh.10) filed by the present appellant before the learned Tribunal, a specific averment is made in para 12 of the written statement that due to flood his vehicle i.e. Car No.RJ-27-CD-4506 was submerged and its insurance company namely Bharti AXA General Insurance Co. Ltd. had assessed the said car as total

loss and thereafter, on 16.10.2015, one Mr. Mohammed Saied Nattekha Sheikh, resident of Udaipur, Rajasthan had purchased the said salvage and in this regard, one contract came to be executed between the parties. Further, though charge-sheet is filed against said Mr. Mohammed Saied Nattekha Sheikh i.e. purchaser of said salvage, he is not joined as a party to the proceeding of claim petition. Though specific contention to avoid liability was taken by the present appellant, no specific evidence in that regard is led even in the cross-examination of the original claimant also. As the claimants are third party, they have nothing to do with the said fact however, as no opportunity was availed to the appellant – owner to prove his defence taken by the appellant in his written statement, pleading taken itself is not a proof.

[7.0] Hence, this Court is of considered view that there is more than one reason to give an opportunity to the appellant to prove his defence that (i) he was neither the owner of the Car No.RJ-27-CD-4506 at the time of accident nor he was in possession or control of the said car on 21.10.2015 as the said car was already assessed as total loss by the then insurance company and subsequently buyer of salvage has made the said car in plying condition and plied on the road; (ii) charge-sheet is filed against one Mr. Mohammed Saied Nattekha Sheikh and he is not joined as a party opponent in the claim petition and (iii) alleged accident took place on 21.10.2015 and policy of the vehicle was in force and vehicle was insured with Bharti AXA General Insurance Company. Hence, this Court is of considered view that on aforesaid three grounds, matter is required to be remitted back to the learned Tribunal.

[8.0] In wake of aforesaid conspectus, present First Appeal is allowed. The impugned judgment and award dated 19.12.2019 passed by the learned Motor Accident Claims Tribunal (Main), Gandhinagar in Motor Accident Claim Petition No.209/2016 is hereby quashed and set aside and

Motor Accident Claim Petition No.209/2016 is hereby remitted back to the learned Motor Accident Claims Tribunal (Main), Gandhinagar to afresh decide the MACP No.209/2016 independently on its own merits after affording opportunity to all the parties to lead the evidence. The learned Tribunal to conclude the remitted matter within a period of SIX MONTHS from the date of receipt of the present judgment.

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

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 19/01/2026 17:34:18