

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1013 of 1993

With

FIRST APPEAL No. 1014 of 1993

With

FIRST APPEAL No. 1016 of 1993

With

FIRST APPEAL No. 1018 of 1993

With

FIRST APPEAL No. 1017 of 1993

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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UNITED INDIA INSURANCE CO LTD - Appellant(s)

Versus

SHANTILAL RAYMALJI THAKOR & 2 - Defendant(s)

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Appearance :

MR HINA DESAI for Appellant(s) : 1,
RULE SERVED for Defendant(s) : 1,
MRGAURANGKPATEL for Defendant(s) : 1,
SERVED BY AFFIX.-(R) for Defendant(s) : 2,
MR HV PUJARA for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 30/03/2012

ORAL JUDGMENT

1. These appeals are directed against the judgement and award dated 23.05.1991 passed by learned Motor Accident Claims Tribunal(Main), Mehsana in Motor Accident Claims Petitions No. 102, 103, 151, 152, 156 of 1986, wherein the Tribunal after considering the appellant negligent to the extent of 60% for the accident in question awarded compensation.

2. It is the case of the claimants that while the deceased/injured was travelling in a truck bearing registration no. GRT 5919, when the tanker driven by the original opponent no. 1 dashed with the truck. The claimants being legal heirs and representatives of the deceased and the injured therefore filed claim petition for compensation. The Tribunal after hearing the parties passed the aforesaid award.

3. Ms. Hina Desai, learned advocate appearing for the appellant in all the matters submitted that the Tribunal did not appreciate the objection of the appellant to either dismiss the petition or order to join the owner, driver and insurer of truck no. GRT 5919. She submitted that the Tribunal has held the truck liable to the extent of 40% and therefore the Tribunal gravely erred in not directing that the claimants will have to recover 40% of compensation from the owner of truck in which they were travelling.

4. As a result of hearing and perusal of records, this Court is of the opinion that the Tribunal has rightly held the driver of

the tanker negligent to the extent of 60% in view of the evidence on record. However, while awarding compensation, it is required to be noted that the appellant shall be liable for payment of compensation only to the extent of which the driver is negligent which in the present case is 60%.

5. Accordingly, appeals are partly allowed. The appellant shall be liable to pay only 60% of the awarded amount by way of compensation to the claimants. The award of the Tribunal is modified accordingly.

(K.S. JHAVERI, J.)

Divya//