

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****FIRST APPEAL NO. 592 of 2003****With****FIRST APPEAL NO. 378 of 2007****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE M.D. SHAH**

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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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AALAMMIYA KAMALUDIN MULLA DECDTHRO' HEIRS BANUBI K

MULLA....Appellant(s)

Versus

BHUPAT KESHU &amp; 2....Defendant(s)

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Appearance:

MR HM PRACHCHHAK, ADVOCATE for the Appellant(s) No. 1 - 1.2

MR PALAK H THAKKAR, ADVOCATE for the Defendant(s) No. 3

RULE SERVED for the Defendant(s) No. 2

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**CORAM: HONOURABLE MR.JUSTICE M.D. SHAH**

**Date : 30/04/2013**

**COMMON ORAL JUDGMENT**

1. Both these first appeals have been filed by the original claimants under Sec.173 of the Motor Vehicles Act, 1988 being aggrieved and dissatisfied with the common judgment and award dated 29-4-2000 passed by the Motor Accidents Claims Tribunal (Aux.), Veraval, in MACP Nos.92 of 1999 (filed by heirs of the deceased) and 93 of 1999(filed on behalf of the minor claimant).
2. Facts in short are that MACP No.92 of 1999 has been filed by the heirs of the deceased-Aalammiya Kamaludin Mulla while MACP No.93 of 1999 has been filed on behalf of minor-Irfanbhai Kamaludin aged about 8 years claiming compensation for death of the deceased and for injuries caused to the minor which is caused in a vehicular accident on 25-3-1990 at about 2.45 p.m. It was contended that the deceased Aalammiya was travelling in bicycle in which the minor Irfan was sitting on the front portion of the bicycle from their house to Patan and when they reached near Weighing Machine of R.J.Trivedi near Bhalka Road, a truck No.GTM-3305 came from opposite direction and dashed with the bicycle causing fatal injuries to the deceased and serious

injuries to minor. Upon upon hearing the learned counsel for the parties and considering the oral as well as documentary evidence on record, the impugned common judgment and award was passed by the Tribunal.

3. I have heard learned advocates for the appellants, Mr.H.M.Prachchhak and Mr.P.H.Thakker for the respondent No.3 and have also taken into consideration the impugned judgment and award together with relevant oral as well as documentary evidence such as FIR and panchnama and other evidence.
4. The learned advocate for the appellants has restricted his arguments only on the aspect of quantum. As far as First Appeal No.592 of 2003 which arises from MACP No.92 of 1999 is concerned, he submitted that considering the age of the deceased as 19 years, reasonable amount may be additionally awarded. As far as First Appeal No.378 of 2007 which arises from MACP No.93 of 1999 is concerned, he submitted that the minor received fracture injuries. Considering the fact that steel rod was fitted and he suffered permanent disablement, some additional amount may be awarded. He therefore prayed to modify the award accordingly.

5. Considering the facts and circumstances of the case and also considering the age of the deceased and nature of work he was doing, if an amount of Rs.51,000/- is additionally awarded in case of First Appeal No.592 of 2003, ends of justice will be met while in First Appeal No.378 of 2007, considering the fact that minor was operated and steel rod was inserted and he suffered permanent disablement, if additional amount of Rs.60,000/- is awarded, it will meet the ends of justice. In view of the above, both the appeals require to be allowed in part.
6. Thus, both the First Appeals are partly allowed. The claimants in MACP No.92 of 1999 are entitled to an additional compensation amount of Rs.51,000/- while claimant of MACP No.93 of 1999 is entitled to an additional compensation of Rs.60,000/- with interest @ 9% per annum on the said additional amounts. The impugned judgment and award dated dated 29-4-2000 passed by the Motor Accidents Claims Tribunal (Aux.), Veraval, in MACP Nos.92 of 1999 and 93 of 1999 is modified only to the aforesaid extent. The remaining part of the impugned judgment and award would remain unaltered. The Insurance Company shall deposit the

additional amount with interest within a period of six weeks from today.

7. Office to send back the records and proceedings, if any, forthwith.
8. Office to place a copy of this judgment in each appeal.

**(M.D.SHAH, J.)**

RADHAN