

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 1173 of 2004**  
**To**  
**FIRST APPEAL No. 1180 of 2004**

**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 ?

2 To be referred to the Reporter or not ?

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

Whether this case involves a substantial question  
 4 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 ?

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**NEW INDIA ASSURANCE CO LTD. - Appellant(s)**

**Versus**

**ABJIBHAI MONGHABHAI BHAMBHOR & 6 - Defendant(s)**

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**Appearance :**

MR HASMUKH THAKKER for Appellant(s) : 1,  
 RULE SERVED for Defendant(s) : 1 – 5.

MR. ASHLESHA PATEL, LEARNED ADVOCATE FOR

MR AMITCNANAVATI for Defendant(s) : 6 - 7.

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

**Date : 30/03/2012**

**COMMON ORAL JUDGMENT**

1. The appellant-Insurance Company has preferred these appeals against the common judgment and award dated 13.01.2004 passed by the Motor Accident Claims Tribunal(Auxi.) Surendranagar,(for short, "the Tribunal") in M.A.C.P. Nos. 884 of 1995, 697 of 1995, 885 of 1995,886 of 1995,1289 of 1995, 128 of 1996,129 of 1996, 130 of 1996, whereby, the tribunal has awarded compensation in the sum of Rs.1,70,000/- to the claimants of M.A.C.P. No.884 of 1995, Rs.35,000/- to the claimant of M.A.C.P. No.697 of 1995, Rs.42,400/- to the claimant of M.A.C.P. No.885 of 1995, Rs.37,900/- to the claimant of M.A.C.P. No.886 of 1995, Rs.39,800/- to the claimant of M.A.C.P. No.1289 of 1995, Rs.28,600/- to the claimant of M.A.C.P. No.128 of 1996, Rs.45,200/- to the claimant of M.A.C.P. No.129 of 1996, Rs.27,200/- to the claimant of M.A.C.P. No.130 of 1996 respectively, with interest at the rate of 09% per annum from the date of filing of the petition till realization.

2. The facts in brief are that on 04.05.1996, some labourers, were travelling in a Tempo-truck bearing registration No. GJ-3U-6511. The driver of the said truck was driving his vehicle rashly and

negligently, therefore, he lost control over his vehicle and the said Truck turned turtle. As a result of the said accident they sustained grievous injuries, therefore, they filed claim petitions before the Tribunal for compensation. The Tribunal. The Tribunal after hearing learned advocates for both the parties and after perusing the record decided the claim petitions and passed the award as stated hereinabove, against which the present appeals are filed by the appellant- Insurance Company.

3. On behalf of the appellant, Mr Sunil Parikh, learned Advocate inter alia contended that the vehicle in question was a goods vehicle and use of the goods vehicle for carrying passengers is prohibited and therefore the insurance company was not liable to pay the compensation.

4. Even otherwise, the no person in any capacity was permitted to travel in a goods vehicle in view of the decision of the Supreme Court in the case of New India Assurance Co. Ltd. v. Asha Rani [(2003) 2 SCC 223], wherein it was categorically held:

“20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people.”

5. In view of the aforesaid discussion, the insurance company is not liable to pay the compensation to the claimant. Therefore, the present appeals are allowed. The amount deposited by the appellant – insurance company, if lying in the FDRs, shall be refunded to the insurance company. However, if the amount is already withdrawn by the claimants, the insurance company is at liberty to recover the same from the owner of the vehicle and not from the claimants.

**[K.S.JHAVERI,J.]**

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