

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1092 of 1994****With****CROSS OBJECTION (STAMP NUMBER) No. 40 of 2012
In FIRST APPEAL No. 1092 of 1994****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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AHMEDABAD MUNICIPAL CORPORATION & 1 - Appellant(s)**Versus****MAHMADISAK IBRAHIMBHAI & 3 - Defendant(s)**

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Appearance :MR MG NAGARKAR for Appellant(s) : 1, MR HS MUNSHAW for Appellant(s) : 2,
MR RA PATEL for Defendant(s) : 1 - 2.
NOTICE SERVED for Defendant(s) : 3,
MR KF DALAL for Defendant(s) : 4,
=====**CORAM : HONOURABLE MR.JUSTICE KS JHAVERI****Date : 29/02/2012****ORAL JUDGMENT**

By way of filing this appeal under Section 173 of the Motor Vehicles Act, 1988 the appellant – Ahmedabad Municipal Corporation has challenged the judgment and award dated 29th August 1992 passed by the learned MAC Tribunal (Aux.), Ahmedabad Rural in MAC Petition No.820 of 1984 vide which the

Tribunal awarded Rs.1,88,300 to the claimants.

2 The facts leading to filing the present appeal are to the effect that on 24th April 1984 at about 9.00 AM deceased Ibrahimbahi was waiting for the bus at Sarkhej Bus Stand. At that time, the offending bus bearing No.GRS 8712 came there rashly and dashed with the deceased because of which he fell down and tyres of the Bus had run over his body. He was shifted to V.S. Hospital where he died on 23rd May 1984 during the course of treatment. The claimants being wife and children of the deceased filed claim petition claiming for total compensation of Rs.3 lakhs on various heads from the opponents.

3 The learned Tribunal has considering the documentary evidence produced on record treated Rs.4,000 as his monthly income and 1/3rd was deducted therefrom towards his personal expenses. The Tribunal adopted the multiplier of 7 looking to age of 52 years of the deceased. He, therefore, awarded Rs.2,24,000 towards loss of dependency. He has also awarded Rs.15,000 towards medicines, and other expenses and Rs.20,000 towards pain, shock and suffering and Rs.10,000 towards loss of expectancy of life. Thus, in all Rs.269,000/- was awarded out of which 30% was deducted towards contributory negligence on the part of the deceased and Rs.1,88,000 was awarded to the claimants. Feeling aggrieved by the same, the appellant Municipal Corporation has filed this appeal.

4 Heard learned counsel for the parties and perused the entire record.

5 Learned counsel for the appellant, Mr Munshaw contended that the income assessed by the Tribunal on the basis of savings of the years 1979, 1981, 1982, 1983, 1984, 1986, 1987 and 1988 is

erroneous. He further submitted that in view of the fact that the accident had taken place on 24.04.1984, the assesment year is 1984-85 wherein the taxable income was Rs.15,000. Therefore, without there being any evidence on record regarding payment of income-tax, the Tribunal has assessed Rs.4000 as the monthly income of the deceased. He has further submitted that the at the most the claimants are entitled to Rs.2,21,000 and after deducting the contributory negligence, they are entitled to Rs.1,55,900.

6 Learned counsel for the respondents – original claimants has supported the judgment and award of the Tribunal and submitted that no interference is called for. He further contended that instead of 7, the Tribunal ought to have granted multiplier of 11. He has also submitted that the contributory negligence apportioned by the Tribunal on the part of the deceased was on higher side and it should not have exceeded 15%. He has also contended that the Tribunal has committed an error in not considering the future economic prospects of the deceased in view of the decision of the Apex Court in the case of Smt. Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121.

7 While considering the evidence as regards the contributory negligence, the Tribunal has discussed the same in detail in paragraphs 8 to 10 of the judgment and after considering the evidence on record including cross-examination of witnesses has rightly apportioned the same between the Driver as well as the deceased. The learned Tribunal has observed that the deceased tried to board the bus from the front door and because of the crowd, he could not come inside the bus and when the bus moved with a jerk, he fell down and sustained injuries. He therefore held the driver of the bus to be negligent to the extent of 70% and the deceased 30%, which is just and proper.

8. As regards the income of Rs.4,000 per month is concerned, the same is on higher side. The Tribunal has committed an error in assessing the income by travelling beyond taxable limit and it could not cross Rs.22,000 per annum from which $1/3^{\text{rd}}$ amount should be deducted therefrom towards his personal expenses. Therefore, the annual income would be Rs.14,660. As the age of the deceased was 52 years at the time of his death the proper multiplier in the light of the decision of the Apex Court in the case of Sarla Verma (supra) would be 11. Rs.14,660/- multiplied by 11 will work out to Rs.161200 rounded off to Rs.161,000. To this figure will have to be added Rs.60,000 which was awarded under different heads. That will lead to a total figure of Rs.2,27,000/-. As the deceased was negligent to the accident to the extent of 30%, an amount of Rs.68,100 being the amount of contributory negligence should be deducted. Thus, the appellants would be entitled to get by way of compensation Rs.1,58,900/- rounded off to Rs.1,59,000 from the claimants. As against that, the Tribunal has awarded Rs.1,88,300/-. Therefore, there is an excess amount of Rs.29,400/- is required to be refunded to the appellant corporation.

9 In view of the aforesaid discussion, the judgment and order dated 29th Augsut 1992 passed by the learned MAC Tribunal (Aux.), Ahmedabad Rural in MAC Petition No.820 of 1984 vide which the Tribunal awarded Rs.1,88,300 to the claimants is modified to the extent that the claimants are entitled to Rs.1,59,000/-. The excess amount of Rs.29,400/- is required to be refunded to the appellant corporation along with interest. Appeal is allowed to the aforesaid extent with no order as to costs. Cross Objections are disposed of.

(K.S.Jhaveri, J.)

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