

Reserved On : 16/10/2026
Pronounced On : 23/10/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 5650 of 2019

**With
CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2026
In R/FIRST APPEAL NO. 5650 of 2019**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No
	Yes	

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SBI GENERAL INSURANCE COMPANY LTD

Versus

RADHABEN GOVABHAI DESAI (RABARI) (DELETED) & ORS.

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Appearance:

MS KIRTI S PATHAK(9966) for the Appellant(s) No. 1

DELETED for the Defendant(s) No. 1

MR KK THAKKAR(2834) for the Defendant(s) No. 2,3,4,5

MR VIBHUTI NANAVATI(513) for the Defendant(s) No. 9

MR. ANSHUL R SHAH(10413) for the Defendant(s) No. 6

MR. NISHIT P GANDHI(6946) for the Defendant(s) No. 6

RULE SERVED for the Defendant(s) No. 8

RULE UNSERVED for the Defendant(s) No. 7

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CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI

CAV JUDGMENT

1. SBI General Insurance Company Ltd. has filed this appeal under section 173 of the Motor Vehicle Act challenging judgment and order dated 31.08.2019 passed by learned MACT, Patan in MACP No.156 of 2015, by which learned Tribunal has assessed total compensation of Rs.37,00,420/- with interest at 9% p.a. from the date of till filing claim petition till realization and

directed all the opponents jointly and severally to pay amount of compensation with rider that if opponent no.3 (SBI General Insurance Company) deposits part of decretal amount, it shall be entitled to recover the said amount from opponent no.2 or legal heirs of opponent no.2.

2. The succinct facts of the case are that the deceased, Babubhai Govabhai Desai, succumbed to fatal injuries sustained in a vehicular accident that occurred on 09.03.2015. On the fateful day, the deceased was traveling as a pillion rider on motorcycle bearing registration number GJ-24-E-1746, ridden by Nizambhai, which was owned by Opponent No. 4 and insured by Opponent No. 5. While the motorcycle was proceeding on the correct side of the road at a moderate and controlled speed, Opponent No. 1 rashly and negligently drove a car—owned by Opponent No. 2 and insured by Opponent No. 3—from the wrong side of the road at high speed, violently dashing against the motorcycle. Consequently, the deceased was thrown onto the road and sustained grievous injuries. He was initially rushed to Patan Janata Hospital for emergency medical treatment and subsequently shifted to Lion Hospital, Mehsana, where he remained hospitalized as an indoor patient but could not survive and lost his breath on 14.03.2015.

3. In the background of aforesaid facts, claimant being heirs and legal representative of the deceased Babubhai, filed the claim petition under Section 166 of the Motor Vehicles Act for getting total compensation of Rs.65 lakhs with interest and cost

jointly and severally from the opponents, inter alia on the pleading that at the time of the road accident, deceased was 49 years old. He was serving as a government teacher in government school at village Kotia; his monthly salary was Rs.35,346/-. Besides, serving as a teacher, deceased was earning from agricultural produce and animal husbandry as well to make his earning Rs.20,000/- more per month. Thus, in all, it is claimed that the deceased was earning Rs.57,000/- per month. Claimants claim that deceased was sole resource of surviving and on his death, family is ruined the livelihood of the claimants.

3.1. Upon above pleading claimants are claiming compensation as stated *supra*.

4. The written statement of opponent no.1, 3 and 5 were filed after being served, vide Exh. 14, 86 and 58 respectively setting up the case of total denial. Apart from setting up the case of regular defense, the opponent no.3 - SBI General Insurance Company Limited raised the defense of fake and fabricated policy; further it claimed that policy produced by the claimant does not belong to car and not issued by the SBI General Insurance Company Ltd. Other defense raised is that car driver was not holding valid and effective driving license at the date of the accident.

5. The learned Tribunal has fixed the issues at Exh.18 and

permitted parties to lead their evidence. After appreciating the evidence on record, the learned Tribunal granted aforesaid compensation to the claimants, reserving right of SBI General Insurance Company to recover the amount of compensation, if any paid, from opponent no.2 or legal heirs of the opponent no.2.

6. Being aggrieved, SBI General Insurance Company Ltd. has preferred the appeal.

7. Another insurance company i.e. Iffco Tokio General Insurance Company Limited has also filed the appeal challenging the self-same judgment vide First Appeal No.663 of 2020. However, by order dated 12.10.2026, proceedings of First Appeal No.663 of 2020 has been separated or de-tagged from the present appeal on the ground that in that matter, the issue involved is in regards to “Act only policy”, which is large before the Supreme Court for consideration. The issue of inter-se negligence of the driver of the offending vehicle is issue of composite negligence for the claimants as deceased was a pillion rider.

8. Heard learned advocates for respective parties.

9. Learned advocate Ms. Pathak, appearing on behalf of the appellant-Insurance Company, vehemently contended that the learned Tribunal has committed a serious and manifest error of law and fact in ignoring that the insurance policy concerning the offending car is a fabricated and fake policy. Drawing attention

to the oral testimony of the company's officer, Mohitsinh Hasuji Rana, examined at Exhibit 78, she submitted that the said witness has on oath deposed that their office thoroughly investigated the matter and scrutinized the entire records, revealing that car bearing registration number MH-01-CA-6881 was never insured by SBI General Insurance Company, nor was any liability of the car owner, Mr. Iqbal Ibrahim Malpara, indemnified at any point in time. She further submitted that the official records of SBI General Insurance Company Limited establish that no premium was ever received by the appellant toward underwriting the risk of the said vehicle. It was pointed out that the copy of the policy relied upon by the claimants is exhibited at Exh. 66, bearing policy number 0000000004854523, whereas the actual policy produced by the Insurance Company at Exh.80 bearing same policy number was issued in the name of Mr. Samuel Vasanth Chellaiah as a “long-term home insurance policy”. Thus, she submitted that the Insurance Company has successfully discharged its burden of proof to establish that the document produced by the claimants is a fake policy. Moreover, comparison of the policy number at Exh.66 with Exh.80 unhastily demonstrates that the document pertains to a long-term home policy and not motor vehicle insurance policy covering the risk of the car in question.

9.1. Finding fault with impugned judgment and award, learned advocate Ms. Kirti Pathak has submitted that before the learned Tribunal the insurance company has successfully established its defense of policy being a fake, yet learned Tribunal has wrongly

marshelled the liability upon the insurance company to pay the compensation and to recover the same from owner of the vehicle.

9.2. Learned advocate Ms.Pathak also submitted that at the time of accident there was no existing or surviving contractual relationship between Mr.Iqbal Malpara – insured and appellant – insurance company. Thus insurance company cannot be held liable to indemnify risk of owner of offending vehicle. It is also submitted that this Hon'ble Court on 04.12.2019 has admitted the appeal and granted stay considering peculiar facts and evidence and held that appellant is not required to deposit the awarded amount. It is submitted that claimants have not challenged the said order before Hon'ble Apex Court. It is submitted that no liberty is given to claimants to file application for disbursement even though they have filed application for disbursement just to harass the insurance company.

9.3. Learned advocate Ms. Kirti Pathak in support of her submission would rely upon the judgment of ***High Court for Punjab and Haryana at Chandigarh being C.M.No.5542-CII of 2009, C.M.A.No.5543-CII of 2009 and FAO No.1180 of 2009 dated 05.03.2009 between Davinder Pal Singh v/s. Lakhwinder Singh and others***, and submitted that High Court has held that if a policy is proven to be a forged and fabricated one, insurance company should not be held liable to pay compensation. She also refers to judgment of this Court in case of **Anitaben and other v/s. Abdulhakim Allarkhan Shaikh (1996) 1 ACC 497**].

9.4. Lastly, it was submitted by learned advocate Ms.Pathak that since SBI General Insurance Company Ltd. has not received any premium to cover the risk of car on the date of the accident, and therefore, insurance company cannot be saddled with liability to indemnify the risk of the owner. Even no order of pay and recover can be passed. Finding the fault with the learned tribunal's impugned judgment and order, learned advocate Ms. Kirti Pathak therefore submitted to allow this appeal and exonerate the insurance company from liability to pay the compensation.

10. Per contra, learned advocate Mr. K.K. Thakkar, appearing on behalf of the claimants, while drawing reference to the deposition of the Insurance Company's officer at Exhibit 78, submitted that the witness who entered the witness box lacked the competence to depose on behalf of the corporate or registered office situated at Andheri East, Mumbai. He further submitted that no official from the actual branch that issued the policy (Exh.66 or Exh.80) was examined as a witness. He additionally contended that although the Insurance Company alleged that a criminal complaint had been lodged regarding the fabricated insurance policy, apart from producing a mere communication addressed to a senior police officer at Vagdod Police Station, Gujarat, the company failed to place on record any material establishing that a FIR or police complaint was ever registered against either the claimants or the owner of the offending vehicle.

10.1. Learned advocate Mr.Thakkar would further submit that the interest of insurance company is saved as insurance company is permitted to recover the amount of compensation from the owner of vehicle by executing the impugned judgment and order. Thus, the claimants being third party, in larger interest, learned Tribunal has rightly passed the impugned judgment and order. He relied upon the judgment of this Court in case of ***Oriental Insurance Company Limited v/s. Jayeshbhai Bhagubhai Patel, First Appeal No.4114 of 2009 with First Appeal No.4115 of 2009*** and judgment of the Bombay High Court in case of ***HDFC Ergo General Insurance Company Limited v/s. Smt. Nisha Milind Kamble and Ors. In First Appeal No.1221 of 2023.***

10.2. Mainly upon above submissions, he submitted to dismiss the appeal.

11. Learned advocate Mr. Vibhuti Nanavati, appearing for Iffco Tokyo General Insurance Company Limited, submits that said insurance company has also filed separate appeal. It is de-tagged from the present appeal on the ground that in that matter, the issue involved is in regards to “Act only policy” which is at large before the Hon’ble Supreme Court for consideration. Therefore, he is not making any submission in this appeal filed by SBI General Insurance Company Ltd.

12. I have also heard learned advocate Mr. Nishit Gandhi for

respondent no.6.

13. Having heard learned advocate for both the side and considering the impugned judgment and award as well as evidence placed on record, at the outset, let refer the finding of learned Tribunal dealing with the issue, in impugned judgment, which is raised by the insurance company in the appeal. Para 23 reads as under :-

“23. The learned advocate for the opponent No.3, i.e. insurance company of the car, has contended that the insurance policy of the car is a fake policy and it was not issued by the insurance company. In this regard, Legal Officer of the insurance company Mr.Mohitsinh Hasuji Rana deposed vide Ex.78 and stated that the said policy is fake and fabricated and not issued by his insurance company. Police complaint filed in this regard has been produced vide Ex.79. It is claimed by the opponent that the policy issued by the insurance company is a “Long Term Home Policy” on the name of “Mr.Samuel Vasanth Chelliah” and not a vehicle policy. The said policy is produced vide Ex.80. So, it is argued that the opponent No.3 should be exonerated from the liability to pay compensation.

But, during the crossexamination of the witness, he admitted that he did not file complaint against the driver or owner of the car and also against his own employee. It is also stated that receipt number of the premium of the policy is always mentioned in the policy, which is not mentioned in the policy produced by him vide Ex.80. Whereas, receipt number of the premium of the policy is mentioned in the policy produced by the applicants vide Ex.66. Moreover, police complaint was also filed after two years from the date of accident by the opponent insurance company, that is too late. In such circumstances, at this juncture, this Tribunal finds no substance in the argument of the learned advocate

for the opponent insurance company as to said policy being fake and fabricated. However, the applicants have produced the judgment of Silli Man Subba and others V. Man Bahadur Subba and another reported in 2015 ACJ 2575, wherein the Hon'ble Sikkim High Court held as under:

Motor insurance Fake Policy Liability of insurance company Insurance company disputes its liability on the ground that policy issued by its official was fake and insurance company could not be held responsible for the act of its employee in issuing the fake policy and that it was not aware of such omission and commission Owner of vehicle produced policy believing it to be genuine one Another policy issued by the insurance company was produced and it was difficult to identify the fake and the genuine No case of the insurance company that owner had deliberately produced fake certificate or he had colluded with its employee to obtain fake insurance policy Whether insurance company can be absolved from liability to third party for the action of its employee for whom it is vicariously liable Held: No; further, the ground raised by the insurance company is not available to it under section 149(2).

However, if in future it is established that, the said policy is fake or fabricated, the insurance company, i.e. opponent No.3, will be at liberty to recover the amount of compensation from the owner of the vehicle, i.e. opponent No.2."

14. It is noticeable that in a proceeding of MACP No.156 of 2015, the SBI General Insurance Company Limited was served in beginning of the claim proceedings but it decided to file the written statement on 19.06.2019 (Exh.86). Apt to note that claimant has entered into witness box on 11.04.2018 (Ex.24). At that time there was no written statement or defence raised by the SBI General Insurance Company and without any defence or written statement, learned advocate Mr. J.P. Jani appearing for

SBI General Insurance Company cross examined the claimants. It implies that insurance company has cross examined claimant without having defence on record at that time. On going through the cross examination of claimant, it appears that the insurance company has not raised any defence of filing fake or fabricated policy of the erring vehicle – car. Not a single question is asked to the claimant in this regards.

15. Another witness PW- 2 entered into witness box at Exh.40 on 14.11.2018. Learned advocate appearing for SBI General Insurance Company did not cross examine this witness.

16. After the claimant tendered the closing purshis, Mr. Mohitsinh Husji Rana, an officer of SBI General Insurance Company Limited, filed his affidavit-in-chief (Exh. 78) on 15.05.2019 but without filing a written statement. Along with his affidavit-in-chief, he placed on record documents Exh. 79 and Exh. 80. He was cross-examined by the learned advocate appearing for the claimant. At the end of claim petition proceedings i.e. after cross-examining the claimant and leading oral and documentary evidence on behalf of SBI General Insurance Company, a written statement was filed at Exh. 86 on 19.06.2019.

17. It is in this factual background this Court has to appreciate the submissions of the learned advocate, Ms.Kirti Pathak, regarding the defense of a fake and fabricated policy.

18. In a motor accident claim petition under Section 166 of the MV Act, 1988, where the insurer disputes the policy relied upon by the vehicle owner or claimant as fake, forged, fabricated, or not issued by the insurance company, the principal question is what evidence the insurer must produce to establish that defence. The issue must be distinguished from the case where a genuine policy was issued but subsequently cancelled on the ground of premium check was dishonored or where the policy does not cover the particular vehicle or accident. The central evidentiary principle in a case of raising a defence of fake, forged, and fabricated policy is that a mere denial by the insurance company that it has not issued the policy should not automatically be treated as proof of forgery. The insurer must establish its defence through legally admissible and sufficiently reliable evidence assessed in the context of the entire record. Ordinarily, the insurer ought to have produce the evidence of authorized officer of policy issuing branch of insurance company to explain whether the policy was issued by the company and the basis of denial; original policy issuance registers or electronic evidence and electronic records to establish whether the policy number, vehicle particulars, and date correspond with the company's records; premium ledgers, receipts, and payment records to examine whether the premium was received and credited for the alleged policy; cover note or policy number series records to investigate whether the number was issued, duplicated, or misused; and investigation reports along with supporting material to establish the factual basis of the allegations of fabrication. The investigation report alone may not

prove every disputed fact; and lastly, police complaints, FIRs, and investigation material, if available, should be produced to corroborate the allegations and demonstrate the insurer's response to suspected fraud. However, the registration of an FIR is not by itself conclusive proof that the policy is fake. These are potential modes of proof, serving as an illustrative rather than a statutory checklist.

19. Thus, where the insurance company seeks to avoid liability on the ground that the policy of insurance produced before the Tribunal is forged or fabricated, such defence must be examined on the basis of cogent and legally admissible evidence. The mere assertion of an authorized officer that the policy was not issued by the company cannot, without an adequate evidentiary foundation, cannot be treated as conclusive proof of fabrication. The relevant policy issuance records, premium accounts, particulars of the policy number, and the testimony of a competent witness having knowledge of the relevant records may be material in determining the genuineness of a document. The duty of the insurer to act diligently upon discovering an alleged fake policy, including reporting the matter to the appropriate authorities has been emphasized by the Supreme Court in ***National Insurance Company Limited v. K. Saravanan (2026 INSC 339)***.

20. The relevant policy issuance records premium accounts particulars of policy number and testimony of a competent witness having knowledge of relevant record may be material in

determining the genuineness of document. The duty of the insurer to act diligently upon discovering an alleged fake policy, including reporting the matter to the authorities of the has been emphasized by the Supreme Court in *K. Saravanan (supra)*, whereby Hon'ble Supreme Court observed in Para 5 as under :-

“5..... Once it comes to its knowledge, and it is satisfied, that policy is forged / fabricated and cannot be acted upon to fasten liability upon it, it is incumbent upon the insurance company to inform the appropriate authorities namely, the police,.....”

21. Coming back to the facts of the case and particularly taking note of the sequence of proceedings as aforesaid, it is important to note that the alleged fake or fabricated policy, as well as the genuine policy relied upon by the Insurance Company, was issued by the office of SBI General Insurance Company Limited situated at Andheri (East), Mumbai. However, the officer who entered the witness box at Exh.78 to depose on behalf of the Insurance Company is serving at the Ahmedabad branch office. In his examination-in-chief, he stated that '**we**' have investigated the matter and '**we**' checked our entire records; however, the identity of the persons referred to as 'we' remains unexplained. He has been thoroughly cross-examined by the learned advocate appearing for the claimants. The entire cross-examination reads as under (it is in Gujarati language, for better understanding, it is translated in English) :-

“Cross-Examination : Ld. Advocate Mr. R. M. Solanki for the Applicant

(1) It is true that I have no personal knowledge regarding the occurrence of the accident. I received notice of this compensation application on 07/07/2015. It is true that I sent the complaint at Exhibit-79 by post on 21st November 2017. It is true that no reason for making this complaint late has been mentioned in the complaint at Exhibit-79. It is true that the complaint at Exhibit-79 is not made against Opponent No. 1 and 2, who are the driver and owner of the car, respectively. It is true that the complaint at Exhibit-79 is not made against any agent or officer of my insurance company. It is true that after 2012, all our insurance policies are computer-generated. On these computer-generated policies, our officer's digital signature is affixed. I have seen the record of this case. Upon looking at both the R.C. Book at Exhibit-65 and the insurance policy produced by the applicant at Exhibit-66, I state that the engine number, chassis number, vehicle's owner, and vehicle registration number are all identical. It is true that the policy produced by the applicant at Exhibit-66 is computer-generated and contains a digital signature. The witness states that he cannot tell whose or which officer's signature it is. I have been working with SBI General Insurance for the past nine months. It is true that, therefore, I cannot state which officer's digital signature was affixed on the policy in 2015. Looking at the policy at Exhibit-66, I state that SBI General printed on 5th March 2015 at 11:21 AM is issued. It is not true that, therefore, the officer who was on duty at SBI General printed on 5th March 2015 at 11:21 AM issued it. It is true that there is a premium acceptance receipt number on the policy. The policy produced at Exhibit-80 is a Long Term Home Policy, and no premium acceptance receipt number is mentioned in it. It is true that in the policy produced by the applicant at Exhibit-66, the premium acceptance receipt number 1746993 is present. Before giving my deposition today, I had not read the reply to this application filed by Opponent No. 1. Regarding the alleged fake policy at Exhibit-66, no notice was issued to Iqbal Ibrahim Malpara, who is the vehicle owner, nor was any information provided to the RTO.

(2) I do not know whether an F.I.R. was registered on the complaint at Exhibit-79 or what action was taken thereon. It did not happened that any departmental action was taken

against our officer regarding the alleged fake policy. It is not true that the policy at Exhibit-66 was generated by our insurance company and belongs to our insurance company. It is not true that I am giving false deposition to save the insurance company from paying the compensation amount.”

22. A perusal of the cross-examination reveals that the officer who entered the witness box for and on behalf of SBI General Insurance Company failed to substantiate the defense of a fake and fabricated policy. Except the fact that no criminal complaint was lodged against Opponents No. 1 and 2 viz. the car driver and owner, no FIR or police complaint was ever filed against any official of SBI General Insurance Company allegedly involved in issuing the policy (Exh.66). He has admitted that he was serving in the SBI General Insurance Company Limited for last last nine month only and thus, he has admitted that he cannot say that who has signed the policy which is issued in the year 2015. He further accepted that, generally, a receipt number is printed on a policy leaf, yet the policy relied upon by the Insurance Company lacks any such receipt number. It further transpires that while SBI General Insurance Company Limited follows the practice of digitally signing insurance policies, Exh.80—the policy relied upon by the company bears a manual signature. Notably, none of the authorized signatories who signed Exh. 79 and 80 stepped into the witness box, and the Insurance Company failed to offer any explanation for withholding these material witnesses. It was additionally admitted that the Insurance Company did not inform the Regional Transport Office (RTO) regarding the fraudulent or fake policy.

23. On marshalling the evidence on record, it appears that the Insurance Company hopelessly failed to prove that the policy at Exh.66 was fabricated and fake. By merely producing another policy (Exh.80) bearing the same policy number as Exh.66, which was signed manually despite the practice of digital signing, the Insurance Company could not establish that the policy at Exh.66 was wholly fabricated or fake. Furthermore, the Insurance Company failed to produce other relevant records, such as premium accounts, policy particulars, and the testimony of a competent witness, to substantiate its claim. It also did not act diligently upon discovering that the alleged policy was fake, as no follow-up action was taken to verify whether an FIR was registered pursuant to the letter at Exh.79. This casual and lackadaisical approach on the part of the Insurance Company remain unsubstantiated and insufficient to prove that the policy involved in this matter is fake and fabricated.

24. Co-ordinate Bench in the case of *Jayeshbhai Bhagubhai Patel (supra)*, in identical fact situation, held as under:

“5. I have considered the rival submission of both the parties and also perused the relevant record of the Tribunal and also gone through the findings given by the Tribunal. The Tribunal has specifically discussed in Para No. 13 of the judgment about the aspect of liability of the Insurance Company and the Tribunal has rightly found that claimant being third party in the present proceeding and since the dispute about the fake policy can be between the owner of the vehicle and Insurance Company and rights of 3rd party claimant cannot be affected by that and more particularly and the Tribunal has considered the judgments reported in 1997 (2) T.A.C. 693 V. Ravi vs. New India Insurance

Company and another judgment 2003 (2) T.A.C. 407 (Calcutta) in the case of United India Insurance Company vs. Ms. Meena Mitra and another and has found that dispute regarding the fake Policy is not proved in the present case by convincing evidence and the liability of the Insurance Company cannot be denied about payment of the claim amount to the claimants, who are 3rd party to such dispute about policy. Moreover, I found from the deposition of the witness of the Insurance Company-Urmilaben at Exhibit 72 that Insurance Company has failed to file any complaint or proceedings against the owner of the vehicle or any other person regarding such alleged fake Policy though the Insurance Company has knowledge about the fake Policy in the year 2003 and not only that Insurance Policy has neither entered into any notice correspondence with the owner of the vehicle regarding such Policy being fake nor any legal proceeding is found to be initiated against the owner of the vehicle or any such other person by the Insurance Company regarding the fake Policy. Therefore, the Insurance Company cannot shrug away its liability to pay the compensation pursuant to the Insurance Company. It is the cardinal principle while deciding such compensation cases that hyper technical approach should not be adopted by the Courts while deciding claims in Motor Accident Claim Petition.”

25. Moreover, what appears that the learned Tribunal, by passing an order of 'pay and recover', saved the interest of the insurance company. Thus, the order is found to be legal and justified. Apt to note that the insurance company did not file written statement up to the last stage of the proceedings, raised meritless contentions before the learned Tribunal, and cross-examined the witness without having any details. As observed hereinabove, not a single question was asked to the claimant regarding whether he has filed a fake or fabricated policy. The present appeal filed by the insurance company in a casual manner is deprecated and is accordingly, deplored.

26. In view of above and for the foregoing reasons, the appeal is bereft of merit and deserves to be dismissed. Accordingly, first appeal is dismissed. Interim relief granted earlier, if any, stands vacated. Connected Civil Application also stands disposed of.

27. Registry to place Record and proceedings along with First Appeal No.663 of 2020.

28. Before parting with the order, let me observe that this Court has not dealt with any issue raised in First Appeal No.663 of 2020 and left to be decided during the hearing of the said first appeal.

SATISH

(J. C. DOSHI,J)