

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2162 of 1998

With

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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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ORIENTAL INSURANCE CO.LTD. - Appellant(s)

Versus

SAVITABEN W/O SOMABHAI ISHVERBHAI PARMAR & 8 - Defendant(s)

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,

MR KV SHELAT for Defendant(s) : 1 - 6.

MRS VASAVDATTA BHATT for Defendant(s) : 7,

NOTICE UNSERVED for Defendant(s) : 8 - 9.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 30/03/2012

COMMON ORAL JUDGMENT

1. By way of these appeals, the appellant-original opponent No.4 has challenged the common judgment and award dated 04.06.1997, passed by the

Motor Accident Claims Tribunal, Morvi, in Claim petition Nos.624, 720, whereby the tribunal has awarded compensation in the sum of Rs. 4,14,000/- to the claimants of M.A.C.P. No. 624 of 1998, Rs.2,16,000/- to the claimants of M.A.C.P. No.720 of 1988 respectively with interest at the rate of 12% per annum from the date of filing of the petition till realization and held appellant-Insurance company to pay compensation jointly and severally to the claimants.

2. The brief facts leading to filing of this appeal are that on 05.03.1988, one Somabhai Ishwarbhai Parmar was going to Nadiad on his Luna Moped bearing registration No.GEB 2703 along with his sons. One Rameshabhai Dahyabhai Solanki was the pillion rider. At that time one S.T. bus bearing registration No. GRU 9747 came on wrong side and dashed the Luna Moped. As a result of the said accident, Somabhai Ishwarbhai Parmar Rameshbhai Dahyabhai Solanki sustained grievous injuries and due to which they died. Therefore, the legal heirs of the deceased filed claim petitions before the Tribunal for compensation.

2.1. The Tribunal after hearing learned advocates for both the parties and after recording the evidence decided the claim petition and passed the award as

stated herein above against which the present appeal is filed by the appellant-Corporation.

3. Learned counsel for the appellant contended that the tribunal erred in passing the impugned judgment and award. He further contended that the tribunal has held that the accident has caused due to the sole negligence of the S.T. bus driver but in operative part of the judgement has wrongly held that the Insurance Company is liable to pay compensation jointly and severally to the claimants. Therefore, he has prayed to allow the present appeals.

4. Learned counsel for the respondent supported the impugned judgement and award of the Tribunal and submitted that the Tribunal after considering the evidence on record has passed the impugned judgment and award. Therefore, he prayed to dismiss this appeal.

5. I have heard learned counsel appearing for both the parties and perused the material on record. The contention of learned counsel for the appellant is required to be accepted as the Tribunal in paragraph 14 in his impugned judgement and award has observed that the S.T. Bus driver was solely responsible for the accident in question. However, the Tribunal has wrongly

held in operative part of the impugned judgement and award that the Appellant-Insurance is liable to pay compensation jointly and severally to the legal heirs of the deceased. Once the Tribunal has held the driver of the S.T. bus solely negligence for the accident in question, then there was no question of holding Appellant-Insurance Company liable to make payment of compensation jointly and severally to the claimants.

6. For the foregoing reasons, the appeals are allowed. The impugned judgment and award is quashed and set aside only qua the extent of imposition of liability on the appellant-Insurance Company to make payment of compensation. The rest of the impugned award remains unaltered. It is, however, observed that if the original claimants have already withdrawn the amount of compensation, then the same shall not be recovered from the original claimants but, shall be recovered from the owner of the offending vehicle and if the amount is still lying with the Tribunal, then the same shall be refunded to the appellant-Insurance Company and in which case, the original claimants can recover the amount from the owner of the offending vehicle. The appeals stand disposed of accordingly. No order as to costs.

[K. S. JHAVERI, J.]

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