

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL NO. 3598 of 2012**  
**With**  
**FIRST APPEAL NO. 3599 of 2012**  
**TO**  
**FIRST APPEAL NO. 3602 of 2012**  
**With**  
**CIVIL APPLICATION NO. 12757 of 2012**  
**In**  
**FIRST APPEAL NO. 3598 of 2012**  
**TO**  
**CIVIL APPLICATION NO. 12761 of 2012**

**FOR APPROVAL AND SIGNATURE:**

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

=====

- 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 ?

=====

NATIONAL INSURANCE CO. LTD....Appellant(s)

Versus

LEGAL HEIRS OF DECD. RAMILABENRASILABEN & 4....Defendant(s)

=====

Appearance:

MR MAULIK J SHELAT, ADVOCATE for the Appellant(s) No. 1

MR PUNIT B JUNEJA, ADVOCATE for the Defendant(s) No. 1.1 - 1.4

MS ROOPAL R PATEL, ADVOCATE for the Defendant(s) No. 3

=====

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

**Date : 31/07/2013**

**ORAL JUDGMENT**

[1] By this first appeals, the appellant herein – original opponent no.4 has challenged the judgment and award dated 23.04.2004 passed by the learned M.A.C.T.(Auxi.), Surendranagar in M.A.C.P. No.750 of 1995, M.A.C.P.No. 27 of 1996, M.A.C.P.No.732 of 1995, M.A.C.P.No.475 of 1996 and M.A.C.P.No.30 of 1996.

[2] Accident in question occurred on 14.10.1995. It is the case of the claimants that on the date of accident, they were travelling in S.T.Bus and when the bus reached on Viramgam and Ahmedabad highway, at that time, driver of truck (dumper) came from opposite direction in rash and negligent manner. As a result, one person died and others received injuries. Therefore, legal heirs of the deceased filed claim petition being M.A.C.P.No.750 of 1995 for getting compensation of Rs.2,00,000/- and other claimants who received injuries also filed claim petitions being M.A.C.P.No. 27 of 1996, M.A.C.P.No.732 of 1995, M.A.C.P.No.475 of 1996 and M.A.C.P.No.30 of 1996. After recording evidence, learned Tribunal by judgment dated 23.04.2004 partly allowed the claim petitions and awarded compensation in favour of the original claimants. Against the said award, original opponent no.4 has preferred this appeal.

[3] It is submitted by learned advocate for the appellant herein – S.T. Corporation that Tribunal has not properly considered and appreciated the evidence on record. It is also submitted that tribunal committed error in holding driver of the truck (dumper) negligent to the extent of 75% and driver of the S.T.Bus negligent to the extent of 25%.

It is also submitted that Tribunal ought to have held driver of both the vehicles to be equally negligent. Therefore, it is requested to allow this appeals.

[4] This Court has gone through the judgment and award dated 23.04.2004 passed by the learned Tribunal together with oral as well as documentary evidence on record.

[5] It is not in dispute that in the accident, one person died and others received injuries. This Court has also gone through the F.I.R. and panchnama. No doubt complaint is lodged by the driver of the S.T.Bus, however, the driver of the S.T.Bus after accident took the injured persons to the hospital. While the driver of the truck ran away on the spot, this conduct speaks volume about the negligence on the part of the driver of the truck. One of the injured witness – Kanialal Shantilal who was travelling in the S.T.Bus and who was serving in G.E.Board has stated on oath that both the vehicles were going in speed. But in cross examination this witness has specifically stated because of negligence on the part of the driver of the truck (dumper), accident occurred. Tribunal has discussed evidence in great detail more, particularly, F.I.R and panchnama and oral evidence and rightly came to the conclusion that driver of the truck (dumper) is negligent to the extent of 75% and driver of the S.T. bus negligent to the extent of 25%. This Court has gone through the decision of Hon'ble Apex Court in the case of **Sarla Verma Vs. Delhi Transport Corporation** reported in (2009) 6 SSC 121.

[6] Considering the evidence on record and ratio laid down by the Hon'ble Supreme Court in the case of *Sarla Verma (supra)*, in opinion of this Court, no error is committed by the Tribunal while passing the award. So far as quantum is also concerned, Tribunal has passed just and proper award and no interference is called for in the findings arrived by the Tribunal.

[7] In view of above, the first appeal deserves to be dismissed and accordingly, it is dismissed. The amount, if any, deposited by the appellants herein with the Registry of this Court, may be transmitted to the concerned Tribunal immediately. Record and Proceedings, if any, be sent to the concerned Tribunal forthwith.

As the appeals are dismissed, no order in Civil Applications and same are dismissed.

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

*satish*