

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL NO. 2098 of 2004****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI**

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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

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HEIRS OF DECD.TEJABHAI RUPABHAI & 1....Appellant(s)**Versus****RASULKHAN RAMJIBHAI VARAHIWALA & 2....Defendant(s)**

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Appearance:**MS PAURAMIB SHETH, ADVOCATE for the Appellant(s) No. 1 - 1.2****MR PALAK H THAKKAR, ADVOCATE for the Defendant(s) No. 3****RULE SERVED for the Defendant(s) No. 2****SERVED BY AFFIX(N) for the Defendant(s) No. 1**

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CORAM: HONOURABLE MR.JUSTICE KS JHAVERI**Date : 31/07/2015****ORAL JUDGMENT**

1. Feeling aggrieved and dissatisfied by the impugned judgment

and award dated 26/02/2002 passed by learned Motor Accident Claims Tribunal (Auxiliary) at Surendranagar (*hereinafter referred to as “the learned Tribunal” for brevity*) in Motor Accident Claim Petition No. 810 of 1993 (*hereinafter referred to as “claim petition” for brevity*) by which, the learned Tribunal has awarded a total sum of Rs.67,500/- with cumulative interest @ 9% *per annum* from the date of claim petition till realization to the original claimants towards compensation for the death of the deceased, the appellants herein – original claimants have preferred the present first appeal for enhancement.

2. Facts leading to the present appeal in nutshell are that in a vehicular accident which took place on 11/05/1993 between the chhokado rickshaw bearing registration No. GJ-10-T-5048 in which the deceased was travelling and the truck bearing registration No. GJ-6-T-3378, the deceased died and therefore, the original claimants – parents of the deceased filed the claim petition before the learned Tribunal claiming compensation at Rs.1.5 lakhs against which, the learned Tribunal had arrived at a figure of Rs.75,000/- for compensation, however, since the driver, owner and the insurance company of the chhakado

rickshaw in which the deceased was travelling were not joined, and since the learned advocate for the claimants had no objection if 10% amount was reduced from the aforesaid amount, the Tribunal awarded Rs.67,500/- towards compensation.

3. Heard Ms. Paurami Sheth, learned advocate for the appellants – original claimants and Mr. Palak Thakkar, learned advocate for the respondent No. 3 - insurance company. Though served, none has put in appearance on behalf of respondent Nos. 1 and 2.

3.1 Ms. Sheth, learned advocate for the appellants, submitted that the learned Tribunal has considered the income of the deceased at Rs.1,000/- per month which is on a lower side and in any case, it should have been Rs.1,800/- per month and accordingly, after deducting the personal expenses of the deceased, the dependency ought to have been considered at Rs.600/- per month and yearly Rs.7,200/- and applying the multiplier of 18, the amount of compensation comes to Rs.1,29,600/- against which, the learned Tribunal has considered the dependency at Rs.67,200/- only. Further, the Tribunal has awarded Rs.5,000/- and Rs.3,000/- respectively under the heads of loss of estate and

the funeral charges, which are also on lower side and the learned Tribunal ought to have awarded Rs.50,000/- and Rs.5,000/- respective under the said heads. By making above submissions, it is requested to allow the present appeal and modify the impugned judgment and award of the learned Tribunal to the said extent. No further submissions have been made by the learned advocate appearing for the appellants.

3.2 Whereas, Mr. Thakkar, learned advocate for the respondent No. 3 - insurance company, submitted that the impugned judgment and award passed by the learned Tribunal being just and proper, no interference is called for by this Court and the present appeal may be dismissed.

4. Heard the learned advocates appearing for the parties at length and perused the impugned judgment and award rendered by the learned Tribunal as well as the documentary evidence on record and considering the same it appears that the dependency arrived at by the learned Tribunal is on a lower side and considering the same at Rs.600/- per month as aforesaid, yearly it would come to Rs.7,200/- and applying the multiplier of 18, the claimants shall be entitled to Rs.1,29,600/- under the head of loss of

dependency. Further, in the considered opinion of this Court, the learned Tribunal has awarded lesser amounts under the heads of loss of estate and the funeral charges, and accordingly, we deem it proper to award Rs.50,000/- under the head of loss of estate and Rs.5,000/- under the head of funeral charges. Accordingly, the claimants are entitled to a total some of Rs.1,84,600/- towards compensation. The rest of the award passed by the learned Tribunal is not required to be interfered with and as such, for which, no grievance is made by the learned advocate appearing for the appellants.

5. In view of the above and for the reasons stated above, the present appeal succeeds and the impugned judgment and award is hereby modified to the aforesaid extent and it is held that the original claimants are entitled to a total sum of Rs.1,84,600/- together with interest @ 9% *per annum* on the aforesaid amount from the date of claim petition till realization. The Tribunal has granted Rs.75,000/- and the appeal is only for Rs.75,000/- and for additional amount of Rs.75,000/- 9% interest from the date of the appeal.

- 5.1 However, in the facts and circumstances of the case, no order as

to costs.

5.2 Registry is directed to return the R&P, if called for, to the concerned Tribunal forthwith.

[K. S. Jhaveri, J.]

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