

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 1186 of 2026**

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NIRUBEN NILESHBHAI TAVIYAD & ORS.

Versus

SURESHBHAI MAVJIBHAI GARASIYA & ORS.

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Appearance:

NISHIT A BHALODI(9597) for the Appellant(s) No. 1,2,3,4

MS KIRTI S PATHAK(9966) for the Defendant(s) No. 3

RULE NOT RECD BACK for the Defendant(s) No. 1

RULE SERVED for the Defendant(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**Date : 07/09/2026****JUDGMENT**

1. Heard, learned advocate, Mr. Bhalodi, for the appellants-claimants and learned advocate, Ms. Pathak, for opponent No.3.

2. This appeal is filed on the limited issue, where, the learned Motor Accident Claims Tribunal (Auxi.) & 2nd Additional District Judge, Dahod (in brief, 'Tribunal'), vide judgment and award dated 10.03.2023, passed in Motor Accident Claim Petition No. 400 of 2012, partly allowed the said claim petition and while awarding total compensation of Rs.13,80,777/- for the death of Nileshbhai Mansukhbhai Taviyad, granted simple interest at the rate of 9% from the date of the filing of the claim petition till 31.03.2021 and 7% interest from 01.04.2021, till payment, while excluding the period between 07.10.2014 to 16.11.2022 from granting any



interest.

3. Since, the facts as well as the amount of compensation awarded by the learned Tribunal are not in dispute and opponent No.3 – insurance company has accepted the fact of accident as well as the liability to pay the amount of compensation awarded by the learned Tribunal, this Court does not deem it proper to burden the present judgment by re-stating the facts and other aspects.

4. From a perusal of the impugned judgment and award, the basis for passing the impugned order, awarding 9% interest for a particular time period and 7% interest for other period is not found. Though, learned Tribunal has placed reliance on the judgment of the Hon'ble Apex Court, rendered in the case of **'Abati Bezbaruah Vs. Dy. Director General, Geological Survey of India & Another'**, reported in (2003) 3 SCC 148, and has passed the order of interest in two different figures, without referring to any evidence. In other words, split application of rate of interest is not recognized by any settled proposition of law. The calculation of interest at 9% for the initial period and at 7% for subsequent period is not an acceptable approach of the Tribunal in view of the decision of the Division Bench of this Court in the case of **'Oriental Insurance Co. Ltd. Vs. Aminaben Rahimbhai Kadiwala'**, reported in 2003 ACJ 1096. In fact, granting of interest is an idea to compensate



the claimant for the amount, which he did not get at the time of road accident.

4.1 The second issue, which is under challenge in this petition, is exclusion of period from 07.10.2014 to 16.11.2022 from grant of any interest. What transpires is that the learned Tribunal by passing the order below Exhibit-1, Dated: 07.10.2014, closed the right of the appellants – claimants from getting interest from the date of filing of the claim petition, i.e. from 07.10.2014. I fail to understand, as to how and under what circumstances, the learned Tribunal came to pass such kind of a general order of closing right of the appellants-claimants to claim interest from a particular date, especially, without there being any application by the insurance company or any contention being raised to that effect and in absence of framing any issue on that particular date, on which the said order was passed, i.e. on 07.10.2014.

4.2 Records and proceedings of the claim petition indicates that the issues were framed on 26.10.2021 vide Exhibit-10 and on the very same day, insurance company filed an application vide Exhibit-11, seeking adjournment to file vakalatnama, which indicates that the insurance company appeared in the matter, only after framing of the issues. Exhibit-14 indicates that the insurance company filed an application to re-open the right to file written-statement,



after framing of the issues and written-statement comes on the record. Application under Section 170 of the Motor Vehicles Act was filed vide Exhibit-26 on 26.10.2021 and on the very same day, learned advocate appearing for the appellants-claimants filed the list for documentary evidence vide Exhibit-17. Then one adjournment was sought by the appellants-claimants and then, vide Exhibits-20, immediately on the next date of hearing the appellants-claimants have filed pursis. Thus, there is no delay on the part of the appellants-claimants in contesting the claim petition. It was the insurance company, who bothered to appear only after framing of the issues and filed the written-statement. Thereafter, it has also filed an application under Section 170 of the MV Act. In view of the passing of the order dated 07.10.2014 to close the right of the claimants to claim interest by the Tribunal is totally an unacceptable approach. The contention that the order passed above Exhibit-1 on 07.10.2014 is not contested by the claimants can be met with by referring to Section 105 of the CPC, 1908, which permits the Court to correct any error or defect or any irregularity affecting the decision of the case during the appeal proceedings.

4.3 In the case of '**Vidhya Kakkar & Ors. v. Delhi Transport Corporation & Anr.**', reported in 1989 ACJ 1088, the Delhi High Court held that the tribunal should grant interest from the date of application, unless the



claimant is responsible for delaying the final disposal of the case. In view of the above as well as taking into consideration the statutory provision of awarding interest, set out in Section 171 of the MV Act, this Court does not approve finding of the learned Tribunal to grant interest in split as well as excluding the time period between 07.10.2014 to 16.11.2022.

5. Consequently, this appeal is **partly allowed** and the impugned judgment and award, granting interest at the rate of 7% from 01.04.2021, till payment, while excluding the period between 07.10.2014 to 16.11.2022, is quashed and set aside to that extent, i.e. the impugned judgment and award is **modified** to the extent that the appellants-claimants shall be entitled to get compensation of Rs.13,80,777/- along with simple interest at the rate of 9% per annum from the date of filing of the claim petition, till realization. Rest of the judgment and award dated 10.03.2023 is kept in tact. R&P be sent back, forthwith.

Direct service is permitted.

UMESH/-

(J. C. DOSHI,J)