IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5014 of 1998

to

FIRST APPEALNo 5016 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

SHARDABEN WD/O CHETANBHAI RAVAJIBHAI KANSAKIYA

Appearance:

MR HARDIK C RAWAL for Petitioner

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 28/02/2001

ORAL COMMON JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. These three appeals have been preferred against the judgement and award of the M.A.C. Tribunal [Aux-IV], Kheda at Nadiad passed on 30th May 1998, partly allowing M.A.C. Petition No. 1285 of 1991 by ordering to pay a sum of Rs.1,00,000=00, M.A.C. Petition No. 1286 of 1991 by ordering to pay a sum of Rs.1,00,000=00 and M.A.C. Petition No. 773 of 1991 by ordering to pay a sum of Rs.2,46,000=00, to the claimants with interest at the rate of 12% per annum from the date of the petition till realisation of the amount. The appellants - original respondents were held to be jointly and severally liable to pay the amount of compensation.

2. Since all the three cases arose from the same accident, they were consolidated by the Tribunal and disposed of by the common judgement. According to the claimants, one Bahadursing was driving the Drill truck No. GJT 6845 from Kalol to Vadodara. Deceased Dineshprasad who was a driller, was also in the truck. Near Kheda, the vehicle went out of order and was therefore parked on the left side of the road on 16th June 1991. Behind this vehicle, there was another truck No. GTY 3535 parked in which deceased Chetanbhai was the repairer. According the claimants, after putting on the signal lights of the vehicles, these three persons went beneath the truck for the purpose of repairs. At about 20.30 p.m., the S.T. bus came from Ahmedabad side at an excessive speed driven by the appellant's driver Jagdishbhai. The S.T. bus which was rashly and negligently driven, dashed with the truck No. GTY 3535, which in turn dashed with the truck No. GJT 6845 and all the three persons who were repairing the vehicle sustained serious injuries and died. The claimants who are the heirs and legal representatives of these deceased persons filed three separate claim petitions.

3. The Tribunal, on the basis of the evidence on record, came to a finding that the driver of the S.T. bus was solely negligent in causing the accident. The Tribunal worked out the quantum of compensation on the basis of evidence which was adduced before it in all the three cases and made the aforesaid award.

4. The learned counsel appearing for the appellant S.T. Corporation strongly contended that since the vehicles had been parked on the road, there was negligence also on the part of these two trucks and at least 25 per cent negligence should have been attributed

to them. It was submitted that merely because there was reference in the Panchnama about the signal lights being on, it cannot be assumed that, at the relevant time when the accident took place, they were in fact kept on. On the quantum aspect, the learned counsel contended that the amounts awarded in these cases were excessive, and that a higher multiplier of 18 was adopted in M.A.C. Petition No. 773 of 1991 which had resulted in a higher amount of compensation of Rs.2,46,000=00.

5. We have been shown the relevant record by the learned counsel, particularly the Panchnama. In fact, the Panchnama clearly shows that the trucks in question were parked on the correct side of the road and they were in fact on a part of the kuchcha road. Therefore, when the S.T. bus was coming from behind, it could have easily gone ahead from the 28 feet wide open portion of the road. The Panchnama and other evidence indicate that the signal lights were kept on. It is therefore clear that the S.T. bus driver did not keep his sight on the road while driving, otherwise he would have surely noted from a sufficient distance that two trucks were parked ahead on the correct side of the road. The speed with which the S.T. bus collided with the parked trucks and the nature of damage that resulted therefrom was clearly indicative of the rash and negligent driving of the driver of the S.T. bus. The driver of the S.T. bus has hardly disputed the fact that the signal lights were on and his theory that he was dazzled by the lights of the oncoming vehicles cannot absolve him of his gross negligence in driving the truck which resulted in this accident. In our opinion, the Tribunal was right in coming to the conclusion that there was no negligence on the part of the drivers of the two parked vehicles. Therefore, there is no question of apportioning any responsibility on these two parked trucks.

6. As regards the amount of compensation which has been awarded (so far as M.A.C. Petitions No. 1285 of 1991 and 1286 of 1991 are concerned), the Tribunal worked it out on the basis of the evidence and taking into account the salary certificates and other relevant aspects of the matter. As per the salary certificates at exh. 36 and exh. 37 and from the deposition of Pritamsing at exh.33, it was established that the deceased persons were getting Rs.1,500=00 per month each and Bhattha of Rs.40=00 per day. They were also provided lunch and dinner free of charge. On the basis of the evidence on record, the Tribunal worked out their emoluments at Rs.2,100=00 per month each in M.A.C. Petitions No. 1285 of 1991 and 1286 of 1991 and worked

out the dependency at Rs.700=00 per month. So far as the claimant of M.A.C. Petition No. 773 of 1991 is concerned, the notional income of the deceased labourer was worked out at Rs.1,500=00 per month and keeping in view the number of units, worked out the dependency at Rs.2,16,000=00 towards the loss of future income, Rs.10,000=00 towards expectation of life, Rs.15,000=00 towards loss of consortium and Rs.5,000=00 towards transportation i.e. in all Rs.2,46,000=00.

7. It is clear from the amounts which have been awarded to these claimants that they are by no means excessive. Even the applicability of multiplier of 18 in M.A.C. Petition No. 773 of 1991 has to be viewed in context of the total amount that has been awarded by way of compensation. The Supreme Court in Nagappa Mahadev Dodda Mani v. New India Assurance Co. Ltd., reported in (1998) 9 SCC 271 has held that interference with the quantum in appeal would be permissible only on the ground of the compensation being inadequate or too excessive. In the present case, by no stretch of imagination, can it be said that the compensation which has been awarded in all these three cases is in any manner excessive. All these three appeals are therefore dismissed.

8. It is agreed between the parties that the claimants will not insist on recovering 15% interest which has been awarded and they will restrict their claim for interst only at the rate of 12% per annum notwithstanding the directions contained in the award regarding penal interest of 15%.

FEBRUARY 28, 2001 [R.K.ABICHANDANI, J.]

[A.M.KAPADIA, J.]

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