

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1451 of 2002****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI**

=====

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 ?

=====

ORIENTAL INSURANCE CO LTD.**Versus****NAVINCHANDRA MOHANLAL JOSHI & 3**

=====

Appearance :

MR RAJNI H MEHTA for Appellant

MR CHETAN K PANDYA for Respondent No.1

DELETED for Respondent No.2

HL PATEL ADVOCATES for Respondent No.3

MR AJAY R MEHTA for Respondent No.4

=====

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**Date : 30/04/2012****ORAL JUDGMENT**

1. Present appeal has been filed by the appellant against the

judgment and award dated 22.03.2001 passed by the Motor Accident Claims Tribunal (Aux.) Surendranagar in M.A.C.P. No.184/1989 whereby the Tribunal allowed the claim petition and awarded compensation in the sum of Rs.8,00,000/-.

2. The brief facts of the case are that on 01.02.1989, an accident took place wherein the claimant was seriously injured. The claimant filed Motor Accident Claim Petition No.184/1989, claiming compensation in the sum of Rs.9,00,000/- under different heads. The learned Tribunal has allowed the claim petition and directed the opponents to pay jointly and severally a sum of Rs.8,00,000/- along with interest at the rate of 12% per annum.

3. The Tribunal considering the documentary as well as oral evidence produced on record partly allowed the claim petitions. Hence, the present appeals are filed by the insurance company against the same.

4. Learned counsel for the insurance company has contended that the Fiat car was a private car and was registered for private use. Therefore, the injured as well as the deceased were illegal passengers in the private jeep car and the risk of the fare-paying passengers travelling in a private vehicle is not covered by the policy.

5. In the case of Bhagyalakshmi and others v. United Insurance Company Limited & Another, (2009) 7 SCC 148 the Honourable Apex Court has held that for breach of package policy the insurance company is not liable to pay the compensation.

6. The Tribunal has failed to consider that there is a clear breach of the Policy and the vehicle which was registered as a private vehicle was used for carrying the passengers for hire and reward. In light of the aforesaid discussion, the impugned judgment and orders passed by the Tribunal cannot be sustained. The same are hereby set aside

and quashed. No liability can be fastened on the appellant insurance company.

7. In the result, the appeals of the appellant are allowed to this extent. However, it is clarified that if any amount has already been paid by the Insurance Company, it shall not be permissible for it to recover the same from the claimants. It is also clarified that if the claimants are entitled to recover the balance amount of the compensation awarded to them, they can recover the same from the estate of the owner.

[K. S. JHAVERI, J.]

vijay