

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL NO. 3408 of 2013****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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DHIRUBHAI MASHRUBHAI DEGAMA DECD. THRO' HEIRS AND LRS &
2....Appellant(s)

Versus

KRUSHNASINH KIRATSINH DARBAR & 3....Defendant(s)

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Appearance:

(MRSURESHMSHAH), ADVOCATE for the Appellant(s) No. 1 - 1.3

MR VISHAL MEHTA FOR MR MEHUL S SHAH, ADVOCATE for the
Appellant(s) No. 1 - 1.3

DELETED for the Defendant(s) No. 3

MRPALAKHTHAKKAR, ADVOCATE for the Defendant(s) No. 2

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CORAM: HONOURABLE MR.JUSTICE M.D. SHAH

Date : 30/11/2013

ORAL JUDGMENT

1. This appeal has been filed by the original claimants being aggrieved and dissatisfied with the judgment and award dated 7-4-2010 passed by the Motor Accidents Claims Tribunal(Aux.), Dhrangadhra in MACP No.457 of 1998 (Old MACP No.409/94) whereby the Tribunal has partly allowed the claim petition and held that all the original opponents are liable to pay compensation of Rs.4,98,000/- with interest @ 8% per annum.
2. Facts in short are that claim petition has been filed by heirs and legal representatives of deceased-Dhirubhai claiming compensation for death of the deceased which is caused in an accident which occurred on 28-4-1994 at about 6.30 p.m. on public road between Katuda-Rajsitapur involving vehicle No.GJ-7T-55-5584 causing fatal injuries to the deceased. After hearing the learned counsel for the parties and considering the oral as well as documentary evidence on record, the impugned award was passed by the Tribunal.
3. I have heard learned advocates for the appellants, Mr.Vishal Mehta for Mr.Mehul S.Shah and Mr.Palak Thakkar for respondent No.2. I have also taken into

consideration the oral as well as documentary evidence including FIR and panchnama and other evidence together with the impugned judgment and award.

4. The learned advocate for the appellants has restricted his arguments only on the aspects of prospective income and deduction made towards personal expenses. He has submitted that considering the age of the deceased, prospective income was not considered by the Tribunal and instead of deducting one-fourth towards personal expenses, the Tribunal has deducted one-third in view of the decision rendered in **Smt.Sarla Verma & Ors. Vs. Delhi Transport Corporation and Another** reported in **(2009)6SCC page 121**.
5. Learned advocate, Mr.Palak Thakkar submitted that appropriate order may be passed considering the facts and circumstances of the case.
6. It is to be noted tht accident is not denied. Insurance Company has not preferred any appeal. Further, policy is also not in dispute. It is an admitted fact that deceased was aged 36 years and, therefore, for assessing compensation under the head of future loss of income, prospective income should be considered. Considering the number of dependents of the deceased, one-fourth

deduction ought to have been made towards personal expenses in light of decision in Sarla Verma(supra). However, the Tribunal has considered only one-third and by that committed error. Considering the prospective income at 50% of the income of the deceased and deducting one-fourth towards personal expenses in light of decision rendered in Sarla Verma (Supra), the claimants are entitled to an additional compensation of Rs.2,00,000/-.

7. In view of the above, the appeal is allowed. The claimants are entitled to additional compensation of Rs.2,00,000/- with interest @ 8% as awarded by the Tribunal on the additional amount. The impugned common judgment and award is modified to the aforesaid extent. The remaining part of the common judgment and award would remain unaltered. The Insurance Company shall deposit the additional amounts with interest within a period of six weeks from today.
8. Office is directed to send back the records and proceedings, if any, forthwith.

(M.D.SHAH, J.)

RADHAN