

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 5318 of 2007****For Approval and Signature:****HONOURABLE MR.JUSTICE D.H.WAGHELA**

Sd/-

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

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 ?

5 Whether it is to be circulated to the civil judge
?

1 & 2 YES ; 3 to 5 NO

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NARMADABEN SURESHBHAI RATHAWA & 5 - Appellant(s)**Versus****RAJESH KANCHANLAL PANCHAL & 2 - Defendant(s)**

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Appearance :

MR MTM HAKIM for Appellants

MR SHASHIKANT S GADE for Respondents

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA**Date : 16/05/2008****CAV JUDGMENT**

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 ("the Act" for short) is directed against the award dated 12.04.2008 of Motor Accident Claims Tribunal, Vadodara in Motor

Accident Claim Petition No.608 of 2001 whereby the original claimants were awarded compensation of Rs.1,97,500/- with interest and cost, and the insurer was held not to be liable to pay any amount.

2. The brief facts of the case were that deceased Sureshsbhai sustained serious injuries on various parts of his body while going as a pillion rider on 05.04.2001 at about 12.30 p.m. The accident was attributed to the fact that the person driving the motorcycle on the road from Chhotaudepur to Kanwat lost control when, at a turning point near Dungar village, a truck came from opposite side and the driver had to suddenly apply brake. Deceased breathed his last on the next day after being transferred to hospital. He was aged 35, serving at a company and earning Rs.3,000/- per month, at the time of his death. The claimants claimed compensation of Rs.5 lakh by filing an application under section 166 of the Act. The Tribunal believed the income of the deceased to be Rs.1,500/- per month holding the income certificate to be inconclusive and, applying multiplier of 15, calculated Rs.1,80,000/- as the loss of dependency benefit; and adding thereto Rs.7,500/- for loss of consortium, Rs.5,000/- for loss to the estate and Rs.5,000/- towards funeral expenses, total

compensation of Rs.1,97,500/- was awarded. Accepting the arguments of the insurer that risk of pillion rider was not covered by the policy of insurance and relying upon judgment of the Supreme Court in ***New India Assurance Co. Ltd. v. Asha Rani [2001 ACJ 1]***, the Tribunal held the insurer to be not liable to pay compensation to the insured.

3. It was argued by learned counsel Mr.MTM Hakim, appearing for the appellants, that the Tribunal had failed to peruse the insurance policy wherein the insured had paid extra premium for Endorsement IMT 64 so as to cover the risk of pillion rider and seating capacity of two persons was also clearly mentioned in the policy. It was submitted that it was a comprehensive policy and covered the risk of vehicle as well as the persons carried on the vehicle. The assessment of amount of compensation was also assailed as perverse.

4. It was seen from the certificate of insurance at Ex.29 that it was expressly in respect of a "*comprehensive policy*" and covered the period during which the accident had happened. It was also expressly made "*subject to IMT endorsements printed herein/attached hereto: 24, 30, 64, 70, 71, 75.*" However, as is the

standard practice, even after observations of the Supreme Court in ***National Insurance Co. Ltd. v. Jugal Kishore & Ors. [1988 ACJ 270]***, full text of the insurance policy was not produced before the Tribunal. According to India Motor Tariff issued by the Tariff Advisory Committee with General Regulations (GR) thereto, there could be only two types of policy forms, viz. (i) Form A covering 'Act Liability' and Form B covering 'Own Damage Losses and Act Liability' which may also be extended to cover additional liabilities as provided for in the Tariff. It is specifically provided in GR.2 that insurers are permitted to restrict covers provided in Section I (loss or damage) under Policy B without reduction in Tariff rates. With that exception, no company may alter or extend in the slightest degree the standard cover, terms and conditions of policies otherwise than as laid down in the Tariff without obtaining the sanction of the Tariff Advisory Committee. According to "*Standard Form for Motor Cycle/Scooter B Policy*", the liability to third party stated in Section II-(1) includes the liability arising in respect of death of or bodily injury to any person, including the person conveyed in or on the motorcycle, provided such person is not carried for hire or reward. Similar clause in the standard form prescribed for "*Two Wheeler Package Policy*" by new IMT superseding

IMT in existence upto 30.06.2002 has been analyzed and interpreted by this Court in First Appeal No.1161 of 2008 and allied matters in ICICI Lombard General Insurance Co. Ltd. v. Ashaben Gautambhai Vala & Ors. (decided on 14.05.2008); with the conclusion as under:

"12. In above view of legal implications of the conditions of Two Wheeler Package Policy, the appellant insurer is held to be liable to indemnify the insured in respect of the claim of compensation arising out of the death of or bodily injury to the occupants carried in the vehicle, including the pillion rider. Accordingly, the appeals are dismissed with costs. Civil Applications for stay do not survive and stand disposed as rejected."

5. Thus, the issue is no longer *res integra* and following the recent decision of this Court on the issue after extensive reference to the provisions and case law on the subject, it is held that the insurer, respondent No.3, was required to be ordered to pay compensation in terms of the policy of the vehicle involved in the accident. The said view is also supported by the earlier Division Bench decision of this Court in First Appeal No.3532 of 1996 decided on 05.02.2003.

6. As regards the quantum of compensation,

the claimants had relied upon the affidavit at Ex.27 of the widow of the deceased who had, in her cross-examination, admitted that her deceased husband was working as labourer and educated upto 10th standard. On the certificate issued by the employer (Ex.44) stating that his wages was Rs.3,000/- per month, learned advocate for the claimants had made an endorsement that there was no objection to the income being taken as Rs.2,000/- per month. Relying upon such evidence and considering the prospect of future rise in income, average loss of monthly income could be taken as Rs.3,000/- and deducting therefrom only 25% towards personal expense of the deceased in view of large family maintained by him and five of them undergoing studies, monthly loss of dependency benefit would come to Rs.2,250/-. Applying multiplier of 16 to the yearly loss of dependency benefit of Rs.27,000/-, Rs.4,32,000/- ought to have been awarded. Adding thereto the conventional amount of Rs.40,000/- towards loss to estate and loss of consortium and other amounts towards pain and shock suffered by the deceased, transportation, medical and funeral expenses, total claim restricted to Rs.5 lakh was required to be allowed.

7. Accordingly, the appeal is allowed with cost and the appellants are held to be entitled

to Rs.5 lakh as compensation with interest @ 7.5% per annum from the date of the claim application till realization. Respondent No.3 shall deposit with the Tribunal that amount within a period of one month. Since seven years have passed since making of the original claim application and only three children of the deceased are now supposed to be minor, it is directed that 10% of the total amount of compensation shall be invested in fixed deposit for a period of two years in the name of each of the children, i.e. applicant Nos. 2 to 6. And, 20% of the amount of total compensation shall be deposited in fixed deposit for a period of two years in a nationalized bank in the name of appellant No.1, original applicant No.1, while the remaining amount shall be paid to her by an account payee cheque in her name.

Sd/-
(**D.H.Waghela, J.**)

(KMG Thilake)