

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## FIRST APPEAL No. 2660 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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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, 1950 or any order made  
thereunder ?

5 Whether it is to be circulated to the civil judge  
?

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KOLI NANUBHAI @ VIRA LUMBHA &amp; 1 - Appellant(s)

Versus

IBRHIMBHAI R &amp; 1 - Defendant(s)

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Appearance :

MR AMAR D MITHANI for Appellant(s) : 1 - 2.

None for Defendant(s) : 1,

MS MONALI H BHATT for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 30/11/2007

ORAL JUDGMENT

1. Learned counsel Ms.Monali H. Bhatt having appeared for the respondents and learned counsel on both sides having agreed and requested to take up the appeal for final hearing today, it was heard *in extenso* and is being disposed accordingly by this Judgment.

2. The appellant-original claimants have

challenged the award dated 27.06.2003 of M.A.C.T. (Auxiliary), Veraval in M.A.C. Petition No.592 of 1999 to claim enhanced compensation in view of tragic loss of their son in the motor accident that took place on 20.12.1992. It was submitted by learned counsel Mr.Mithani that even as the son of the appellants was killed in the prime of his youth while he was earning Rs.1500/- per month and was helpful in tilling the land which the appellants had, the dependency benefit was restricted to Rs.450/- per month and applying multiplier of 13, only an amount of Rs.70,200/- was awarded in the impugned award. He submitted that even as the Tribunal had relied upon the judgment of this Court in **Somabhai Vajabhai and another V/s. Babubhai Bhailalbai and others [1982(1)GLR 785]** and considered dependency of the parents in view of the deceased son being unmarried, multiplier of 16 applied by this Court was not adopted by the Tribunal. Even second Schedule prescribed under Section 163-A of the Motor Vehicles Act, 1988 required application of multiplier of 16. He further submitted that in view of the rural background of the bereaved family and holding of land by the parents, the Tribunal ought to have adopted dependency benefit of more than Rs.500/- per month for the parents and also considered the increasing longevity of the rural poor. Mr. Mithani relied upon judgment of the Supreme Court in **Urmilla Pandey V/s.**

**Khalil Ahmad [AIR 1994 SC 2405] and Fakeerappa and another V/s. Karnataka Cement Pipe Factory and others [2004 AIR SCW 7475]** in that regard.

3. Learned counsel Ms.Monali Bhatt, appearing for the respondents, supported the impugned award with the submission that the appellants had not even claimed loss of the estate or any other benefit and the Tribunal had presumed higher income in favour of the appellants even in absence of any reliable evidence of income of the deceased. It was also submitted that, in view of uncertainty about the age of the deceased as well as the appellants, compensation awarded by the impugned award was not required to be altered.

4. It is true that the age of the dependent parents was the relevant factor in deciding the multiplier and the Tribunal had considered actual minimum income as also future increase in the income. However, only on the basis of the statement that the deceased was going to be married within two years, the presumption of diversion of 2/3 of his income for the maintenance of his prospective family and reduction of the benefit for the appellants to only 1/3 of the prospective income which was restricted to Rs.1800/- per month for all times to come clearly appear to be unrealistic and

unreasonable. Although it is not made a ground and not clear from the evidence, it *prima facie* appears that the deceased was the only son of the appellants who were in their late forties at the time of the award and hence, they could have been heavily depending upon the support and income of the deceased, if he were alive. In these facts, the monthly benefit of the appellants is required to be increased at least to Rs.500/- and multiplier of 15 is required to be applied for the purpose of calculating dependency benefit of the appellants.

5. Accordingly, multiplying the yearly benefit of Rs.6,000/- by the multiplier of 15, due amount on that count would come to Rs.90,000/- and the impugned award is required to be modified accordingly so as to increase it by 19,800/-. Therefore, the appeal is partly allowed with the direction that additional amount of Rs.19,800/- shall be paid to the appellants with 6% interest from the date of the application till the date of realisation.

6. In view of passage of time and advanced age of the appellants, the amount of additional compensation awarded by this judgment is not required to be invested and shall be paid by A/c.payee cheques in the names of each of the appellants after equally dividing the amounts

within a period of two months from today. There is no order as to costs.

(D.H.WAGHELA, J.)

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