

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## FIRST APPEAL No. 1783 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed  
to see the judgment ? **-Yes.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy  
of the judgment ? **-No.**

4 Whether this case involves a substantial question  
of law as to the interpretation of the  
constitution of India, 1950 or any order made  
thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge  
? **-No.**

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**NATIONAL INSURANCE CO. LTD. - Appellant(s)**

**Versus**

**SHARDABEN JAGDISHBHAI PRAJAPTI & 4 - Defendant(s)**

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**Appearance :**

MS LILU K BHAYA for Appellant(s) : 1,  
MR AMIT C NANAVATI for Defendant(s) : 1 - 4.  
MR TEJAS M BAROT for Defendant(s) : 5,

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**CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**

**Date : 29/08/2008**

**ORAL JUDGMENT**

1. By way of this appeal, the appellant-original opponent no.2 has  
challenged the judgment and order dated 1/4/2006 passed by

learned Judge and Ex-officio of Workmen Compensation Commissioner, Nadiad in Workman Compensation Case No.104 of 1993 whereby the learned Commissioner has partly allowed the case of applicants and awarded a compensation in the sum of Rs.1,44,105/- with interest at the rate of six percent from the date of application and also directed original opponent no.1 to pay Rs.36,026.25 as 25% penalty.

2. Brief facts of the case are that applicants are the legal heirs and representatives of deceased Jagdishbhai Prajapati. Jagdishbhai Prajapati was working as a driver of vehicle bearing no.GJ-7T 9848 of defendant no.1. There was a relation of employer and employee between them. Defendant no.1 has taken insurance of vehicle from defendant no.2-company. On 11/10/1992, when Jagdishbhai Prajapati was going to Indore in the vehicle loaded with acid tins, when he reached near Dakore Road Salaria Patia, he has met with an accident and died on the spot. When Jagdishbhai Prajapati died, he was 37 years and his salary was Rs.1,500/- per month. Therefore, the legal heirs of deceased Jagdishbhai Prajapati have filed claim application for recovery of compensation of Rs.2,00,000/-.

3. Heard learned advocates for the respective parties.

4. The main contention of the learned advocate for the appellant is

with regard to award of interest. According to her this is a matter under Workmen's Compensation and therefore, the authority has committed an error in awarding the interest.

5. However, this is a road accident and deceased was employee in the vehicle which was insured and in view of the decision in case of Ved Prakash Garg vs. Reemi Devi and others, reported in (1997) 8 SCC 1 since it is a road accident, interest can be awarded.
6. The learned advocate Mr.Barot for respondent no.5 has submitted that insurance company is liable to make payment in view of the fact that the vehicle is insured. He has relied upon the decision of Hon'ble Supreme Court in the case of **New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya and another, reported in 2006 (3) GLR 2246** wherein it is held that where a contract of insurance is entered into by and between the employer and the insurer, the insurer shall be liable to indemnify the employer.
7. I have perused the documents on record and the decision of the authority. As a result of hearing and perusal of the record, I am in complete agreement with the reasonings given and the findings arrived at by the Competent Authority. Hence, the appeal is devoid of merits. Even otherwise, no question of law

much less substantial question of law is involved in this appeal.

8. In the premises, First Appeal deserves to be dismissed. Hence, the same is dismissed. No order as to costs.

**(K.S.Jhaveri, J.)**

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