

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 1132 of 2014**

=====

ORIENTAL INSURANCE COMPANY**Versus****JASHWANTSINH CHHATRASINH CHAUHAN & ORS.**

=====

Appearance:**MR DAKSHESH MEHTA(2430) for the Appellant(s) No. 1****RULE SERVED for the Defendant(s) No. 1.1,1.2,1.3,1.4,2,3****UNSERVED EXPIRED (R) for the Defendant(s) No. 1.5,1.6**

=====

CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**Date : 02/09/2026****JUDGMENT**

1. Present First Appeal is directed against the judgment and award dated 7.10.2023 passed in MACP No.127 of 2003, whereby the learned MACT, Panchmahal @ Godhara granted compensation 6,01,000/- with 9% interest per annum from the date of petition till realization.

2. According to the claimants, on 18.10.2002, deceased, Jashvantsinh Chhatrasinh Chauhan was walking on the edge of the road between Moti Samal Devi and Kalol and at that time, he was hit from behind by a truck bearing registration number GJ-17-T-8790 driven by its driver at excessive and uncontrollable speed. The deceased sustained serious and fatal injuries and lost his life during treatment at SSG Hospital, Vadodara.



2.1 A telephonic vardhi was made by Head Constable Rameshbhai Ranchhodbhai of Kalol Police Station, pursuant to which a complaint was registered, and a case was thereafter registered against the truck driver. Thereafter chargesheet came to be filed.

2.2 Opponent Nos. 1 and 2, through the advocate on record, filed written statement at Exh. 24, admitting the accident, stating that while Opponent No. 1 was passing near Ambika Society, Kalol Godhra Highway, a man was hit by the truck.

2.3 The learned Tribunal ignoring the defence raised by the insurance company as to the involvement of the vehicle, granted total compensation of Rs. 6,01,000/- with 9% interest from the date of petition till realization.

2.4 Hence, present First Appeal.

3. Heard learned advocate Mr. Dakshesh Mehta for the appellant - insurance company. Though served, none appears for the respondents.

4. With reference to the statement of an eyewitness and the report of an investigation carried out by the investigating officer, it was submitted on behalf of the appellant that the driver had been planted in the road accident, and that the vehicle was not even involved in the accident, so that it was a case of a fictitious road accident. Thus, the learned Tribunal committed serious error in disbelieving the contention of the insurance company.



4.1 Upon above submissions, learned advocate Mr. Dakshesh Mehta requests to allow this appeal and to quash and set aside the impugned judgment and award.

5. What could be noticeable that copy of the FIR, panchnama, inquest panchnama, pm report, statement of the opponent No.1 before the investigator, investigation report were produced at Exhs. 32, 33,29,30,66 and 67. It is observed that that the insurance company, having raised the contention of non-involvement of the vehicle, did not lead the evidence of the driver to prove the facts contained in its written statement, whereas the driver, who had filed the written statement at Exh. 24, had accepted the fact of the accident in the terms recorded therein. Thus, it is held that the insurance company, not having led any evidence to discharge the burden of disproving the involvement of the vehicle, could not raise the contention in appeal that the vehicle was not involved.

6. Nonetheless, the FIR, charge sheet, the investigation into the claim, the case registered against Opponent No. 1, and the claim petition and submissions regarding involvement of the vehicle, all carry presumptive value, and, though not conclusive proof, constitute valid, admissible, and reliable evidence in the absence of any rebuttal evidence.

7. At this juncture, I referred to the judgment of the Hon'ble Apex Court in case of **ICICI Lombard General Insurance Co.Ltd. Versus Rajani Sahoo, 2025 (2) SCC 599**, wherein the Hon'ble Apex Court held in para 8 to 11 as under:-



*"8. As regards the reliability of charge sheet and other documents collected by the police during the investigation in motor accident cases, this Court in the case of **Mangla Ram v. Oriental Insurance Co. Ltd. and Ors., (2018) 5 SCC 656; 2018 INSC 311** held in paragraph No.27, thus :-*

*"27. Another reason which weighed with the High Court to interfere in the first appeal filed by Respondents 2 & 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis done by the Tribunal is to hold that Jeep No. RST 4701 was driven rashly and negligently by Respondent 2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge-sheet filed by the police, naming Respondent 2. This Court in a recent decision in **Dulcina Fernandes [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646** , noted that the key of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt. Suffice it to observe that the exposition in the judgments already adverted to by us, filing of charge-sheet against Respondent 2 prima facie points towards his complicity in driving the vehicle negligently and rashly. Further, even when the accused were to be acquitted in the criminal case, this Court opined that the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the Tribunal". (Emphasis Supplied).*

9. It is true that the Tribunal had looked into the oral and documentary evidence including the FIR, final report and such other documents prepared by the police in connection with the accident in question. The Tribunal had also taken note of the fact that based on the final report, the driver of the offending

truck was tried and found guilty for rash and negligent driving. The High Court took note of such aspects and found no illegality in the procedure adopted by the Tribunal and consequently dismissed the appeal.

10. *In the contextual situation it is relevant to refer to a decision of this Court in **Mathew Alexander v. Mohammed Shafi & Anr., (2023) 13 SCC 510; 2023 INSC 621** this Court held thus:-*

*“12....A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in **Dulcina Fernandes vs. Joaquim Xavier Cruz, (2013) 10 SCC 646** which has referred to the aforesaid judgment in *Bimla Devi*.”*

11. *Thus, there can be no dispute with respect to the position that the question regarding negligence which is essential for passing an award in a motor vehicle accident claim should be considered based on the evidence available before the Tribunal. If the police records are available before the Tribunal, taking note of the purpose of the Act it cannot be said that looking into such documents for the aforesaid purpose is impermissible or inadmissible.”*

8. Thus, taking holistic view of the evidence, the contention raised by Learned advocate for the appellant being devoid of merits deserves to be discarded.



9. Resultantly, present First Appeal fails and stands dismissed. Interim relief, if any, granted earlier stands vacated forthwith.

10. The Tribunal shall disburse the entire awarded amount lying in the FDR and/or with the Tribunal, with accrued interest thereon, if any, to the claimant, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure, if not paid so far.

11. While making the payment, the Tribunal shall deduct the courts fees, if not paid, in accordance with rules/law.

12. Record and proceedings be sent back to the concerned Tribunal, forthwith.

SHEKHAR P. BARVE

(J. C. DOSHI,J)