IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 630 of 2016

With
R/CROSS OBJECTION NO. 69 of 2016
In
R/FIRST APPEAL NO. 630 of 2016

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ICICI LOMBARD GENERAL INSURANCE
Versus
DHARAMSHIBHAI VITHALBHAI MAKWANA & ORS.

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Appearance:
MR SUNIL B PARIKH(582) for the Appellant(s) No. 1
DS AFF.NOT FILED (R) for the Defendant(s) No. 3
MR VISHAL MEHTA for the Defendant(s) No. 1,2
RULE SERVED for the Defendant(s) No. 4

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 01/09/2026

JUDGMENT

1. This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (in short “the Act”) by the appellant ICICI Lombard General Insurance Company Limited, challenging the judgment and order dated 21.1.2016 passed in MACP No. 936 of 2007, whereby the learned Tribunal granted compensation of Rs. 3,08,500/- with interest at the rate of 9% per annum from the date of the claim petition till realisation.

2. The facts, as recorded, are that on 19th June, 2007, the deceased, along with her mother, had gone to the labour market, and thereafter travelled in a tractor bearing

registration number GJ-4-H-6202 with a trolley bearing registration number GJ-4-H-2421, owned by Opponent No. 2. At the time of the accident, Opponent No. 2 was using the tractor for the purpose of sprinkling fertilizer in his field; after loading fertilizer from the village, the tractor and trolley were proceeding to the agricultural field where the fertilizer was to be sprinkled. When the tractor and trolley reached near village Kardej on the Vartej Ghanghali Road, the tractor, being driven at excessive speed by the opponent No.1, caused the tractor and trolley to capsize. The deceased, who was sitting in the trolley, sustained serious injuries and succumbed to them.

2.1 The claimants, being a legal heir of deceased Harshaben Makwana, filed a claim petition under Section 163A of the Act seeking compensation.

2.2 Applying the structured formula, the learned Tribunal granted compensation of Rs. 3,08,500/- together with interest at 9% per annum from the date of petition till realization.

2.3 Being aggrieved by the said award, the insurance company preferred the present appeal.

2.4 The claimant, being dissatisfied with the quantum of compensation, preferred a cross-objection for enhancement of the compensation.

3. Having considered the submissions of learned advocates for both sides, two issues arose for consideration:

"3.1. Whether, in the facts of the present case, the

insurance company can be held directly liable, or whether a direction of the nature of pay and recover ought to be passed on account of a breach of the terms and conditions of the policy?

3.2. Whether, in a case filed under Section 163A, the amendment to the Motor Vehicles Act introducing Section 164 would apply retrospectively?"

4. On the first issue being for the principle of pay and recover, learned advocate for the appellant relied upon the judgment of the Hon'ble Apex Court in case of **Bharatbhai Shamjibhai Jambucha v. Mukeshbhai Usmanbhai Desai, 2025 JX (Guj) 802**. For the retrospective effect of amendment in section 163A, learned advocate Mr. Vishal Mehta relied upon the judgment of the Hon'ble Apex Court in case of New India Assurance Co. Ltd. Vs. Urmila Halder, 2024 JX (SC) 1154 for the proposition that the amendment introduced by Section 164 to the Motor Vehicles Act, being a beneficial piece of legislation, must be given retrospective effect.

5. It appears that the facts, supported by the evidence on record, duly proved that the deceased, on unfortunate day, was travelling in the tractor and trolley, and that, since the tractor was being driven at excessive speed, it capsized, resulting in the death of the deceased.

6. To be noted that the policy produced on record was a Miscellaneous Package Policy. The deceased was traveling in the tractor and trolley, thereby, the facts are suffice to hold that there was a breach of terms and conditions of the policy. Tritely, as per the policy, carrying the deceased as a passenger in the trolley amounted to a breach of terms and conditions of the policy.

7. Nonetheless, having regard to the judgment in case of **Bharatbhai Shamjibhai Jambucha (supra)** in which this Court had, with reference to paragraphs 8, 9, and 10 thereof, referred to the slew of pronouncements and held that order of pay and recover deserves to be passed. Para 8 to 10 reads as under:-

> *"**8**. Evidence on record indicates that the claimants were travelling as gratuitous passengers along with their goods. In the fact situation, Co-ordinate Bench of this Court in the case of United India Insurance Co. Ltd. v/s. Fatmaben Ismailbhai and Ors. [First Appeal No.1915 of 2006], refereed judgment of **Shamanna v. Oriental Insurance Co. Ltd., (2018) 9 SCC 650, Manuara Khatun v. Rajesh Kr. Singh, (2017) 4 SCC 796 and Shivaraj V/s Rajendra and another reported in 2018 ACJ 2755** to pass order of pay and recover. The issue raised in this appeals are governed by said judgments. Out of above judgments, let refer judgment in the case of Shamanna v. Oriental Insurance Co. Ltd., (2018) 9 SCC 650, it is held in paragraphs 12 to 14 as under:*
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> *"12. The above reference in Parvathneni case [**National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785 : (2009) 3 SCC (Civ) 568 : (2009) 3 SCC (Cri) 943**] has been disposed of on 17-9-2013 [National Insurance Co. Ltd. v. Parvathneni, (2018) 9 SCC 657] by the three- Judge Bench keeping the questions of law open to be decided in an appropriate case.*
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> *13. Since the reference to the larger Bench in Parvathneni case [National Insurance Co. Ltd. v.*

Parvathneni, (2009) 8 SCC 785 : (2009) 3 SCC (Civ) 568 : (2009) 3 SCC (Cri) 943] has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in Swaran Singh case [***National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733*** *] followed in Laxmi Narain Dhut [* ***National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700 : (2007) 2 SCC (Cri) 142*** *] and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and Laxmi Narain Dhut [National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700 : (2007) 2 SCC (Cri) 142] cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment [Shamanna v. Laxman, 2016 SCC OnLine Kar 6928] of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored.*

14. So far as the recovery of the amount from the owner of the vehicle, the insurance company shall recover as held in the decision in Oriental Insurance Co. Ltd. v. Nanjappan [***Oriental Insurance Co. Ltd. v. Nanjappan, (2004) 13 SCC 224 : 2005 SCC (Cri) 148*** *] wherein this Court held that : (SCC p. 226, para 8)*

"8. ... For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer."

9. *With profit I may refer judgment in the case of* ***Manuara Khatun v. Rajesh Kr. Singh, (2017) 4 SCC 796*** *, it is held in paragraphs 15 to 16 as under:*

"15. This question also fell for consideration recently in National Insurance Co. Ltd. v. Saju P. Paul [***National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41 : (2013) 1 SCC (Civ) 968 : (2013) 1 SCC (Cri) 812 : (2013) 1 SCC (L&S) 399*** *] wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the insurance company by reversing the judgment [* ***Saju P. Paul v. National Insurance Co., 2011 SCC OnLine Ker 3791 : 2012 ACJ 1852*** *] of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the insurance company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the insurance company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".*

16. R.M. Lodha, J. (as his Lordship then was and later became CJI) speaking for the Bench held in paras 20 and 26 as under : (Saju P. Paul case [National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41 : (2013) 1 SCC (Civ) 968 : (2013) 1 SCC (Cri) 812 : (2013) 1 SCC (L&S) 399] , SCC pp. 52 & 55).

"20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).

26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur [***National Insurance Co. Ltd. v Baljit Kaur, (2004) 2 SCC 1 :***

2004 SCC (Cri) 370 *] and Challa Upendra Rao [* ***National Insurance Co. Ltd. v. Challa Upendra Rao, (2004) 8 SCC 517 : 2005 SCC (Cri) 357*** *] should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 [National Insurance Co. Ltd. v. Saju P. Paul [National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41, 55 (footnote 14)]] and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in Challa Upendra Rao [National Insurance Co. Ltd. v. Challa Upendra Rao, (2004) 8 SCC 517 : 2005 SCC (Cri) 357] ."*

10. However, noticeably, the claimants are third party and were travelling as gratuitous passengers along with their goods in the errant vehicle truck. Goods vehicle was used for the purpose of carrying passengers which would be antithetical to the terms of insurance policy, since the claimants were third party, the claimants cannot suffer on such technicalities to pay compensation whether by owner or insurance company. The contract of policy on record is comprehensive policy and insured the vehicle, risk of the owner of vehicle is covered. Thus it is case to follow law laid down in the case of Shamanna (supra) and Manuara Khatun (supra) to pass order pay and recover."

8. On the second issue, it is found that the same was fully covered by the judgment of the Hon'ble Apex Court in case of **Urmila Halder (supra)**, which holds that the amendment to a beneficial piece of legislation must be given retrospective effect.

9. Section 163A of the Motor Vehicles Act has been replaced by Section 164, introducing a fixed compensation of Rs. 5,00,000/- in death cases, and that the Hon'ble Apex Court had held that this amendment would apply even where the accident occurred before the amendment came into force. Relevant para of the judgment is 6 to 10, which read as under:-

> *"6. Reliance was placed on the last line of the notification, which indicates that the said amendment would come into force from the date of publication in the official Gazette, which is 22nd May, 2018. It was submitted that as the accident had occurred on 11th December, 2004, the benefit of such amendment could not be granted to the respondent. In support of this contention, learned counsel referred to and relied upon various decisions of this Court in **Padma Srinivasan Vs. Premier Insurance Company Limited, [(1982) 1 SCC 613]; Shyam Sunder and Others vs. Ram Kumar and Another, [(2001) 8 SCC 24]; Nasiruddin and Others Vs. Sita Ram Agarwal, [(2003) 2 SCC 577] and Panchi Devi Vs. State of Rajasthan and Others, [(2009) 2 SCC 589]** .*
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> *7. It was further contended that the present case is covered by the policy under which the payment is made and the same crystallized on the date the same*

was entered into and subsequent developments would not alter the rights and liabilities of the parties. Thus, the contention was that the appellant would not be liable to pay any further than what it was obliged to pay under the Act prior to coming of the amendment on 22nd May, 2018.

8. Learned counsel for the respondent submitted that the High Court has rightly taken a view that it is merely a procedural amendment which has to be given retrospective effect and it is nothing substantive so as to affect the merits of the issue.

9. Having considered the matter, we do not find any reason to interfere with the judgment impugned. With regard to the judgments of this Court relied upon by learned counsel for the appellant, having gone through the same we find that they are distinguishable from the facts of the present case and thus, the ratio of those cases would not apply in the present case.

10. The order of the High Court is well discussed and we agree with the view taken. We may, however, add that a beneficial legislation would necessarily entail the benefit to be passed on to the claimant in the absence of any specific bar to the same. In the present case, the liability of the appellant-Insurance Company has not been interfered with. Only the computational mode and the modality have been further clarified, which rightly has been noted by the High Court and accordingly, the claim has been enhanced to Rs. 5,00,000/- (Rupees Five Lakhs). As 50% of the compensation amount was stayed by this Court, the same be paid to the respondent in terms of the impugned judgment within eight weeks."

10. Applying the aforesaid dictum, the following order is passed:

10.1 The appeal filed by the insurance company is partly allowed. The cross objection is also allowed.

10.2 The judgment of the learned Tribunal is modified to the extent that the claimant shall be entitled to the fixed compensation of Rs. 5,00,000/-, together with interest at 9% per annum from the date of the claim petition till realization.

10.3 Opponent Nos. 1 and 2 shall be liable to pay the compensation.

10.4 In the first instance, Opponent No. 3, the insurance company shall satisfy the award, and shall be entitled to recover the said amount of compensation from Opponent Nos. 1 and 2 by executing this order.

11. Registry is directed to return back the R & P, if any, to the concerned Court forthwith.

(J. C. DOSHI,J)

SHEKHAR P. BARVE