

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

**FIRST APPEAL No. 4536 of 2007**  
**With**  
**CIVIL APPLICATION No. 12903 of 2007**  
**In FIRST APPEAL No. 4536 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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**NATIONAL INSURANCE CO. LTD. - Appellant(s)**

**Versus**

**MANILAL VALLABHBHAI PRAJAPATI & 3 - Defendant(s)**

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**Appearance :**

MS LILU K BHAYA for Appellant(s) : 1,  
MR HARSHIT S TOLIA for Defendant(s) : 1 - 2.  
None for Defendant(s): 3 - 4.

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**CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA**

**Date : 31/01/2008**

**ORAL JUDGMENT**

1. By the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, "the Act"), the appellant-Insurance Company has called into question award dated 31.01.2007 of M.A.C.T.,

Valsad in M.A.C.P. No.1964 of 2002, whereby total compensation of Rs.4,60,000/- was awarded to the claimants with interest at the rate of 7.5% and cost.

2. The appeal was pressed mainly for the purpose of reducing the amount of compensation on the grounds that the negligence could have been partly attributed to the deceased himself and that the Tribunal had erred in applying multiplier of 16 while age of the deceased at the time of death was 28 years. It was vehemently argued by learned counsel Ms.Bhaya that after assuming the income of the deceased to be Rs.100/- per day and Rs.3,000/- per month, the dependency benefit was counted on the basis of Rs.25,000/- per year by deducting only 1/3 of the income. It was pointed out from the evidence that the deceased was already engaged and, therefore, he was to marry very shortly. Therefore, 2/3 of his income ought to have been deducted, according to the submission. She also pointed out that the age of the parents of the deceased was 56 and 52 respectively which could not justify application of multiplier of 16 in the peculiar facts of the case. Otherwise, there was no dispute about the fact that the deceased aged 28 died on 21.01.2002 after the accident dated 17.01.2002 in which the truck insured by

the appellant dashed from behind with the motorcycle driven by the deceased and the deceased succumbed to the injuries after four days of treatment.

3. Learned counsel Mr.Tolia, appearing for the original claimants, submitted that the deceased was the only son and was not married at the time of death and, therefore, higher multiplier was properly applied by the Tribunal. He also submitted that even though, the claimants had originally claimed Rs.3,00,000/- as compensation, the Tribunal had the jurisdiction and justification for awarding higher amount in view of the evidence led before it.

4. It was seen from the record that there was hardly any concrete and conclusive evidence about actual income of the deceased and the Tribunal had not made any calculation on the basis of future rise in the income of the deceased. However, in view of the fact that the deceased was to marry in the near future, the deduction of only 1/3 of his income towards expenses on himself was not proper and his expenditure on himself could have necessarily increased after his marriage. Therefore, taking the minimum figure of income of Rs.3,000/- per month and assuming reasonable rise in his income

in future and deducting therefrom  $\frac{2}{3}$  of the income towards his own expense, yearly dependency benefit could reasonably be assessed at Rs.18,000/- and applying multiplier of 13, a total sum of Rs.2,35,000/- was required to be awarded towards loss of dependency benefit to the parents. Adding thereto Rs.15,000/- towards pain and suffering of the deceased, Rs.50,000/- towards loss to the estate and loss of consortium, Rs.50,000/- towards medicine and transport charges and Rs.25,000/- towards pain, shock and suffering of the claimants, a total sum of Rs.3,75,000/- would be the reasonable amount of compensation.

5. Accordingly, the appeal is partly allowed so as to reduce the total amount of compensation to Rs.3,75,000/- which shall be paid by the appellant with interest at the rate of 7.5% from the date of application till realisation and cost. Civil Application for stay does not survive in view of the disposal of the appeal and hence, Rule issued therein stands discharged with no order as to costs.

(D.H.WAGHELA, J.)

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