IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 3192 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE MOOL CHAND TYAGI

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Approved for Reporting	Yes	No

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NEW INDIA ASSURANCE CO. LTD.
Versus
DILIPBHAI D DAVE & ORS.

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Appearance:
MR VIBHUTI NANAVATI(513) for the Appellant(s) No. 1
DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESTENTATIVES for the Defendant(s) No. 2.2
MR R G DWIVEDI(6601) for the Defendant(s) No. 2.2.1,2.2.2,2.2.3
RULE SERVED for the Defendant(s) No. 1,2.1,2.3

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CORAM:**HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

Date : 12/08/2026

JUDGMENT

1. The captioned appeal has been preferred by the original opponent No.2/appellant herein – New India Assurance Company Limited against the impugned judgment and award dated 16.05.2014 passed by the learned Motor Accident Claims Tribunal (Main) at Gandhinagar in M.A.C.P. No.141 of 1999, whereby the learned Tribunal had partly allowed the Claim Petition and awarded a sum of Rs.8,71,800/- along with interest at the rate of 9% per annum, from the date of filing of the claim petition till its realization, as compensation.

2. The succinct facts, which led to the filing of the captioned appeal, as narrated in the Claim Petition are summarized as under:-

i. On 28.07.1997 at around 6:00 p.m., Mr. Dilipsinh Motisinh Solanki (hereinafter referred to as the "**deceased**") was driving a scooter bearing registration No.GJ-1H-1848 at very moderate speed and on the correct side of the road. When he reached near the place of the accident, one Mr. Dipakbhai Narendrabhai Joshi came by driving one Maruti Car bearing registration No.GJ-1R-0110 (hereinafter referred to as the "**offending car**") at very excessive speed and in a rash and negligent manner, as a result, he lost control over the steering of the offending car and dashed with the scooter driven by the deceased from behind, thereby causing the vehicular accident. As a result of the said vehicular accident, the deceased fell down on the road and sustained grievous injuries, and he succumbed to the said injuries.

ii. It is the case of the original claimants before the learned Tribunal that at the time of the vehicular accident, the deceased was aged about 44 years and he was earning Rs.5,365/- per month, by serving as a Designer in Narmada Planning, Sachivalaya. Therefore, the original claimants preferred the Claim Petition before the learned Tribunal seeking compensation on account of the death of the deceased, who was the sole bread-winner of the family.

iii. Having been served with the notices/summons of the Claim Petition, original opponent No.1/respondent No.1 herein – owner of the offending car and original opponent No.2/appellant herein - Insurance Company filed their respective Written Statements, thereby denying the averments made in the Claim Petition, and in brief, prayed for dismissal of the Claim Petition.

3. Having considered the pleadings, evidence on record and the submissions advanced by the learned counsels for the respective parties, the learned Tribunal had partly allowed the Claim Petition and awarded a sum of Rs.8,71,800/- along with interest at the rate of 9% per annum, from the date of filing of the claim petition till its realization, as compensation.

4. Being aggrieved and dissatisfied with the impugned judgment and award, original opponent No.2/appellant herein - Insurance Company has challenged the impugned judgment and award on the ground of involvement of the offending car as well as the negligence attributed to it by the learned Tribunal.

5. Heard learned counsels for the parties.

6. Ms. Masumi V Nanavaty, learned counsel appearing of behalf of the appellant – Insurance Company vehemently argued that the offending car was not involved in the alleged vehicular accident. She submitted that the FIR came to be lodged by the driver of the offending

car, viz., Mr.Dipakbhai Narendrabhai Joshi (DW-2) and the said complaint has been proved at Exh.39. She further submitted that as per the said FIR, the vehicular accident had occurred when the deceased, who was the rider of the scooter bearing registration No.GJ-1H-1848 dashed with one stray cow, which was crossing the road. She further submitted that the driver of the offending car - Mr. Dipakbhai Narendrabhai Joshi (DW-2) also stepped into witness-box and he was examined at Exh.49. She further submitted that the owner of the offending car - Dr.Dilipbhai Dinkarbhai Dave (DW-1) also stepped into the witness-box and filed his affidavit in examination-in-chief at Exh.48. She further argued that a conjoint reading of the evidence of DW-1 and DW-2 and the contents of the FIR proved at Exh.39 would reveal that the offending car was not involved in the vehicular accident, and the said accident took place owing to the reason that the rider of the scooter (deceased) has dashed his scooter with a stray cow which was crossing the road. She further submitted that the widow of the deceased - Chandrikaben Dilipsinh Solanki (PW-1) has also stepped into the witness-box and in her cross-examination, she admitted that she was not an eye-witness to the vehicular accident, as such, argued that her deposition on the point of negligence or involvement of the offending car is of no use.

7. Learned counsel for the appellant – Insurance Company further argued that Mr. Falgunbhai Pravinchandra Vora (PW-2), who was examined at Exh.43 was not an eye-witness to the accident. In order to substantiate her plea, learned counsel for the appellant – Insurance Company has placed reliance upon the observations made by the learned Magistrate in the judgment passed in the criminal case proved at Exh.56. She submitted that the learned Magistrate, while acquitting the driver of the offending car, observed that Mr. Falgunbhai

Pravinchandra Vora (PW-2) was not an eye-witness to the vehicular accident. Learned counsel for the appellant – Insurance Company further submitted that PW-2, in his cross-examination, has also admitted to the said fact by stating that when he heard a noise, he came to know that some accident had taken place. As such, learned counsel for the appellant – Insurance Company vehemently argued that in light of the oral as well as documentary evidence available on record, the claimants have miserably failed to prove the involvement as well as negligence of the offending car in the vehicular accident in question. She further contended that the accident took place owing to the negligence of the deceased himself as he dashed his scooter with the stray cow which was crossing the road at the time of the accident. Therefore, she submitted that the findings returned by the learned Tribunal is perverse and is liable to be reversed.

8. Per contra, Mr. R G Dwivedi, learned counsel appearing on behalf of the original claimants vehemently submitted that eye-witness PW-2 had proved on record that the vehicular accident had occurred owing to the sole negligence of the driver of the offending car. He further submitted that the version of the claimants is also supported by the panchnama of the place of accident. He further contended that though the FIR came to be lodged by the driver of the offending car, after investigation, the prosecution agency has filed the charge-sheet against the said driver of the offending car. He further contended that the driver of the offending car, in his cross-examination has admitted to the said fact. He argued that the mere fact that a Criminal Court has acquitted the accused, would not have any relevance in the present proceedings. In support of his contentions, learned counsel for the original claimants has placed reliance upon the judgment rendered by the Hon'ble Apex Court in the case of ***Anita Sharma & Ors. vs. New***

India Assurance Company Limited & Anr. reported in ***(2021) 1 SCC 171.*** Having placed reliance upon the aforesaid judgment, learned counsel for the original claimants submitted that the claimants have to prove the issue of negligence as well as the issue of involvement of the offending car on the touchstone of preponderance of probability, therefore the captioned appeal is liable to be dismissed.

9. Having considered the submissions of the learned counsels for the parties and having perused the material available on record, it is to be noted that the original opponent No.2/appellant herein - Insurance Company has challenged the impugned judgment and award on the ground of involvement of the offending car as well as the negligence attributed to it by the learned Tribunal.

10. It is the case of the claimants that on 28.07.1997 at about 6:00 p.m., Mr. Dilipsinh Motisinh Solanki was passing through CH-3 Road, near Sachivalaya by riding his motorcycle and in the meantime, the driver of the offending car came by driving the said car in a rash and negligent manner, so as to endanger human life, and dashed with the scooter driven by the deceased from behind, and hence caused the vehicular accident. In order to prove the issue of involvement and negligence, Chandrikaben Dilipsinh Solanki (PW-1) filed her affidavit in examination-in-chief at Exh.37 along with the lines of the pleadings, however, in the cross-examination she admitted that she was not an eye-witness to the accident, as such, her testimony on the point of involvement of the offending vehicle and negligence is of no use. The claimants have also examined one Mr. Falgunbhai Pravinchandra Vora (PW-2) at Exh.43. In his examination-in-chief, he narrated the manner of occurrence of the accident. In brief, he deposed that the offending

car dashed with the scooter driven by the deceased from behind. He denied the suggestion that the vehicular accident had occurred owing to the reason that a stray cow came ahead of the scooter and the scooter slipped. It is pertinent to note that the FIR of the vehicular accident came to be lodged by Mr.Dipakbhai Narendrabhai Joshi, who was the driver of the offending car at the time of the vehicular accident. In the said FIR, the driver of the offending car stated that the accident had occurred when the deceased - rider of the scooter dashed with a stray cow, which was crossing the road at the time of the accident. The owner of the car - Dr.Dilipbhai Dinkarbhai Dave had filed his written statement at Exh.10, wherein, he stated that the vehicular accident had occurred when the deceased -rider of the scooter dashed his scooter with the divider on the road. The appellant - Insurance Company has also filed a written statement at Exh.18, wherein the contents of the claim petition were denied and further averred that the claimants have to prove the manner of occurrence of the accident, involvement, and negligence of the offending car bearing registration number GJ-1R-0110. It also emerges from the records that the appellant - Insurance Company has also filed an additional written statement at Exh.20, wherein it came with the plea that the claimants have to prove the involvement of the offending car and whether its driver was holding a valid and effective driving license at the time of the vehicular accident and whether the said car was being driven in a rash and negligent manner. On perusal of the written statements filed by the owner of the offending car and the appellant -Insurance Company, it appears that there is some material contradiction. The owner of the offending in his written statement stated that the accident had occurred when the rider of the scooter dashed with the divider on the road, while the appellant - Insurance Company took the plea that the claimants have to prove the involvement of the offending vehicle, manner of occurrence of accident and negligence.

11. Further, during the course of arguments, the appellant – Insurance Company has taken a stand different from the plea raised before the learned Tribunal. At this junture, it would be profitable to refer to Para 16 of the impugned Judgment and Award. The same is reproduced hereinunder for ready reference :-

> *"16. While on the other hand, learned Advocate Ms. S. V. Parikh for opponent No.2 Insurance Company has contended that looking to the scene of accident, and the manner, in which, the accident took place, it is a case of contributory negligence. She has vehemently submitted that the accident has not been caused by the vehicle Maruti Car as alleged by claimants, this opponent cannot be held liable to indemnify the claimants."*

12. Thus, it is evident that at the time of the arguments before the learned Tribunal, the appellant - Insurance Company has raised the plea of contributory negligence and thereafter, during the arguments before this Court, it appears to have changed its version and has taken a different stand.

13. It is also pertinent to mention here that the owner of the offending car had stepped into witness-box and filed his affidavit in examination-in-chief at Exh.48. In his examination-in-chief, he improved his version and deposed that suddenly a cow came ahead of the scooter driven by the deceased and the deceased's scooter dashed with the cow and thereafter, he fell down on the road near the divider on the road, however, in cross examination, he admitted that he has no

personal knowledge regarding the manner of occurrence of the accident, as such, his evidence on the point of negligence as well as involvement of the offending car is of no use.

14. Further, the driver of the offending car, Mr. Dipakbhai Narendrabhai Joshi had also filed his affidavit in examination-in-chief along with the lines of the complaint made by him at Exh.39. In cross-examination, he admitted that after investigation, the Prosecution Agency has filed the charge-sheet against him. He also admitted that he has not made any complaint in writing to the Prosecution Agency that he has been falsely implicated in this case. Thus, from the dissection of the oral as well as documentary evidence available on record, the following initial inferences can be made :-

1. It comes on record that the FIR came to be lodged by the driver of the offending car, viz., Mr.Dipakbhai Narendrabhai Joshi.

2. After investigation, the prosecution agency has filed the charge-sheet against driver of the offending car, viz., Mr.Dipakbhai Narendrabhai Joshi.

3. The criminal court had acquitted the driver of the offending car, viz., Mr.Dipakbhai Narendrabhai Joshi in the criminal case by giving him the benefit of doubt as revealed from Exh.56 – Judgment.

15. Learned Counsel for the appellant-Insurance Company has argued that the driver of the offending car has been acquitted by the Criminal Court, therefore this fact itself would prove that he was not

negligent for causing the vehicular accident in question. It is a settled proposition of law that the proceedings before the Tribunal are summary in nature. Further, the provisions of Sections 41 to 44 of the Evidence Act, 1872 makes it amply clear that the judgment rendered by a criminal court has no bearing in a civil matter. As such, the contention raised by the learned counsel for the appellant - Insurance Company in this regard is not sustainable and is accordingly rejected.

16. Further, the appellant – Insurance Company came with a defence that the deceased's scooter dashed with a stray cow, resulting in the vehicular accident. If the scooter had in fact dashed with the cow, then its front portion would have been damaged due to the collision. At this juncture, it would be profitable to refer to the panchnama of the place of accident proved at Exh.40. Perusal of the said panchnama would reveal that the front as well as the rear portion of the scooter has been damaged. It is pertinent to note that the rear portion of the scooter is also badly damaged. This fact itself corroborates the version of the claimants that the scooter was hit from behind by the offending car and thereafter it dashed with the divider on the road. Resultantly, the front as well as the rear portion of the scooter got damaged. Reliance has been placed on the judgment rendered by the Hon'ble Apex Court in the case of ***Bimla Devi and others Vs. Himachal Raod Transport Corporation and others*** reported in ***2009 (13) SCC 530***, wherein the Hon'ble Apex Court while discussing the nature of evidence required for proof of accident and determination of compensation before the Tribunal, has held that in MACP cases, the Tribunals must apply the principle of preponderance of probability, rather than the stricter standard of proof beyond reasonable doubt.

17. Thus, from the oral as well as documentary evidence available on record, more particularly the deposition of PW-2, who was an eyewitness to the accident and having considered the fact that the charge-sheet came to be filed against the driver of the offending car, in my considered opinion is by itself sufficient to prove the negligence of the driver of the offending car. Therefore, in my considered view, the learned Tribunal has not committed any error in arriving at the conclusion that the offending Maruti Car was involved in the vehicular accident and its driver was solely negligent for causing the vehicular accident. Therefore, the findings returned by the learned Tribunal on the issue of negligence as well as the involvement of the offending car requires no interference and is accordingly upheld.

18. Thus, having regard to the conspectus of the facts and after a thorough examination of the case records, this court finds no merit in the appellant – Insurance Company's submissions. No error or infirmity is evident in the impugned judgment and award passed by the Tribunal. As such, this Court is of the considered view that the captioned appeal preferred by the appellant – Insurance Company deserves to be dismissed and is accordingly **dismissed**.

19. The appellant – Insurance Company shall satisfy the awarded amount along with interest forthwith. Upon depositing the awarded amount, the learned Tribunal shall disburse the entire awarded amount to the original claimants (deducting deficit Court fee, if any), after due verification.

20. Statutory amount, if any, lying deposited with the Registry of this Court shall be transmitted to the learned Tribunal concerned forthwith.

Records & Proceedings, if any be sent to the learned Tribunal concerned. No order as to costs.

(MOOL CHAND TYAGI, J)

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