

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 400 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI**

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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 COMPANY LIMITED - Appellant(s)**Versus****HARIBEN RAVJIBHAI PATEL & 2 - Defendant(s)**

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Appearance :

MS VIRAJ FOZDAR FOR MS MEGHA JANI for Appellant(s) : 1,

RULE SERVED for Defendant(s) : 1 - 3.

MR HM PRACHCHHAK for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**Date : 30/04/2012****ORAL JUDGMENT**

1.0 This appeal is directed against the judgement and award dated
27.09.2005 passed by the Motor Accident Claims Tribunal (Auxi.),
Court 8, Ahmedabad in Motor Accident Claim Petition No. 936 of 2001

whereby the learned Tribunal has awarded a sum of Rs. 258000/- as compensation along with interest @ 8% per annum from the date of claim petition till realization.

2.0 On 17.06.2001 at about 5.30 p.m. Alkesh was driving the scooter bearing registration No. GJ 1 V-8094 and Manishbhai was pillion rider on the said scooter. While they were proceeding near Sarita Udhiyan at Gandhinagar on left side of the road at moderate speed., at that time, a truck No. GJ1-V 7776 came from the behind in excessive speed and in a rash and negligent manner dashed with the scooter. As a result of this, Alkesh sustained grievous injuries and succumbed to injuries. The claimants, therefore filed the aforesaid claim petition wherein the learned Tribunal has passed the aforesaid award which is challenged in the present appeal.

3.0 Learned advocate for the appellants contended that the claimant was the mother of the deceased and therefore, the learned Tribunal has erred in deducting 1/3rd towards personal and living expenses. He placed reliance on the decision of the Hon'ble Apex Court in case of ***Sarla Verma (Smt) and others versus Delhi Transport Corporation and another*** reported in ***(2009) 6 Supreme Court Cases 121*** wherein it is held that 50% is required to be deducted as personal and expenses, since the deceased was a bachelor and the claimant is the mother.

4.0 Learned advocate for the appellants further contended that the multiplier of 15 applied by the learned Tribunal by considered the age of the deceased is on higher side; that the age of the mother ought to have been considered in case where the mother is the claimant. She submitted that age of the mother was 80 years at the time of accident and therefore multiplier of 5 ought to have been applied in the view of the principles laid down in case of Sarla Verma (supra).

5.0 Learned advocate appearing for the respondent supported the judgement and award of the learned Tribunal and submitted that the appeal may be dismissed.

6.0 Heard learned advocate for the respective parties and perused the documents on record. The learned Tribunal by considering the entire facts and circumstances of the case has rightly assessed the income of Rs. 2000/- as prospective income. The deceased was unmarried. The claimant is the mother of the deceased and therefore, in view of the principles laid down in case of Sarla Verma (supra), if 50% is deducted towards personal and living expenses it would come to Rs.1000/- (i.e.50% of Rs.2000/-). Hence, the loss of dependency benefit would come to Rs. 1000/-(Rs. 2000/-Rs. 1000/-) per month and Rs. 12000/- (Rs. 1000/- x 12) per year. Since the mother is claimant, her age is required to be considered for calculation of actual loss of economic loss

in view of the decision of Hon'ble Supreme Court in case of National Insurance Co. Ltd. vs. Shyamsing reported in AIR 2011 SC 3231. The age of the mother was 80 years and therefore, 5 years multiplier would be just and proper. By applying 5 multiplier, the actual economic loss would come to Rs.60,000/- (Rs. 12000/- x 5).

7.0 The amount of Rs. 15000/- towards loss of estate is on higher side. Therefore, it is reduced to Rs. 10000/-. The claimant is entitled to a Rs 5000/- toward funeral expenses.

8.0 In the result, the appeal is partly allowed. The appellant-Insurance Company is liable to pay compensation of Rs.75000/- (Rs. 60000/- towards future loss of income + Rs. 10000/-towards loss of estate + Rs. 5000/- towards funeral expenses). However, the learned Tribunal has awarded a sum of Rs. 258000/- for compensation. Therefore, an excess amount of Rs. 183000/- (Rs.258000/-/- Rs.75000/-) along with proportionate interest and costs shall be refunded to the appellant-Insurance Company. The award of the learned Tribunal is modified accordingly. If any amount lying with this Court shall be transmitted to the concerned Tribunal. No costs.

(K.S.JHAVERI, J.)

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