

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

**R/FIRST APPEAL NO. 3494 of 2017**

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**SHRIRAM FINANCE COMPANY LIMITED**

**Versus**

**AARTIBEN BHARATBHAI PETHANI & ORS.**

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Appearance:

MR MANISH J PATEL(2131) for the Appellant(s) No. 1

RULE SERVED for the Defendant(s) No. 1,2

SERVED BY AFFIX. (R) for the Defendant(s) No. 3

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

**Date : 09/10/2026**

**ORDER**

1. The present First Appeal, under Section 173 of Motor Vehicles Act, 1988, is preferred by the appellant being aggrieved and dissatisfied with the judgment and award dated 17.1.2017 passed by the Motor Accident Claims Tribunal, Rajkot in Motor Accident Claim Petition No.1026 of 2011.

2. Since the factual aspects of the case involving the vehicle in the road accident and the liability of the owner as well as the insurer are not disputed by the Insurance Company, to streamline the consideration of the present appeal, I have adopted approach that avoids burdening the judgment with unnecessary narration, since the facts are already detailed in the record and there is no practical purpose in restating the same. Likewise, re-evaluating the underlying findings would serve no useful purpose in the

appeal. The efficiency of stating the facts and evaluating the evidence is entirely justified, since the core element remains undisputed. Thus, reiterating these settled matters would only clutter the final judicial analysis. Therefore, this Court can safely adopt the existing record without further review. This omission ensures a focused, clear, and efficient resolution of the remaining issue argued before the Court.

3. Learned advocate Mr. Manish Patel appearing for the appellant – insurance company raised solitary contention that the learned Tribunal has wrongly interpreted the definition of “owner” to consider the appellant as owner of the offending vehicle, whereas, the appellant has issue loan for purchase of the offending vehicle and executed Hypothecation Agreement (HPA) and thus, Mr.Vijaybhai Vachhrajani is the owner of the offending vehicle and is liable to pay the compensation and thus, the learned Tribunal has erred in marking the liability of the appellant – insurance company to pay the compensation being the owner of the offending vehicle. Thus, he prays to allow this First Appeal.

4. Though served, none appears for the respondents.

5. Having heard learned advocate for the appellant, let refer para 11 of the impugned judgment and award, whereby the learned Tribunal has decided the issue raised in this First Appeal (translated into English from vernacular language).

*“If we look at the liability to pay the compensation to which the applicants are entitled, then in the present case, looking at the retail invoice submitted by the*

*applicants at No. 32 and the sale certificate submitted by the applicants at No. 33, it is seen that the Bajaj auto rickshaw involved in the accident was new at that time and its owner was opponent No. 1. Further, looking at the said evidence, it is also seen that the said auto rickshaw was purchased on loan by opponent No. 1, so that the HPA of the said auto rickshaw was with Shri Ram Finance K.L., opponent No. 2. The main submission of the applicants is that It has been submitted that the respondent no.1 is the owner of the said auto rickshaw and he has taken a loan from the respondent no.2 Shri Ram Finance Co. Ltd. and the said rickshaw is owned by the respondent no.2 company HPA and thus the respondent no.2 is the co-owner of the said rickshaw involved in the accident, so that both the respondents should be held liable to pay compensation. If this submission made by the petitioners is taken into consideration, the fact that the respondent no.1 is the owner of the said rickshaw involved in the accident is evident from the documentary evidence of figures-32 and 33 presented on the record. If figure-32 is seen, it is a copy of the retail invoice and in the said retail invoice it is clearly seen that the said vehicle is HPA BY Shri Ram Finance Co. Ltd. i.e. respondent no. The said retail invoice has been issued on 7-4-2011. That is, it is clearly evident that it is an invoice before the accident. Similarly, if the sale certificate submitted with No. 33 is seen, the said sale certificate states that "The Vehicle is held under agreement of Hire Purchase with Shri Ram Loans Fin. Co. Ltd." The said sale certificate has been issued on 15-4-2011 as per the said sale certificate. The accident in question has taken place on 13-4-2011 and looking at the facts of the retail invoice with No. 32 and the sale certificate with No. 33, the said vehicle is registered with No. 2 Shri Ram Finance Qu. Ltd. H.P.A. If the accident occurred, the constructive possession of the said vehicle involved in the accident is considered to be that of respondent no. 2. In this context, if we look at the definition of owner as per section 2(19) of the MV Act, it is as follows:*

"OWNER" means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement; Thus, despite the fact that the respondent No.2 has been served with notice for the purpose of the compensation application, he has not appeared in person or through his lawyer and no denial has been made of the record submitted for the purpose of the compensation application. If we look at the judgment of the Hon'ble Gujarat High Court in **Himmatnagar Nagarik Sahakari Bank Ltd., vs. Sureshkumar Jayantilal Thakkar and others, 2016 ACJ 2821**, the Hon'ble Gujarat High Court has concluded as follows in para 5.11 and 5.12 of the said judgment:

5.11 After considering various earlier decisions, the Hon'ble Supreme Court in the case of Godavari Finance Co., 2006 ACJ 1612 (SC), in para-10 has observed and held as under :-

"(10) on a plain reading of the aforesaid definition, it is demonstrable that a person in whose name a motor vehicle stands registered is the owner of the vehicle and, where motor vehicle is the subject of hire-purchase agreement or an agreement of hypothecation, the person in possession of the vehicle under that agreement is the owner. It also stipulates that in case of a minor, the guardian of such a minor shall be treated as the owner. Thus, the intention of the legislature in case of a minor is mandated to treat the guardian of such a minor as the "owner", This is the first exception to the definition of the term "owner". The second exception that has been carved which is the subject of hire-purchase agreement or an agreement of lease or an agreement of hypothecation, the person in possession of vehicle under that agreement is the owner. be it noted, the legislature has deliberately carved out these exceptions from registered owners thereby making

*guardian of a minor liable, and the person in possession of the vehicle under the agreement mentioned in the dictionary clause to be the owners for the purposes of this Act."*

*5.12 Applying the law laid down by the Hon'ble Supreme Court in the aforesaid decisions and even considering the definition of "owner" contained in section 2(19) of the Motor Vehicles Act, 1939, and considering the fact that the appellant bank- creditor was in possession of the jeep under both the agreements, i.e., agreement of pledge as well as hypothecation agreement the appellant bank can be said to be the "owner" within the definition of section 2(19) of the Motor Vehicles Act, 1939 and therefore, being "owner", the appellant bank is liable to pay comepsnation to the victim of the accident. Under the circumstances, as such no error has been committed by the learned trial court in holding the appellant bank jointly and severally liable to pay comepsnation to the victim of the accident. The Learned Tribunal has rightly passed the award agaisnt the appellant bank also and has rightly held the appellant bank also liable to pay comepsnation to the victim of the accident."*

*Thus, in view of the above facts, taking into account the principles laid down in the above judgment by the Hon'ble Gujarat High Court, it is held that the liability for paying the compensation to which the petitioners are entitled lies with the co-defendants No. 1 and 2 jointly and severally and therefore the petitioners are entitled to compensation from both the co-defendants. Therefore, I hereby pass the following final order in the interest of justice under point No. 3."*

6. The aforesaid finding of the learned Tribunal demonstrates that the learned Tribunal has followed the judgment of this Court and held that the vehicle since

hypothecated under the HPA, the owner would be the financier u/s 2(19) of the MV Act and is liable to pay the compensation. Learned advocate Mr. Patel failed to point out any infirmity in the aforesaid findings of the learned Tribunal.

7. In view of above, First Appeal fails and stands dismissed.

8 The Tribunal shall disburse the entire awarded amount lying in the FDR and/or with the Tribunal, with accrued interest thereon, if any, to the claimant, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.

9. While making the payment, the Tribunal shall deduct the courts fees, if not paid, in accordance with rules/law.

10. Record and proceedings be sent back to the concerned Tribunal, forthwith.

SHEKHAR P. BARVE

**(J. C. DOSHI,J)**

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 09/10/2026 17:29:48