IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 47 of 2025

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NATIONAL INSURANCE CO. LTD.
Versus
ROSHANBEN RAMJANBHAI HALA & ORS.

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Appearance:
MR TANMAY B KARIA(6833) for the Appellant(s) No. 1
MR. HEMAL SHAH(6960) for the Defendant(s) No. 1,3,4,5
MS KIRTI S PATHAK(9966) for the Defendant(s) No. 7
NOTICE SERVED for the Defendant(s) No. 6,8

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 01/09/2026

ORDER

1. While issuing notice for final hearing on 8.1.2025, this Court passed following order:-

> *"ORDER IN FIRST APPEAL :*
>
> *1. The claim petition was filed by the legal heirs and representatives of the deceased Javedbhai Ramjanbhai Hala who was travelling as a cleaner in truck bearing No.GJ-3-AZ-8645. The accident took place in a head on collision manner between truck No.GJ-3-AZ-8645 and truck No.CG-4-JA-9902 resulted in death of the deceased Javedbhai Hala. Therefore, it is a case of composite negligence. In background of this, National Insurance Company Limited being insurer of Truck No.CG-4-JA-9902 has filed this appeal on the ground that chargesheet has been filed against driver of the truck No.GJ-3-AZ-8645. Therefore, the driver of that vehicle is to be treated as more negligent. The appeal does not contain any merit and could be disposed of at the state of admission summarily, yet for the purpose of final disposal Notice be issued, making it returnable on 24.02.2025.*

ORDER IN CIVIL APPLICATION :

2. The appellant shall deposit its share which include interest and cost within four weeks from today before learned Tribunal. Upon deposit of the aforesaid amount, the impugned judgment and award delivered by learned Tribunal shall remain stayed as far as liability of the present appellant – National Insurance Company Limited is concerned. If Insurance Company fails to deposit the amount of compensation as ordered hereinabove, the Civil Application shall stand dismissed. Upon deposit of the aforesaid amount, learned Tribunal shall follow its own order for disbursement of the amount.

3. With this, Civil Application stands disposed of."

2. Heard learned advocate Mr. Karia for the appellant – insurance company and learned advocate Mr. Shah for the respondent Nos.1 & 3 to 5 as well as learned advocate Ms. Kirti Pathak for the respondent No.7.

3. This Court has analyzed the issue raised in this appeal, in the aforesaid order. Therefore, it is a case of composite negligence; one of the insurance companies cannot come forward to insist that in a case of composite negligence, the actual and exact determination of the *inter se* negligency be made.

4. Recently, the Hon'ble Apex Court in case of **Manomati Chouhan Versus Oriental Insurance Co. Ltd., 2026 ACJ 742** has dealt with the identical issue and therefore, the issue involved in the present matter clearly governs by the judgment of the Hon'ble Apex Court. Para 4 to 6 are relevant, which read as under:-

"4. On appeal by the insurer, the High Court set aside the award, holding that the determination made by the Tribunal has resulted in an ambiguous judgment, since the court concluded that both trucks involved in the collision were responsible to some or the other extent, for the unfortunate end result and yet, did not determine the degree of composite negligence.

*5. A perusal of the award of the Tribunal in our considered view reveals the reason why the Tribunal refrained from doing so. Reference was made to a Full Bench judgment of this court in **Khenyei v. New India Assurance Co. Ltd., 2015 ACJ 1441 (SC),** which in its para 16 holds as under:*

(16) This court in National Insurance Co. Ltd. v. Challa Bharathamma, 2004 ACJ 2094 (SC), with respect to mode of recovery has laid down thus:

(13) The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. Offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the concerned Regional Transport Authority. The executing court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the

insurer. In case there is any default it shall be open to the executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, i.e., the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured.

6. That being the position in law, we find that the view taken by the High Court was not justified. Should the respondent be so advised and desire to pursue the matter with the owners/drivers/insurers of the stationary truck, it shall be open for them to do so in accordance with the above. The same shall be done in a independent proceedings, uninfluenced by this order."

5. In view of above, present First Appeal does not survive and stands dismissed summarily. The judgment and award by the learned Tribunal is hereby confirmed. Interim relief, if any, granted earlier stands vacated forthwith. Notice discharged.

6. The learned Tribunal is directed to disburse the amount of compensation to the claimants through RTGS/IMPS or any other mode and after due verification and identification along with interest and after verifying their right to claim the compensation.

7. Registry is directed to return back the R & P, if any, to the concerned Court forthwith.

(J. C. DOSHI,J)

SHEKHAR P. BARVE

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SHEKHAR PRAFULBHAI BARVE(HC00200), Principal Pvt. Secretary, at High Court of Gujarat on 01/09/2026 14:34:14