

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 3904 of 2025

With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/FIRST APPEAL NO. 3904 of 2025

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Approved for Reporting	Yes	No
	✓	

UNITED INDIA INSURANCE COMPANY LIMITED
 Versus
 BHARATBHAI MANUPRASAD UPADHYAY & ORS.

Appearance:

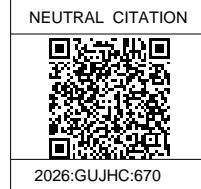
MS MASUMI V NANAVATY(9321) for the Appellant(s) No. 1
 MR VIBHUTI NANAVATI(513) for the Appellant(s) No. 1
 ABATED for the Defendant(s) No. 2
 MR NISHIT A BHALODI(9597) for the Defendant(s) No. 3,4,5
 NOTICE SERVED for the Defendant(s) No. 1,6,7

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 06/01/2026
ORAL JUDGMENT

ADMIT. Learned advocate Mr. Nishit Bhalodi waives service of notice of Admission. With the consent of learned advocates appearing for respective parties, present appeal is taken up for final hearing today.

[1.0] This appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the appellant-original opponent No.2 – United India Insurance Company Ltd. against the judgment and award dated 17.02.2025 passed by the learned Motor Accident Claims Tribunal (Auxi.), at Halol, District Panchmahals (for short referred to as “learned Tribunal”) in Motor Accident Claim Petition



No.2 of 2019 filed under Section 166 of the Motor Vehicles Act, 1988 (for short referred to as "MV Act") whereby the learned Tribunal has partly allowed the claim petition of respondent Nos.3 to 7 herein – original claimants and awarded compensation of Rs.22,03,800/- with interest at the rate of 6% per annum from the date of filing of the claim petition.

[2.0] The brief facts of the claim petition are that the accident took place on 21.08.2017, when Ghanshyambhai Bariya i.e. the driver of Tavera Car No.GJ-17-BA-3487 (hereinafter referred to as "offending vehicle") was driving the vehicle in rash and negligent manner and at around 14.00 hours, when the offending vehicle was passing through Dahod-Limkheda road, at that time, the deceased rammed the vehicle in a stationary tanker, resulting into death of the driver of offending vehicle (hereinafter referred to as "deceased") and serious injuries was caused to other passengers sitting in the offending vehicle. The legal heirs and representatives of the deceased preferred the captioned MACP under section 167 of the MV Act claiming compensation of Rs.25,00,000/- and the learned Tribunal awarded the aforesaid amount of compensation.

[3.0] Learned advocate Mr. Vibhuti Nanavati appearing for the appellant has strenuously argued that the learned Tribunal has committed an error in not appreciating the evidence produced on record and erred in deciding the issue of liability on the part of the appellant – insurance company. The learned Tribunal has also erred in not considering that the claim petition was filed under Section 167 of the MV Act and deceased driver of offending vehicle himself was held sole tort feasor in causing the accident whereby he cannot



take advantage of his own wrong and learned Tribunal ought to have considered that the owner of offending vehicle had not paid the additional premium under the head of 'legal liability towards the paid driver' and appellant – insurance company was wrongly held liable to pay the compensation under Section 147 of the MV Act. He has further submitted that the learned Tribunal has erred in relying upon Clause "PA Cover Paid Driver" IMT-17 i.e. additional premium for compulsory PA cover to owner-driver as in GR 36 shall apply. Hence, he has requested to allow the present appeal and alternatively, without admitting the liability, he has argued that the learned Tribunal ought to have calculated the compensation as per Section 4 of the Workmen Compensation Act, 1923 relying upon the prevailing minimum wages.

[4.0] Learned advocate Mr. Nishit Bhalodi appearing for the respondent Nos.3 to 5 has opposed the present appeal by submitting that the learned Tribunal has properly appreciated the evidence and claimants have a right to file claim petition either under Section 166 or under Section 167 of the MV Act. If the claim petition is filed under Section 167 of the MV Act, once additional premium is accepted, as per the judgment of the coordinate Bench of this Court in the case of **Valiben Laxmanbhai Thakore (Koli) Wd/O Late Laxmanbhai Ramsinghbhai Thakore (Koli) vs. Kandla Dock Labour Board and Another** reported in **2022 (1) GLR 440**, the learned Tribunal has not committed any error in saddling the appellant – insurance company with the liability. Hence, he has requested to dismiss the present appeal.

[5.0] Having heard learned advocates appearing for the respective



parties, it appears that the main contention of the learned advocate for the appellant is that the learned Tribunal has committed error in calculation of amount of compensation mainly on the ground that once the learned Tribunal come to conclusion that claim petition is filed under Section 167 of the MV Act and once it is an admitted fact that under Section 167 of the MV Act, claim petition is filed as accident occurred due to negligence of the driver of offending vehicle then the tort feasor is not entitled get the compensation for his own wrong under Section 166 of the MV Act and for getting compensation under Section 166 of the MV Act, claimants have to prove the negligence of driver of the offending vehicle. Herein, it is admitted fact that the owner of offending vehicle i.e. Tavera Car had not paid the additional premium under the head of "legal liability towards paid driver" though the learned Tribunal has considered the liability of insurance company to pay the compensation under Section 147 of the MV Act. As per section 147 of the MV Act, it is the statutory liability while the learned Tribunal has relied on IMT-17 and come to conclusion that additional premium for compulsory PA cover to owner-driver is paid.

[5.1] But, if we peruse the insurance policy produced at Exh.55, premium of Rs.100/- towards compulsory PA cover to owner-driver is paid and under the head of legal liability towards paid driver, no additional premium has been paid and no any premium is paid to cover the legal liability of the employee. Hence, in absence of any premium, once the insurance company has not accepted any contractual liability or received any premium, the appellant – insurance company cannot be held liable to pay the compensation.



The additional premium for compulsory PA cover to owner-driver is a contractual liability and not a statutory liability under Section 147 of the MV Act. Hence, once the learned Tribunal come to conclusion that claim petition was filed under Section 167 of the MV Act, in absence of any additional premium *qua* legal liability towards paid driver, this Court is of considered view that upto that extent the learned Tribunal has committed an error in relying upon IMT-17 and coming to conclusion that the owner of offending vehicle has paid additional premium of Rs.50/- towards compulsory PA cover to owner-driver. The said finding is perverse which requires interference by this Court.

[5.2] As stated in earlier part, appellant – insurance company has not accepted any additional premium and hence, IMT-17 is not applicable. Hence, authority relied upon by the learned Tribunal on the judgment of the coordinate Bench of this Court in the case of **Valiben Laxmanbhai Thakore (Koli) Wd/O Late Laxmanbhai Ramsinghbhai Thakore (Koli)** (Supra) is wrongly relied upon by the learned Tribunal as no any additional premium is accepted by the appellant – insurance company and in absence of any additional premium, insurance company has not undertaken to indemnify the owner of the offending vehicle for making payment of compensation on behalf of the owner of the offending vehicle. In this regard, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **New India Assurance Co. Ltd. v. C.M. Jaya reported in (2002) 2 SCC 278** as well as in the case of **National Insurance Co. Ltd. v. Prembai Patel and others** reported in **(2005) 6 SCC 172**. Hence, liability under Section 147(1)



(b) of the MV Act and under Section 4 of the Workmen Compensation Act, 1923 both are different. Section 147(1)(b) of the MV Act may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award under Section 166 of the MV Act and for this purpose, owner or employer must have to take policy of that particular kind for which he may be required to pay additional premium and policy must clearly show a clause to the effect that liability of insurance company is not limited to that provided under the Workmen Compensation Act, 1923, as in absence of any such additional premium in the schedule of policy (Exh.55). Herein, the insurance company has not taken any higher liability or higher premium. Hence, insurance company cannot be held liable to satisfy the impugned judgment and award.

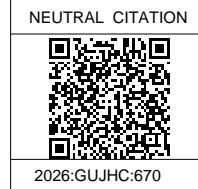
[5.3] Even otherwise, if we consider that the claim petition is filed under Section 167 of the MV Act, option is given to the claimants to receive the compensation either under the MV Act or under the Workmen Compensation Act, 1923 but it is not open for the claimants to avail both the remedies i.e. under the MV Act as well as under the Workmen Compensation Act, 1923 as risk of deceased is not covered in absence of any additional premium. As discussed in earlier part, the insurance policy is produced at Exh.55 and deceased is not entitled to receive the compensation for his own wrong as he himself is the tortfeasor and hence, the compensation is required to be considered in light of section 167 of the MV Act and admittedly, the learned Tribunal has come to conclusion that the claimants have filed the claim petition under Section 167 of the



MV Act. Hence, the learned Tribunal ought to have awarded compensation under the provisions of the Workmen Compensation Act, 1923 considering the minimum wages prevailing at the time of accident to award just compensation. It is undisputed fact that the accident took place in the August, 2017 and considering the fact that the deceased was engaged in skilled profession of driving and therefore, minimum wages of Rs.8000/- per month is assessed and 50% of the said minimum wages taken into consideration then it would come to Rs.4000/- and as the deceased was aged 30 years, factor of 207.98 is required to be applied. Thus, the claimants would be entitled to **Rs.8,31,920/- (Rs.4000 x 207.98)** and towards compensation as per section 4 of the Workmen Compensation Act, 1923 alongwith interest of 12% per annum from the date of claim petition. Hence, the impugned judgment and award whereby the learned Tribunal has awarded compensation of Rs.22,03,800/- to the original claimants with 6% interest per annum is erroneous which calls for interference in hands of this Court.

[6.0] In wake of aforesaid conspectus, present appeal **succeeds**. The impugned judgment and award dated 17.02.2025 passed by the learned Motor Accident Claims Tribunal (Auxi.), at Halol, District Panchmahals is modified and it is held that the original claimants are entitled to recover compensation of **Rs.8,31,920/-** from the owner of Tavera Car No.GJ-17-BA-3487, under the Workmen Compensation Act, 1923 with interest at the rate of 12% per annum from the date of filing of claim petition till its realization.

[7.0] The Tribunal after disbursing **Rs.8,31,920/-** in favor of the original claimants from the amount of Rs.22,03,800/- (already



deposited by the appellant – insurance company with the learned Tribunal) alongwith accrued interest thereon at the rate of 12% per annum from the date of filing of claim petition till its realization, as per the apportionment already made by the learned Tribunal, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure, shall refund the remaining amount to the appellant – United India Insurance Company Ltd..

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

[8.1] Record and proceedings, if any, be sent back to the concerned Tribunal, forthwith.

[9.0] Pending Civil Application (For Stay) stands disposed of in view of disposal of First Appeal.

Sd/-
(HASMUKH D. SUTHAR, J.)

Ajay