NEUTRAL CITATION
2026:GUJHC:60466

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 627 of 2016

==========

HANSABEN RAMBHAI GOHIL & ORS.

Versus

ASHOKBHAI GHOHABHAI JAPADIA & ORS.

==========

Appearance:
MR.HIREN M MODI(3732) for the Appellant(s) No. 1,2,3,4,5,6
MR RATHIN P RAVAL(5013) for the Defendant(s) No. 3
MR SP KOTIA(5687) for the Defendant(s) No. 1

==========

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

Date : 24/09/2026

JUDGMENT

1. This is an appeal, filed under Section 173 of the Motor Vehicles Act, arising from the impugned judgment and award, Dated: 15.01.2016, passed by the learned Motor Accident Claims Tribunal (Main), Bhavnagar (in brief, the 'Tribunal', in MACP No. 233 of 2011 by which the Tribunal granted total amount of compensation of Rs.3,82,800/-, along with 9% simple interest from the date of the filing of the claim petition, till realization from Opponent Nos. 1 and 2, but, exonerated Opponent No.3-insurance company from the liability to pay compensation.

1.1 Being aggrieved with the same, the appellants-claimants have, who had filed the claim petition under Section 163-A of the MV Act, filed the present appeal *inter alia* on the ground that on 13.02.2011, when the deceased was coming from Bhadli to Goradka in the jeep, bearing registration No. GJ-4-V-6101, with his goods, which was being driven in rash and negligent manner and with excessive speed, and when the said jeep reached near

Uploaded by UMESH H. CHAVDA(HC00203) on Fri Sep 25 2026 Downloaded on : Wed Nov 25 13:36:56 IST 2026

NEUTRAL CITATION
2026:GUJHC:60466

the place of incident, the deceased fell down from the said jeep. On account of that the deceased sustained fatal injuries and succumbed to the said injuries. Therefore, the appellants-claimants filed the claim petition, wherein, the Tribunal recorded the finding that the deceased was traveling in the goods vehicle as a gratuitous passenger and the driver was not holding valid and effective driving license. On the aforesaid two grounds, the Tribunal exonerated Opponent No.3-insurance company vide impugned judgment and award. Hence, the present appeal.

2. Heard, learned advocate, Mr. Modi, appearing for the appellants-claimants and learned advocate, Mr. Raval, for Opponent No.3-insurance company and learned advocate, Mr. Kotia, for Opponent No.1. Though served, none appeared for Opponent No.2.

3. Learned advocate, Mr. Modi, appearing for the claimant, mainly contended that, even if, the deceased was traveling as an unauthorized passenger, the Tribunal could have ordered Opponent No.3-insurance company to pay and recover. Secondly, it was submitted that the claim petition was filed under Section 163-A of the MV Act and therefore, in view of the judgment of the Apex Court in the case of ***'New India Assurance Co. Ltd. Vs. Urmila Halder'***, reported in 2024 SCC OnLine 4983, the Tribunal ought to have applied the structured formula under the amended Section 164 of the MV Act and ought to have awarded Rs.5,00,000/- in the case of death of the deceased. It was, therefore, submitted that, as per the structured formula, the appellants-claimants are entitled to get

Uploaded by UMESH H. CHAVDA(HC00203) on Fri Sep 25 2026 Downloaded on : Wed Nov 25 13:36:56 IST 2026

NEUTRAL CITATION
2026:GUJHC:60466

Rs.5,00,000/- along with interest.

3.1 By making the above submissions, it was prayed that the present appeal be allowed.

4. Learned advocate, Mr. Raval, appearing for Opponent No.3-insurance company submitted that document of the policy does not contain any premium for the passengers traveling in the utility vehicle. Thus, Opponent No.3-insurance company is not contractually liable to indemnify the passenger, who was traveling unauthorizedly in the offending vehicle. It was, thus, submitted that the learned Tribunal has rightly exonerated Opponent No.3 – insurance company.

4.1 By making the above submissions, it was prayed to dismiss this appeal.

5. Learned advocate, Mr. Kotia, appearing for Opponent No.1, i.e. the driver of the offending vehicle, submitted that it is a case of invocation of principle of 'Pay & Recover' and prayed to pass appropriate orders.

6. The issue raised by the appellants-claimants in this appeal is duly covered by the decision of the Hon'ble Apex Court, rendered in the case of ***'Kaminiben & Ors. Vs. The Oriental Insurance Company Limited & Ors.'***, 2026 LiveLaw (SC) 174, wherein, in Paragraph-10 the Apex Court has observed as under;

"10. In the present case, the deceased was travelling in the

Uploaded by UMESH H. CHAVDA(HC00203) on Fri Sep 25 2026 Downloaded on : Wed Nov 25 13:36:56 IST 2026

NEUTRAL CITATION
2026:GUJHC:60466

subject tempo along with Ganesh Idol, which was taken for immersion in Narmada River. Thus, the dominant purpose for hiring the vehicle was not for travelling but for carrying the Ganesh idol for immersion. Travelling in the vehicle was only incidental, therefore, at best, the deceased can be treated as gratuitous passenger travelling with his goods (Ganesh idol). This being the circumstance, we rely on the judgment in the matter of Manuara Khatun & Ors. (supra), wherein this Court has held thus in paragraph Nos. 15 and 16:-

> *"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*

Uploaded by UMESH H. CHAVDA(HC00203) on Fri Sep 25 2026 Downloaded on : Wed Nov 25 13:36:56 IST 2026

NEUTRAL CITATION
2026:GUJHC:60466

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.

Uploaded by UMESH H. CHAVDA(HC00203) on Fri Sep 25 2026 Downloaded on : Wed Nov 25 13:36:56 IST 2026

NEUTRAL CITATION
2026:GUJHC:60466

> *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].”*

6.1 Insofar as, the aspect that the deceased was traveling as a gratuitous passenger in an utility vehicle is concerned, considering the claim of the appellants-claimants that the deceased was traveling with the goods, in absence of any evidence contrary to that, I find that this is a fit case to invoke the principle of ‘Pay & Recover’. Secondly, in view of decision of the Hon’ble Apex Court in the case of ‘***New India Assurance Co. Ltd.’*** (Supra), the amended Section 164 of the MV Act shall apply retrospectively and the appellants-claimants shall be entitled to get standardized compensation of Rs.5,00,000/-.

7. In view of the above discussion, this appeal is ***partly allowed***. The impugned judgment and award, Dated: 15.01.2016, passed by the learned Motor Accident Claims Tribunal (Main), Bhavnagar, in MACP No. 233 of 2011 is

Uploaded by UMESH H. CHAVDA(HC00203) on Fri Sep 25 2026 Downloaded on : Wed Nov 25 13:36:56 IST 2026

NEUTRAL CITATION
2026:GUJHC:60466

modified to the extent that the appellants-claimants shall be entitled to total compensation of Rs.5,00,000/-, along with 9% simple interest from the date of the filing of the claim petition, till realization from Opponent Nos. 1 and 2, jointly and severally. However, in the first instance, Opponent No.3-insurance company is directed to satisfy the judgment and award and to deposit the awarded amount with the concerned Tribunal within the period of ***eight weeks***, from today and then, to ***recover*** the same from Opponent Nos. 1 and 2, jointly or severally, by executing this judgment. Upon deposit of the aforesaid amount, the Tribunal shall disburse the entire amount in favour of the appellants-claimants, after due verification and if required, by passing the fresh order for disbursement. R&P, if any, be sent back to the concerned tribunal, forthwith.

Direct service is permitted.

(J. C. DOSHI,J)

UMESH/-

Uploaded by UMESH H. CHAVDA(HC00203) on Fri Sep 25 2026 Downloaded on : Wed Nov 25 13:36:56 IST 2026