

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1714 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NATIONAL INSURANCE CO LTD - Appellant(s)

Versus

PRANSUKHLAL BHAILALBHAI PATEL & 3 - Defendant(s)

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,

MR SANDIP C SHAH for Defendant(s) : 1 - 2.

None for Defendant(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 31/07/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 08.08.84 passed by the Motor Accident Claims Tribunal (Aux.) at Narol in MACT No. 248 of 1982 whereby the Tribunal awarded compensation to the tune of Rs. 59,000/- payable to the original claimants by the original opponents.

2. The present respondent nos. 1 & 2- original claimants who are the parents of the deceased had filed claim petition seeking compensation to the tune of Rs.

60,000/- in respect of the accident which occurred on 20.11.80 at about 1.30 pm when the deceased, aged about 15 years, was riding his cycle on Dhodhal-Bavla road. At that time, a tractor with a trailer attached, driven by original opponent no.1 and owned by original opponent no.2, was coming from the opposite direction behind a camel cart. The driver of the tractor in an attempt to overtake the camel-cart came on the extreme right side of the road and thereby knocked down the cyclist. He was thrown off the road and got crushed under the wheel of the trailer attached to the tractor thereby causing his death while shifting him to a hospital.

3. Learned counsel for the appellant has contended that the insurance company's overall liability is limited to Rs. 50000/- in view of the statutory provisions of sections 95 and 96 of the Motor Vehicles Act and the policy issued by the company. He has further contended that the Tribunal ought to have held that in view of the specific provisions contained in sec. 95(2)(a) of the Act, the company's liability in respect of persons other than passengers carried for hire or reward is limited to Rs.50,000/-.

4. Heard learned counsel for the parties. I have gone

through the award of the Tribunal and the material placed on record. As a result of hearing and perusal of records, it emerges that the contention raised by the learned counsel for the appellant regarding limited liability was not raised before the Tribunal. In that view of the matter, the same cannot be accepted by this Court at this stage. Therefore, the reasonings given by the Tribunal in absence of the said contention is just and proper and I am in complete agreement with the same.

5. In view of the above, appeal is dismissed. No order as to costs.

(K.S. JHAVERI, J.)

Divya//