

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****FIRST APPEAL NO. 5345 of 2007****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 ?
- 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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A.M.T.S. &amp; 1....Appellant(s)

Versus

MINAKSHIBEN WD/O. GHANSHYAMBHAI PARSOTTAMDAS THAKKAR &  
2....Defendant(s)

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Appearance:

MR SATYAM Y CHHAYA, ADVOCATE for the Appellant(s) No. 1 - 2

MR RC KAKKAD, ADVOCATE for the Defendant(s) No. 1 - 3

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

**Date : 28/08/2014****ORAL JUDGMENT**

1. This appeal under section 173 of the Motor Vehicles Act is at the instance of the appellant - owner of the offending vehicle in a proceedings under section 166 of the Motor Vehicle Act and is directed against the award dated 15<sup>th</sup> November, 2006 passed by the Presiding Officer, Fast Track Court No.2, Ahmedabad (Rural) in Motor Accident Claim Petition No.401 of 2000 thereby awarding a sum of Rs.2,63,000/- with interest at the rate of 7.5% *per annum* from the date of filing of the application till realization.

2. It appears from the record that the accident occurred on 19<sup>th</sup> February, 2000. According to the claim application, when the victim was crossing the road, a bus of route number 36 of Ahmedabad Municipal Transport Service (A.M.T.S.) came in a rash and negligent manner and had dashed the victim and thereafter, fled away. The victim died, as a result of said accident, in the hospital. A complaint was lodged by the elder brother of the victim and on the basis of such complaint, a criminal case was initiated against the driver.

3. According to the claim application, the income of the victim was Rs.5000/- a month and he used to work under two different employers on part time basis. The deceased left his wife and two children. Consequently, the total amount of Rs.7,50,000/- was claimed as compensation.

4. Respondent no.2 – owner of the vehicle filed written statement thereby denying the material

allegations made in the application for the compensation and specific case of respondent no.2 was that the bus started from depot at 11.20 and could not reach the place of accident as alleged in the claim application and such fact indicates that the bus was not involved in the accident.

5. At the time of hearing, the widow of the victim alone gave evidence in support of the claim application, whereas the driver of the offending bus gave evidence controverting the allegations.

6. In the deposition, the driver admitted that he was discharging his duty as a driver in the bus of route no.36 from Sarangpur to Sarkhej of the Ahmedabad Municipal Transport Service on 19<sup>th</sup> February, 2000. But according to him, the bus left at 11.20 and thus, it was not possible to reach G.B.Shah College at 11.30. In his deposition, he further stated that although he remembered that he was discharging his duty as driver of route no.36, but he did not remember the number of the said bus. He further admitted that the complaint was lodged against him.

7. From the evidence on record, it further appears that inspite of specific case made out by the owner of the bus that the bus started depot at 11.20, for the reasons best known to it, no evidence was adduced in support of said allegation by production of documentary evidence. In spite of having possession of the best evidence to prove case that it was impossible for the bus in question to be

involved in the accident at the relevant time, the owner did not produce such documents.

8. In my opinion, in the fact of the present case, the fact that the victim died in the road accident having been well proved, the Tribunal has rightly drawn adverse inference against the owner of the bus. I, thus, affirm the said finding of the Tribunal below that the concerned bus was involved in the accident.

9. The next question is whether the driver was responsible for the death of the victim in view of the negligence. It appears that the victim was on the road while crossing the same at about 11.20 and at that point of time, he was dashed by the bus. Such being the position, the driver must have to be held to be negligent in not applying the brake in time, even if we assume for the sake of argument that there was some negligence on the part of the victim. Be that as it may, in the case before us, the driver having totally denied the accident and such defence having been found to be false, there is no reason to set aside the finding of the Tribunal as regards 100% negligence of the driver of the vehicle.

10. The next question is about quantum. It appears that the victim used to earn Rs.5000/- a month, the Tribunal below has assessed the amount to be Rs.2000/-. The accident having occurred in the year 2000 and the victim being 35 years with wife and two children, the finding arrived by the Tribunal about the income cannot be said to unreasonable. On the other hand, it was a fit

case for considering the income to be atleast Rs.3000/- but as the application for condonation of delay in filing cross - objection has been rejected by a learned Single Judge of this Court, there is no scope of enhancement of the amount in this appeal filed by the owner of the vehicle.

11. It further appears that the Tribunal below has applied multiplier of 15 though according to the decision of the Hon'ble Supreme Court in the case of **Sarla Verma v/s. Delhi Transport Corporation** reported in (2009) 6 SCC 121, it should be 16 and at the same time the prospective income of the victim has not been taken note of. I have already pointed out that there being no cross objection or separate appeal at the instance of the claimants in this appeal, there is no scope of enhancing the compensation. At any rate, there is no question of reducing the amount of compensation at the instance of the owner of the vehicle in the facts of the present case.

12. I, thus, find no reason to interfere with the award impugned. The appeal is dismissed. No order as to costs.

13. In view of the fact that both the minor children have attained major, the Tribunal is directed to release the amount in favour of the claimants after expiry of one month from today.

**(BHASKAR BHATTACHARYA, CJ.)**

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