

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 635 of 2023****With****CIVIL APPLICATION (FOR STAY) NO. 2 of 2023****In R/FIRST APPEAL NO. 635 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE GITA GOPI**

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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 or any order made thereunder ?	

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**HDFC ERGO GENERAL INSURANCE CO. LTD.****Versus****SHAHIN WD/O. ARSHAD SHAMIM SAIFI & ORS.**

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**Appearance:****MR RATHIN P RAVAL(5013) for the Appellant(s) No. 1****MR.HIREN M MODI(3732) for the Defendant(s) No. 1,2****RULE UNSERVED for the Defendant(s) No. 3**

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**CORAM:HONOURABLE MS. JUSTICE GITA GOPI****Date : 30/04/2024****ORAL JUDGMENT**

1. Challenge is given by the insurance company to the judgment dated 21.10.2022 passed by MACT (Main),

Panchmahals at Godhra in MACP no.642 of 2013.

2. The case of the claimant as was urged before the Tribunal was to the effect that on 31.3.2012, the deceased was going on his motorcycle bearing registration no. GJ-18 R-561 of the ownership of the opponent no.1 for buying dinner. At about 00.45 hrs., he was passing from Godhra - Vadodara highway road, opposite Reliance Petrol Pump, suddenly a dog came on the road and to save the dog, motorcycle got slipped and he fell on road and received multiple injuries and succumbed to death. It is the case of the insurance company that the deceased stepped into the shoes of the owner and the insurance company would be liable to pay the compensation amount in accordance to the contractual liability if at all drawn through the policy.
3. Mr. R.P. Raval, learned advocate for the appellant submitted that here in the present case, P.A. cover for owner driver is to the extent of Rs.1 lac and thus, the claimant's entitlement would be only to the limit of Rs.1 lac. Mr. Raval submitted

that the Tribunal has fallen in error to grant compensation of Rs.4,17,500/-.

4. In the case of **Ram Khiladi & Ors. v. United India Insurance Company Ltd.**, (2021) 2 SCC 550, it has been held that the claim of owner/borrower/permissive user would be limited to personal accident coverage on use of vehicle strictly as per contract of insurance covering the borrowed vehicle.
5. While countering the arguments, Mr. Modi referring to the judgment of the Tribunal submitted that the negligence aspect cannot be looked into when the prayer is made under Section 163A of the Motor Vehicles Act and submitted that the amount would be paid as per the schedule to the said section.
6. The two wheeler liability only policy with respect to involved vehicle which admittedly is of the ownership of the opponent no.1. The policy shows the insured name as Mohammad Sarin Mirza who is opponent no.1. The P.A. cover for owner driver is Rs.1 lac and in absence of contract, no

compensation amount can be paid when the policy does not cover the risk. Here the contractual liability for the owner is Rs.1 lac and since the deceased as borrower of vehicle stepped into the shoes of the owner, the claimant as heir and legal representative would be entitled for the said amount of Rs.1 lac.

7. In the result, the impugned judgment and order stands modified and the insurance company would be held liable to pay the amount of Rs.1 lac to the claimants.
8. It is submitted that the award amount of Rs.4,17,500/- along with the interest has been deposited before the Tribunal. Let the amount of Rs.1 lac with accrued interest be paid to the claimants and the remaining amount be refunded back to the insurance company along with accrued interest on the said amount. Let the amount as stated hereinabove be paid to the claimants RTGS/NEFT on verification of the identity in the proportion as declared by the Tribunal.

9. The impugned judgment and award be modified accordingly. The appeal is partly allowed. Registry is directed to send the record and proceedings back to the Tribunal, if received.

Maulik

**(GITA GOPI,J)**