

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL NO. 5383 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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MORARBHAI HARIBHAI VASAVA & 1....Appellant(s)

Versus

BABUBHAI DHIRUBHAI KHANT (DELETED) & 4....Respondent(s)

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Appearance:

MS SNEHA A JOSHI, ADVOCATE for the Appellant(s) No. 1 - 2.4

MR EKANT G AHUJA, ADVOCATE for the Respondent(s) No. 4

MR KK NAIR for Respondent No.3

RULE SERVED for the Respondent(s) No. 2

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CORAM: HONOURABLE MR.JUSTICE M.D. SHAH

Date : 10/05/2013

ORAL JUDGMENT

1. This appeal has been filed by the claimants, who are parents of the deceased, under Sec.173 of the Motor Vehicles Act, 1988 being aggrieved and dissatisfied with the apportionment of compensation awarded by the Motor Accidents Claims Tribunal (Main), Gandhinagar, in MACP No.196 of 2002 vide judgment and award dated 29-6-2007 whereby the Tribunal has awarded compensation of Rs.2,15,000/- with interest at the rate of 7.5% per annum to be paid by the original opponent Nos.2 and 3 to the original claimants(present appellants) to the extent of 50% and to the original opponent No.4- wife of the deceased to the extent of 50% from the date of petition till realisation and with proportionate cost.
2. The claim petition was filed by the parents of the deceased Rameshbhai Morarbhai Vasava claiming Rs.2,00,000/- as compensation for his death which is alleged to have been caused in an accident which took place on 12-4-1991 at about 6.00 a.m. when the truck No.GJ-7T-6675 in which the deceased was sitting as a conductor turned turtle causing fatal injuries to the deceased. Upon issuance of summons and after hearing the learned counsel for the parties and considering

oral as well as documentary evidence on record, the Tribunal awarded compensation to the extent of 50% to the parents of the deceased (original claimants) and 50% to the wife of the deceased (original opponent No.4) . Being aggrieved with the said apportionment, present appeal has been preferred by the original claimants.

3. I have heard learned advocates, Ms.Joshi, for the appellants, Mr.Ekant G.Ahuja for the respondent No.4 and Mr.K.K.Nair for the respondent No.3. I have also taken into consideration the relevant oral as well as documentary evidence such as FIR, panchnama and other evidence.
4. It is submitted by Ms.Sneha Joshi that wife of the deceased got remarried and, therefore, present appellants and the heirs of the deceased Sonaben namely 2/1 to 2/4 are entitled to get more share of compensation.
5. Considering the facts and circumstances of the case, this Court is of the opinion that if appeal is partly allowed and amount awarded by the Tribunal is apportioned between the appellants and the heirs of the deceased Sonaben namely 2/1 to 2/4 and wife of the deceased in the ratio of 58% and 42% respectively,

ends of justice will be met.

6. Thus, this appeal is partly allowed. The appellants and the heirs of the deceased Sonaben namely 2/1 to 2/4 are entitled to 58% of the compensation awarded by the Tribunal while the wife-respondent No.4 is entitled to 42% of the compensation awarded by the Tribunal. The impugned judgment and award is modified only to the aforesaid extent. The remaining part of the judgment and award would remain unaltered.
7. Office is directed to send back the records and proceedings, if any, forthwith.
8. Direct service is permitted.

(M.D.SHAH, J.)

RADHAN