

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****FIRST APPEAL NO. 263 of 1994****With****FIRST APPEAL NO. 2585 of 1993****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI**

=====

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 or any order made thereunder ?	

=====

**JAWANSINH BHAVANSINH RAJPUT DECD.THROUGH THE****LRS....Appellant(s)****Versus****AMARATLAL VIRJIBHAI NINAMA & 2....Defendant(s)**

=====

**Appearance:****MR JA ADESHRA, ADVOCATE for the Appellant(s) No. 1.1 - 1.5****DELETED for the Defendant(s) No. 1****MR DHAWAN JAYSWAL, ASST GOVERNMENT PLEADER for the Defendant(s) No. 2****MR SUNIL B PARIKH, ADVOCATE for the Defendant(s) No. 3**

=====

**CORAM: HONOURABLE MR.JUSTICE KS JHAVERI**

**Date : 31/07/2015**

**ORAL JUDGMENT**

1. The appellants herein have challenged the award dated 08.02.1993 passed by the Motor Accident Claims Tribunal No. IV (Main), Ahmedabad in Motor Accident Claims Petition No. 217 of 1986 whereby the Tribunal awarded Rs. 66,348/- by way of compensation to the original claimants along with 12% interest.

1.1 First Appeal No. 263 of 1994 was initially filed by the original claimant and thereafter upon his death, legal heirs were brought on record. The claim in First Appeal No. 263 of 1994 is for additional compensation of Rs. 83,652/- together with interest and costs at 15% interest per annum.

1.2 Similarly, First Appeal No. 2585 of 1993 has been filed by original respondent no. 2 challenging the award so far as the Tribunal awarded compensation by holding contributory negligence on the part of original claimant and respondent no. 2 to the extent of 40% and 60% respectively.

2. It is the case of the claimants that while the original claimant – now deceased Javansinh Rajput was riding his motorcycle bearing registration no. GTF 4950 and proceeding towards his house, a Mobile Van bearing registration no. GAO 2735 driven by the original opponent no. 1 in a rash and negligent manner hit the original claimant as a result of which he sustained serious injuries. The original claimant therefore filed claim petition for compensation to the tune of Rs.

1,50,000/-. The Tribunal after hearing the parties passed the aforesaid award.

3. Mr. Adeshara, learned advocate appearing for the legal heirs of original claimant submitted that the Tribunal erred in quantifying the award and in holding the original claimant negligent to the extent of 40%. He submitted that the Tribunal has erred in assessing the future economic loss as well as the amount paid under the head of attendant charges.

4. Mr. Dhawan Jayswal, learned AGP appearing for original respondent no. 1 submitted that the Tribunal ought to have held the original claimant guilty of the accident instead of attributing only 40% negligence. He has drawn the attention of this Court to the documentary evidence relied upon by the Tribunal and submitted that the original claimant was not eligible for any compensation.

5. The Tribunal has gone into the evidence in detail and has come to the conclusion that the accident in question happened because of the negligence of the driver of the Van and the original claimant who was driving the motorcycle. The Tribunal has considered the panchnama at Ex. 27, the deposition of the original claimant at Ex. 65, the deposition of eye witness at Ex. 72 and the Regulations 6 and 7 of Schedule 10 of the Motor Vehicles Act, 1939 and has come to the conclusion that had both the drivers taken enough care the accident could have been prevented. The drivers of both the vehicles ought to have taken care particularly at the place of accident which was a cross road. I am in complete agreement with the reasonings adopted and findings arrived at by the

Tribunal. The Tribunal has rightly assessed the contributory negligence on the part of the mobile van driver and bike driver at 60%-40%. The amount of compensation awarded is also just and proper. Nothing is pointed to take a contrary view. Therefore, this court does not see any reason for causing interference.

6. In the premises aforesaid, appeals are dismissed. No costs.

**(K.S.JHAVERI, J.)**

divya