

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****FIRST APPEAL No. 2458 of 2002****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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**LILADEVI WD/O MOHANPRASAD KULANAND & 2 - Appellant(s)****Versus****VASUDEVBHAI GANESHJI PUROHIT & 1 - Defendant(s)**

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**Appearance :**

MR AV PRAJAPATI for Appellant(s) : 1 - 3.

NOTICE SERVED for Defendant(s) : 1 - 2.

MR HARDIK C RAWAL for Defendant(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE KS JHAVERI****Date : 31/01/2012****ORAL JUDGMENT**

By way of filing this appeal under Section 173 of the Motor Vehicles Act, 1988 the appellants – original claimants have challenged the judgment and award dated 20<sup>th</sup> January 2000 passed by the learned MAC Tribunal (Aux.I), Ahmedabad Rural in MAC Petition No.1782 of 1991 vide which the Tribunal awarded Rs.2,04,428 to the claimants as against the claim of Rs.5 lakhs and prayed for enhancement of the awarded amount.

2 The facts leading to filing the present appeal are to the effect that on 4<sup>th</sup> October 1991 at about 23.15 hours the accident in question took place in which deceased Mohan Prasad died. On the fateful day deceased Mohan Prasad was driving Jeep No.GUD 2698 during the course of his official duty. AT that time the offending vehicle being truck No.GJ 8 T 4004 came from the opposite side in full speed and rashly and dashed with the jeep because of which Mohan Prasad died. The appellants being wife and children of the deceased filed claim petition claiming for total compensation of Rs.5 lakhs on various heads from the opponents.

3 The learned Tribunal vide impugned judgment and award awarded Rs.2,04,428/-. Feeling aggrieved by the same, the appellants – original claimants have filed this appeal seeking enhancement of the compensation.

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

5 Learned counsel for the appellants though argued on the point of contributory negligence which was assessed at 30% has not pressed the same. He, however, 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.

6 The Tribunal has considered the income of the deceased at Rs.3400 per month and deducted 1/3 amount therefrom towards his personal expenses and arrived at datum figure of Rs.2267 per month and Rs.27,204 per year. Looking to the age of the deceased at 48 years applied the multiplier of 10 and arrived at Rs.2,72,040/-

as the future economic loss. He then awarded Rs.10,000 towards loss of expectation of law and Rs.10,000 towards loss of consortium. The Tribunal has, however, not awarded any amount towards funeral expenses. Thus, in all, Rs.2,92,040/- was determined to be awarded to the claimants. Out of this amount, an amount of Rs.87,612/- was deducted towards 30% contributory negligence on the part of the deceased and therefore the claimants were awarded Rs.2,04,428/- with interest at the rate of 12% per annum from the date of application till realisation.

7 In view of the observations made by the Apex Court in the *Sarla Verma (supra)*, there should be an addition of 50% of actual salary to the actual salary income of the deceased towards the future prospects where the deceased had a permanent job and was below 40 years. However, the addition should be 30% only if the age of the deceased was 40 to 50 years and there should be no addition where the age of deceased is more than 50 years. In the present case, the deceased was 48 years old. Therefore, the Tribunal ought to have granted 30% addition towards future prospects.

8 The income of the deceased was at Rs.3400 per month and there should be addition of 30% of the actual salary on account of future prospects, which comes to Rs.1020. Thus, the monthly salary of the deceased would be Rs.4420 from which 1/3<sup>rd</sup> amount should be deducted therefrom towards his personal expenses to arrive at datum figure of Rs.2947 rounded to Rs.2950 per month and Rs.35,460 per year. As the age of the deceased was 48 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 10. Rs.35,460/- multiplied by 10 will work out to Rs.3,54,600/-. To this figure will have to be added the conventional figure of loss of expectation of life of Rs.10,000/- and Rs.5,000

towards funeral charges. That will lead to a total figure of Rs.3,69,600/-. As the deceased was negligent to the accident to the extent of 30%, an amount of Rs.1,10,700 being the amount of contributory negligence should be deducted. Thus, the appellants would be entitled to get by way of compensation Rs.2,58,300/- from the claimants.

9 In view of the aforesaid discussion, the judgment and order dated 20<sup>th</sup> January 2000 passed by the learned MAC Tribunal (Aux.I), Ahmedabad Rural in MAC Petition No.1782 of 1991 vide which the Tribunal awarded Rs.2,04,428 to the claimants is modified to the extent that the claimants are entitled to Rs.2,58,300/-. Thus, the claimants are entitled to get additional amount of Rs.53,872 along with interest at the rate of 7½ % per annum from the date of the petition till the date of realisation. Appeal is allowed to the aforesaid extent with no order as to costs.

(K.S.Jhaveri, J.)

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