

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 602 of 2013
With
R/CROSS OBJECTION NO. 85 of 2013
In
R/FIRST APPEAL NO. 602 of 2013

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UNITED INDIA INSURANCE COMPANY LIMITED
Versus
CHANDRAKANT VISHANDAS HARWANI & ORS.

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Appearance:

MR VIBHUTI NANAVATI(513) for the Appellant(s) No. 1
MR MTM HAKIM(1190) for the Defendant(s) No. 2

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CORAM: HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA
and
HONOURABLE MR.JUSTICE J. L. ODEDRA

Date : 22/09/2026

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA)

1. On 07.05.1990, an accident occurred with the claimant was travelling in the truck, which was incidentally owned by his brother-in-law. As a result of this accident, the truck in which the claimant was travelling turned turtle and the claimant suffered grievous injuries.
2. On 09.11.1998, i.e. about 8 years after the accident, the claim petition was preferred contending that the claimant had become permanently disabled and had become paraplegic and, therefore, the compensation was required to be granted.
3. The Insurer entered appearance and basically contended

that the accident occurred on 07.05.1990 when there was no liability on the Insurer to cover the risk of occupants in their truck and, therefore, the liability fastened on it was incorrect. It is also contended that the sums awarded were excessive.

4. The Tribunal, on consideration of the evidence, came to the conclusion that the accident occurred due to negligence of the driver of the truck and it also came to the conclusion that the Insurer was liable and ultimately, awarded a sum of Rs.13,06,000/- as compensation. For arriving at the said sum, the Tribunal assessed monthly income at Rs.2,250/- per month.
5. Being aggrieved by this award, both the Insurer has filed the Appeal, while the claimant has filed cross-objection.
6. Shri Vibhuti Nanavati, learned advocate for appearing for the Insurer primarily contended that there was no liability cast on the Insurer to satisfy the risk of the occupant of the truck. Especially, having regard to the fact that this liability was fastened on the Insurer only from 1994 by amending Section 147 sub-clause (1)(b)(i). He sought to highlight the fact that there was no liability on the Insurer. The award of the Tribunal should not bind the Insurer and

it was always open for the claimant to proceed against the owner of the truck, i.e. the claimant's brother-in-law.

7. The argument was also advanced by the Insurer that there was no credible evidence to come to the conclusion that the claimant was a person, who was travelling with his goods in the truck. The claimant had specifically pleaded in his claim petition that he was travelling in the truck along with fire bricks and clay items, for it being sold in Madhya Pradesh.
8. In her cross-examination, the wife of the claimant has gone on to state that he earned his livelihood by selling the aforementioned commodities and in order to sell the commodities, he was carrying the same in his brother-in-law's truck to Indore. There is not even a suggestion made by the Insurer that this assertion of the claimant was false. When the Insurer did not challenge this claim of the claimant that he was travelling in the truck along with his goods, the further argument of the Insurer that the claimant was only a gratuitous passenger cannot be accepted.
9. In light of the positive evidence of the wife of the claimant that he was travelling in the truck along with his goods in

order to sell them at Indore, it will have to be held that he was not a gratuitous passenger and was entitled to be carried in the truck free of charge, as provided under the Gujarat Motor Vehicles Act, 1988.

10. Learned counsel appearing for the claimant, on the other hand, contended that the Insurance policy covered the risk of occupants in the truck, since the limitations, as to its use, clearly indicated that the vehicle should be used only as permitted under the public carriers' permit.
11. He contended that the Rule 122 of the Gujarat Motor Vehicle Rules permitted that the owner of the goods could be carried free of charge in the goods carriage and since there was clear evidence that the claimant was travelling in the truck along with his goods, the Insurer would actually be made liable. He also sought to point out that there was absolutely no suggestion of the Insurer that the claimant was not travelling in the goods carriage along with his goods and since there was no challenge to this particular aspect, the Insurer would be liable.
12. He also contended that the compensation awarded was inadequate, since the Future Prospects was not granted and having regard to the fact that the claimant had become

disabled completely, ie. he was a paraplegic, reasonable sums are required to be awarded for Attendant Charges and Loss of Amenities.

13. The principal question raised by the Insurer is regarding its liability.
14. Section 147 (1)(b)(i), as it stood on 07.05.1990, reads as follows:

“147.Requirement of Policies and limits of liability.-(1)
In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) xxx xxx xxx

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

i) against any liability which may be incurred by him in respect of the death of or bodily or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place;”

15. As could be seen from the above, the requirements of the policy was that it should insure the person or classes of persons specified in the policy to the extent specified in sub-section(2).
16. Rule 122 (1) of the Gujarat Motor Vehicles Rules, 1989, which came into force on 01.07.1989, and which was in force as on the date of the accident, reads as follows:

“122. Carriage of persons in goods carriages.-

(1) Subject to the provisions of this rule, no person shall be carried in a goods carriage:

Provided that the owner or the hirer or a bonafide employee of the owner or the hirer of the vehicle carried free of charge, or a police officer in uniform, traveling on duty, may be carried in a goods carriage.”

17. As could be seen from the above, though under sub-rule (1) of Rule 122, there is an absolute bar for any person being carried in a goods carriage, the proviso carves out an exception and permits either the owner or the hirer or a *bona fide* employee of the owner or the hirer of the vehicle to be carried free of charge. This would fundamentally mean that though there is a bar for any person carried in a goods carriage, the law does permit the hirer of the goods carriage or even his employee to be carried in the truck free of charge. If Section 147 (b) and Rule 122(1) along with its proviso are read in conjunction, it makes it clear that the owner of the truck was entitled to carry in the truck, the hirer of his vehicle free of charge and as a consequence, the requirements of the policy, as contemplated under Section 147 (b) would cover the liability of the Insurer with respect of such persons being carried in a goods carriage.

18. The Insurer, however, sought to contend that the decision

of the Supreme Court in the case of *The New Indian Assurance Company Limited vs. Asha Rani*, 202 (0) ALJEL-SC 19625, would cover the issue.

19. In our view, the said judgement can have no application, since in the case of *Asha Rani* (*supra*), the Supreme Court was not considering a scenario where a rule such as Rule 122 of the Gujarat Motor Vehicles Rules was involved. The Supreme Court was basically dealing with the substantive provisions of the Motor Vehicles Act, which did not permit the carriage of passengers in a goods carriage. However, since the Rules of Gujarat Motor Vehicles Rules, specifically permit the carriage of a specified category of passengers in the truck and the Insurance Policy issued also indicates that the liability of the Insurer would cover the usage of vehicle so long as it is under the conditions of public carrier permit, the judgement would have no application.
20. It may also be pertinent to notice here that the policy is admittedly a comprehensive policy and, therefore, the occupants of the vehicle would also stand covered under the policy.
21. We are, therefore, of the view that the argument of the

Insurer that it cannot be made liable, cannot be accepted and the arguments are, therefore, rejected.

22. As far as the quantum of compensation is concerned, the Tribunal has assessed the monthly income at Rs.2,250/- in the absence of any documentary evidence. In our view, this assessment of the monthly income having regard to the date of the accident cannot be found fault with.
23. The Tribunal has, however, not awarded Future Prospects and accordingly, in light of the decision rendered in the case of *National Insurance Company Limited vs. Pranay Sethi and others*, (2017) 16 SCC 680, 40% Future Prospects is added to the monthly income, which comes to Rs.3150(2250x0.40). The claimant was aged about 25 years and, therefore a multiplier of 18 will have to be made applicable. Consequently, towards Loss of Future Income, claimant will be entitled to Rs.6,80,400/- (3150x18x12).
24. The Tribunal has awarded a sum of Rs. 1,00,000/- towards Medical Expenses and further sum of Rs.100,000/- towards Future Medical Expenses. In our view, these sums are just and proper and are, therefore, maintained.
25. The Tribunal awarded a sum of Rs.4,00,000/- towards

Pain, Shock and Sufferings and Rs.75,000/- towards Loss of Amenities. In our view, the sums awarded towards Pain, Shock and Sufferings are just and proper and are, therefore, maintained. Since the evidence on record indicates that the claimant has become a paraplegic, it would be appropriate to award a sum of Rs.2,00,000/- towards Loss of Amenities, in lieu of Rs.75,000/- that is awarded by the Tribunal.

26. The Tribunal has awarded a sum of Rs.100,000/- towards Attendant Charges. Given the fact that the claimant has become a paraplegic and has become bedridden, it would be appropriate to enhance the said sum to Rs. 3,00,000/-.
27. The Tribunal has awarded a sum of Rs. 20,000/- towards Special and Nutritious Diet and Rs. 25,000/- towards Transportation Expenses. These are required to be enhanced to Rs.50,000/- each.
28. Consequently, the claimant would be entitled to the following sum:-

Sr.No.	Particulars	Amount (Rs.)
1	Future Loss of Income	6,80,400
2	Medical Expenses & Future Medical Expenses	2,00,000

3	Pain, Shock and Suffering	4,00,000
4	Loss of Amenities	2,00,000
5	Attendant Charges	3,00,000
6	Special & Nutritious Diet	50,000
7	Transportation Charges	50,000
	Total Amount of Compensation	18,80,400
	Amount awarded by the Tribunal	13,06,000
	Enhanced Amount of Compensation	5,74,400

29. The enhanced amount of compensation, which is payable to the claimant, is **Rs.5,74,400/-**. However, interest at the rate of 9% per annum would be carried only on Rs.4,74,400/-from the date of the claim petition till the date of payment. Ten (10) weeks time is granted to the Insurance Company to deposit the said amount.
30. Appeal of Insurance Company is dismissed. The cross-objection filed by the claimant is allowed in part. R &P, if any, be sent back to the concerned Tribunal forthwith.

(N.S.SANJAY GOWDA,J)

(J. L. ODEDRA, J)

SUDHIR