

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 418 of 2015****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE J. L. ODEDRA**

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Approved for Reporting	Yes	No
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GANGABEN @ AMRUTABEN NARANBHAI DOLASHIYA & ANR.**Versus****MADHUBHAI SHAMBHUBHAI JOLIYA & ANR.**

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Appearance:**MR.HIREN M MODI(3732) for the Appellant(s) No. 1,2****MS VIDHI J BHATT(6155) for the Defendant(s) No. 2****RULE SERVED for the Defendant(s) No. 1**

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CORAM:HONOURABLE MR.JUSTICE J. L. ODEDRA**Date : 29/01/2026****ORAL JUDGMENT**

1. The present Appeal arises from the judgment and award dated 30.06.2014 passed by the learned Motor Accident Claims Tribunal (Aux.), Bhavnagar, in MACP No.152 of 2006.
2. By way of the impugned judgment and award, the Tribunal was pleased to award compensation to the tune of Rs.2,89,000/- from the opponent no.1, driver-cum-owner of the Tractor concerned, with an interest on the said

amount at the rate of 9% per annum from the date of filing of the claim petition till its actual realization.

3. The opponent no.2 – ICICI Lombard General Insurance Company came to be exonerated for the reasons stated in the impugned judgment and award.
4. The accident in question is owing to the rash and negligent driving by the owner of the Tractor bearing Engine/Chasis No.RDT-5771, as a result whereof, one Naranbhai, who was walking on the road, was dashed upon by the said Tractor. As a result, Naranbhai sustained grave injuries as one of the wheels of the Tractor ran over his stomach. As a result of the resultant injuries, said Naranbhai died on the spot.
5. Heard learned advocate appearing for the appellant.
6. Learned advocate Mr. Hiren Modi has submitted before this Court that in the present Appeal, the impugned judgment and award has been challenged both on the ground of quantum and exoneration of the Insurance Company. He, at the outset, has submitted that as such, the reasoning of the Tribunal that there was a clear-cut breach of policy condition, for the reason that the owner did not have

requisite valid and effective driving license, cannot be disputed. He, however, relied upon two authorities, those being the judgments in the case of **Jawahar Singh Vs. Bala Jain** reported at **2011 (6) SCC 425**, which, later on, was relied on by this Court in the judgment in the case of **First Appeal No.1641 of 2015** in the case of **Vimalaben Ratilal More and Ors. Vs. Sukhmay K Roy and Anr.** dated 09.01.2025. Relying on the said judgments, it was urged that as the case herein is that the breach of the policy condition of the insurance policy, which admittedly existed on the date of the accident, therefore, this Court may kindly pass order/s of “pay and recover” in respect of the exonerated Insurance Company, the respondent no.2, herein. He next submitted that the second challenge being on the quantum is, more or less, for enhancement on the conventional heads of compensation, viz., that on account of adding prospective income to the income arrived at by the Tribunal, as also under the heads of the Loss of Consortium, Funeral Expenses and Loss of Estate. It was submitted that in terms of the judgment in the case of **National Insurance Co. Ltd vs Pranay Sethi** reported at **2017 (16) SCC 680** as the age of the deceased was of 55

years, which, in the present proceedings, is undisputed for the reason being no appeal preferred by the original opponents, therefore, as per the dictum in the case of **Pranay Sethi (*supra*)**, 10% prospective income is liable to be awarded in terms of the ratio in the said judgment. He also submitted that for the purpose of computation of loss of dependency, the income ought to be deducted at the rate of 1/3 from the aggregate monthly income, i.e., Rs.3,000/- plus (10% of Rs.3,000/-). He, however, submitted that the Tribunal has correctly deducted 1/3rd of the income of the deceased for the reason that there were only two dependents, those being the claimants in the original claim petition, i.e., the widow and the son of the deceased.

7. He next submitted that to the sum thus arrived at i.e., the multiplicand, a multiplier of 11 may be applied. He submitted that the said amount may kindly be treated as future dependency loss. It was also submitted that over and above the future dependency loss, the Tribunal has only awarded Rs.10,000/- towards Loss of Estate, together with the Funeral Expenses to the tune of Rs.5,000/-. He, however, submitted that in terms of the applicable case-laws, under the heads of the Funeral Expenses and Loss of

Estate, Rs.18,150/- may kindly be awarded under each head. Secondly, it was submitted that for the Loss of Consortium, the Tribunal has only awarded a sum of Rs.10,000/-. It was, however, submitted that as there are two dependents, under the head of the Loss of Consortium, Rs. 96,800/- (Rs.48,400 X 2) may kindly be awarded.

8. Learned advocate Mr. Ninad P Shah appearing for Mrs. Vidhi J Bhatt for the opponent No.2 - Insurance Company submits that there is no scope for interference in the judgment passed by the learned Tribunal. He submitted that as such the fact that the person driving the offending vehicle – Tractor did not possess valid and effective driving license and that it was clear cut breach of policy condition. It was submitted that no copy of the driving license was adduced by the driver and also he did not step into the witness box. It was also submitted that however, the driver-cum-owner has admitted in his statement before the police at Exhibit-33 that he did not possess any type of driving license. It was submitted that a notice at Exhibit-41 was also issued to the opponent no.1(driver-cum-owner of the offending vehicle) and that the said notice was served which was evidenced by the fact that acknowledgment for

the same was produced on record at document Exhibit-42.

9. He submitted that even though the said opponent no. was called upon through the said notice to produce his driving license, he has not produce the same which conclusively proves that the said individual did not possess any driving license.
10. He next submitted that therefore, the conclusion of the Tribunal that there was a clear cut breach of policy condition is unacceptable and it would naturally lead to the exoneration of the respondent no.2 Insurance Company. It was thus, submitted that there is no reason why the Insurance Company could be made liable in the facts of the present matter.
11. It was next submitted that even the relief for granting pay and recover is not liable to be granted inasmuch as the judgment in the case of **Jawahar Singh (supra)** was distinguishable on facts. It was submitted that in the said case, the notice in the Special Leave Petition was only confined to the question of contributory negligence and that therefore, no finding in respect of pay and recover,

could be attributed to the said judgment, as the said judgment did not consider the said aspect at all. It was submitted that indeed this Court in the case of **Vimlabhen Ratilal (*supra*)**, had based its decisions on the basis of the decision in **Jawahar Singh (*supra*)**. It was submitted that both in the case of **Jawahar Singh (*supra*)** and in **Vimlabhen Ratilal (*supra*)**, the vehicle was driven by a minor. It was, however, submitted that in the present case, there was no such fact. It was thus submitted that both these judgments are distinguishable and therefore, this Court may not direct the respondent no.2 - Insurance Company to first pay the compensation awarded and thereafter to recover the same from the owner.

12. It was next submitted that insofar as the submissions on the enhancement of compensation are concerned, the learned Tribunal, taking into overall facts and circumstances of the case, has limited the said compensation to an aggregate amount of Rs. 2,89,000/-. It was submitted that the facts do not warrant any enhancement and therefore, the present petition may kindly be rejected.

13. Having heard the learned advocates for the parties, this Court proceeds to decide the present appeal in terms of appearing hereinafter.

14. The points of determination which arise for decision of this Court in the present proceedings are as follows:

1. Whether in the facts of the present case, the Insurance Company could be directed to first pay the compensation awarded and thereafter to recover from the owner?

2. Whether the compensation as awarded by the learned Tribunal in the present case is just, fair and reasonable? If not, what would be the just, fair and reasonable compensation, in facts of the present case?

15. Admittedly, neither of the parties in the present matter dispute that the driver did not have requisite license. In the present Appeal, the respondent no.1 - driver was served, though, none has appeared on behalf of the said respondent. Now, the record indicates that he did not produce license before the learned Tribunal despite him having been served with a notice Exhibit-41, calling upon

him to produce such license. The fact that the said notice was served upon the said respondent no.1 is evident from the fact that an acknowledgment, evidencing the service of the said notice on the respondent no.1, is also produced on record at Exhibit-42 before the learned Tribunal.

16. Moreover, the said respondent no.1, in his statement before the Police at Exhibit-33, has candidly admitted that he did not have any driving license whatsoever. In the circumstances, the fact that the driver did not have any license cannot be doubted. Now, the learned advocate for the appellant had placed reliance on judgment in the case of **Jawahar Singh (supra)**. In the said case indeed, as pointed out by learned advocate of the Insurance Company, the notice was confined with the question of contributory negligence. However, the fact remains that the Hon'ble Supreme Court had indeed noted that the Tribunal has passed an order for pay and recover which was not disturbed by the High Court in the facts of the said case. Therefore, it is plain that it was only for the reason that the Hon'ble Supreme Court was in agreement with the said line of reasoning, namely, the order of pay and recover, that it

did not deem it appropriate to issue notice on the said aspect. Hence, in that case, notice was limited only to the question of contributory negligence. In the circumstances, it would not be entirely true to hold that the said judgment does not endorse the direction to the Insurance Company for paying first and thereafter recovering the same from the owner where there is a breach of policy condition of the insurance policy.

17. Even the Coordinate Bench of this Court in **Vimlaben Ratilal (*supra*)** has followed the said judgment and has held that in the facts of the said case it was a fit case to pass order of pay and recover. In both of the aforesaid cases, of course, the driver was a minor. However, the law is not that only when a driver is a minor that the order for pay and recover can be made. The law, succinctly put, is that when there is a breach of policy condition, a third party may not be subjected to the technicality of breach of terms and conditions between the owner and the insurer, nor could such third party be made to suffer in those circumstances. And to oblivate such prejudice to third party, the order of pay and recover ought to be passed. The

said aspect is duly satisfied in the facts of the present case and therefore, in this case too, it would be just and proper for this Court to pass an order for pay and recover.

18. Hence, the compensation, as shall be finalized in terms of this Order in the forthcoming paragraphs, shall be first paid by the Insurance Company to the claimant and thereafter, the Insurance Company would be at liberty to recover the same from the owner of the offending vehicle.

19. Insofar as the compensation is concerned, there too, this Court is inclined to hold that as per the dictum in **Pranay Sethi (*supra*)**, 10% prospective income is liable to be added to the income of the deceased. The deceased, as is apparent from the facts of the present case, was an agriculturist and therefore, he would qualify under the direction of the **Pranay Sethi (*supra*)** for the purpose of additional prospective income in terms of the said judgment. Now, as the age of the deceased at the time of the accident was 55 years, therefore, 10% prospective income is liable to be awarded in terms of the said judgment. The relevant portion of the said judgment reads as follows:.

“(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

20. Accordingly, when to the monthly income, as assessed by the Tribunal i.e. a sum of Rs. 3,000/- per month, is considered for the purpose of prospective income, the total monthly income would be Rs. 3,300/- (Rs.3000/- plus 10% of Rs.3000/-). As the learned Tribunal had failed to consider the prospective increase to the income, the entire compensation will have to be reworked. Indeed, the learned Tribunal has correctly deducted 1/3rd of the income for the reason that the dependents of the said deceased were two(2) in number namely, the appellants herein, who are respectively, the widow of deceased and the son of the deceased. Therefore, deducting 1/3rd from an amount of Rs. 3300/-, a sum of Rs.2200/- would be arrived at. The same would be in terms of the following observation of Hon'ble Apex Court in **Sarla Verma & Ors vs Delhi**

Transport Corp.& Anr. reported at 2009 (2) SCC (CRI) 1002, which reads as follows:

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra⁴, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this (2003) 3 SLR (R) 601 Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.”

21. The aforesaid amount of Rs.2,200/- would be the monthly income for the purpose of present petition. When the said amount is multiplied by 12, the yearly income (multiplicand) would be Rs.26,400/- (Rs. 2,200/- X 12). In terms of the judgment in **Sarla Verma (supra)**, the multiplier is to be decided in terms of the following observations of the Hon’ble Apex Court:

“15. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by

one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

22. Accordingly, since the age of the deceased in the present case is of 55 years, which is evident from the Postmortem Note pertaining to the deceased at Exhibit-29, the multiplier in this present case would be 11. Accordingly, a sum of Rs. 26,400/-, when multiplied with 11, the amount arrived at would be Rs. 2,90,400/-, which would be the Future Loss of Income.

23. As the dependents in the present case are two(2) in number, the Loss of Consortium amount would be to the tune of Rs.48,400/- multiplied by 2, which would be Rs.96,800/-. The same is in terms of the judgment in the case of **Pranay Sethi (supra)**. It may be recalled that the learned Tribunal had awarded only Rs.10,000/- under the said head. So be it. Adding thereto the sums under the heads of Loss of Estate and Funeral Expenses, both of which would be to the tune of Rs. 18,150/- and thus the

amount liable to be granted under these heads would be an aggregate amount of Rs.36,300/-.

24. Hence, the overall compensation in the present case would be as follows:

Sr. No.	Particulars	Amount awarded by the Tribunal (in Rs.)	Amount determined by this Court
1	Loss of Income	2,64,000/-	2,90,400/- (Rs.26,400/- X 11)
2	Loss of Consortium	10,000/-	96,800/- (Rs.48,400/- X 2)
3	Loss of Estate	10,000/-	18,150/-
4	Funeral Expenses	5,000/-	18,150/-
	TOTAL	2,89,000/-	4,23,500/-
	Less: Already awarded amount by the Tribunal		2,89,000/-
	Enhanced amount by this Court		Rs.1,34,500/-

25. The enhanced amount of **Rs.1,34,500/-** shall carry interest at the rate of 9% per annum. At this stage, it would be appropriate to note that learned advocate for the respondent No.2 Insurance Company has vehemently argued that looking to the banking interest rate being

awarded by the banks, the said interest rate may kindly be pegged to 7%. However, this Court is not impressed by the said argument. The fact remains that the accident in the present case had occurred in March, 2006 and the compensation is being awarded after a prolonged period, in the year of 2026. Considering the same and looking at the inflationary trends prevalent in the country, so as to maintain the purchase power of the compensation awarded, this Court deems it appropriate that the interest rate on the enhanced compensation be fixed at 9% per annum.

26. Finally, the mode of recovery of amount by the respondent – Insurance Company under the pay and recover orders. It may be noted that the Hon'ble Apex Court in the case of **National Insurance Co. Ltd. Vs. Baljit Kaur and Ors.**, reported at **2004 (2) SCC 1**, was a case where the Insurance Company was directed to first satisfy award amount and thereafter, it was permitted to recover the same from the owner of the vehicle. It was further clarified that such recovery may be initiated through a proceedings before the executing court itself, rather than having to file a

second suit for the purpose of such recovery. The relevant observation of the Hon'ble Apex Court reads as follows:

21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh¹. The said decision has been overruled only in Asha Rani². We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court 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. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding.

(emphasis supplied by underlining.)

27. The Insurance Company shall forthwith deposit the entire compensation together with the interest as awarded under this judgment, within a period of 8 weeks from the date of the availability of the signed copy of this judgment. The Tribunal shall forthwith proceed to disburse the said amount to the claimants after due verification. The Insurance Company shall be at liberty to recover from the owner of the offending vehicle, the award amount that it deposits as aforesaid, without entering into any further adjudicatory proceedings against the said owner, by way of execution proceedings.

28. The present Appeal stands allowed to the aforesaid extent and is disposed of accordingly.

29. R&P, if any, be forthwith remitted back to the Tribunal.

(J. L. ODEDRA, J)

JIGAR J RABARI/ SUDHIR