

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****FIRST APPEAL NO. 2519 of 2008****With****FIRST APPEAL NO. 2520 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE THE CHIEF JUSTICE  
MR. BHASKAR BHATTACHARYA**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
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 ?	No
5	Whether it is to be circulated to the civil judge ?	No
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VIJAYKUMAR VISHNURAM [DECD. THRO.HIS HEIRS]....Appellant(s)

Versus

AHER MERUBHAI JADAVBHAI RAM &amp; 3....Defendant(s)

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Appearance:

MR AMAR D MITHANI, ADVOCATE for the Appellant(s) No. 1 - 1.2

MS KARUNA V RAHEVAR, ADVOCATE for the Defendant(s) No. 4

RULE SERVED for the Defendant(s) No. 1 - 3

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**CORAM: HONOURABLE THE CHIEF JUSTICE MR.  
BHASKAR BHATTACHARYA**

**Date : 28/08/2014**

**COMMON ORAL JUDGMENT**

These two First Appeals under section 173 of the Motor Vehicles Act were heard together as in these two appeals a common award passed by the Tribunal below disposing of two motor accident claim applications has been challenged.

The following facts are not in dispute:-

The two victims, who were brothers, were travelling in a motorcycle owned by their father. According to the claimants, who are the father and the sister of the victims, while they were travelling on the said motorcycle, a tractor and attached trailer coming from opposite direction had hit the said motorcycle resulting in the death of both the brothers. Consequently, two claim-applications were filed claiming compensation.

In spite of service of summons, the owners of the tractor and trailer as well as the driver did not contest the proceeding by filing written statement but it was the insurer of the said tractor and trailer who filed written statement denying involvement of the tractor and trailer in the said accident. In the written statement filed by the Insurance company, it has relied upon the statement made by the driver of the tractor to the police that the tractor was not involved in

the accident but subsequently, the police and the applicants have wrongly indicted the driver of the vehicle.

At the time of hearing, the Insurance Company, however, examined the driver of the tractor. According to the statement made by the said witness, his father is the owner of the tractor and his uncle is the owner of the trailer and on the date of the accident, the tractor was going from Una to Sanjavapur after filling stones and when the tractor reached near Nathej village, the accident had already taken place and the police persons were present at the site. The victim has also given the name of the persons who were present there. According to the said driver, the police persons had stopped the tractor and told him to help them to place the affected person to rickshaw. Accordingly, the driver along with the labourers put the injured person in the auto rickshaw and they left taking their tractor. According to the said driver, after about 30 to 35 days, the police called him and wrongly implicated them in the accident.

It further appears from the record that initially in the FIR there was no allegation against the tractor but allegation was made against the driver of the motorcycle. The father of the victims in his deposition did not disclose whether his sons had any driving licence nor was any such driving licence produced. This Court has been given to understand that the criminal case is still pending.

In the aforesaid facts, in my opinion, it is a fit case for remanding the matter to the Tribunal below for giving further opportunity to the claimants to examine the concerned police official, who after investigation, implicated the driver of the tractor inasmuch as in the FIR the name of the driver of the tractor was not mentioned. The claimants should also be given opportunity to lead other evidence if they want to give in support of their case that the tractor in question was really involved in the accident.

I, thus, set aside the award impugned and remand the matter to the Tribunal below for fresh decision on the basis of evidence on record as well as the evidence which will be further given by the parties. It is needless to mention that the Insurance Company as well as the driver and owner of the vehicle will also be entitled to give evidence in rebuttal. Since the matter is pending from 1999, the Tribunal is directed to conclude the further hearing within six months from the date of communication of this judgment.

The appeals are, thus, allowed to the aforesaid extent.

Lower Court record be sent back to the Tribunal forthwith.

**(BHASKAR BHATTACHARYA, CJ.)**

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