

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2451 of 2003
To
FIRST APPEAL No. 2454 of 2003
WITH
FIRST APPEAL No. 2455 of 2003
WITH
FIRST APPEAL No. 2457 of 2003
TO
FIRST APPEAL No. 2461 of 2003
WITH
FIRST APPEAL No. 2587 of 2003
TO
FIRST APPEAL No. 2589 of 2003
WITH
FIRST APPEAL No. 2464 of 2003

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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NEW INDIA ASSURANCE CO LTD. - Appellant(s)

Versus

LALAJI MULJI TRANSPORT CO. & 1 - Defendant(s)

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,
MR MN MEHTA for Defendant(s) : 1,
MR PANKAJ R DESAI for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 30/03/2012

COMMON ORAL JUDGMENT

1. The appellant-Insurance Company has preferred these appeals against the common judgment and award dated 16.08.2002 passed by the Motor Accident Claims Tribunal(Auxi.) Surendranagar,(for short, "the Tribunal") in M.A.C.P. Nos. 762 of 1991, 427 of 1991, 428 of 1991, 912 of 1991, 335 of 1991, 470 of 1991, 472 of 1991, 763 of 1991, 494 of 1991, 61 of 1994, 337 of 1991, 469 of 1991, 471 of 1991, 473 of 1991, whereby, the tribunal has awarded compensation in the sum of Rs.20,000/- to the claimant of M.A.C.P. No.762 of 1991, Rs.1,70,000/- to the claimants of M.A.C.P. No.427 of 1991, Rs.10,000/- to the claimant of M.A.C.P. No.428 of 1991, Rs.2,90,000/- to the claimants of M.A.C.P. No.912 of 1991, Rs.95,000/- to the claimants of M.A.C.P. No.335 of 1991, Rs.25,000/- to the claimant of M.A.C.P. No.470 of 1991, Rs.25000/- to the claimant of M.A.C.P. No.472 of 1991, Rs.20,000/- to the claimant of M.A.C.P. No.763 of 1991, Rs.32,000/-to the claimant of M.A.C.P. No.492 of 1991, Rs.55,000/- to the claimants of M.A.C.P. No.61 of 1994, Rs.80,000/- to

the claimants of M.A.C.P. No.337 of 1991, Rs.1,08,000/- to the claimants of M.A.C.P. No.469 of 1991, Rs.37,000/- to the claimant of M.A.C.P. No.471 of 1991 and Rs.70,000/- respectively, with interest at the rate of 09% per annum from the date of filing of the petition till realization.

2. The facts in brief are that on 28.01.1991, some persons were travelling in a Truck bearing registration No. GJ-1-T-6915. When they reached near board of village Jhakhad, the driver of the said truck was driving his vehicle rashly and negligently, therefore, he lost control over his vehicle and the said Truck turned turtle. As a result of the said accident they sustained grievous injuries and due to which some of them are expired. Therefore, they several claim petitions filed by the injured persons and the legal heirs of the deceased. The Tribunal after hearing learned advocates for both the parties and after perusing the record decided the claim petitions and passed the award as stated hereinabove, against which the present appeals are filed by the appellant- Insurance Company.

3. On behalf of the appellant, learned Advocate inter alia contended that the vehicle in question was a goods vehicle and use of the goods vehicle for carrying passengers is prohibited and therefore the insurance company was not liable to pay the compensation. He relied upon the decision of the Apex Court in the case of **Pramod Kumar Agrawal and Another Vs. Mushtari Begum (Smt) and Others**, reported in **(2004) 8 SCC 667** and **Kusum Lata and Others Vs. Satbir and Others**, reported in **2011, ACJ 926**, and submitted that the Insurance Company has to pay compensation and may recover from the owner of the vehicle. However, I am of the view that such a direction cannot be given at this stage, as the Insurance Company has already been exonerated.

4. Learned counsel for the respondents contended that the Tribunal ought to have granted compensation to the driver and cleaner of the offending vehicle. The contention of learned counsel for the respondent cannot be accepted as no cross objection is filed by the owner of the vehicle.

5. I have heard learned counsel appearing for both the parties and perused the material on record.

The Hon'ble Apex Court in the case of New India Assurance Co. Ltd. v. Asha Rani [(2003) 2 SCC 223], has held that no person in any capacity was permitted to travel in a goods vehicle, The relevant portion of the said decision are reproduced as under:-

“20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people.”

6. In view of the aforesaid discussion, the insurance company is not liable to pay the compensation to the claimant. Therefore, the present appeals are allowed. The amount deposited by the appellant – insurance company, if lying in the

FDRs, shall be refunded to the insurance company. However, if the amount is already withdrawn by the claimants, the insurance company is at liberty to recover the same from the owner of the vehicle and not from the claimants.

[K.S.JHAVERI,J.]

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