

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL NO. 3898 of 2014**

With
CIVIL APPLICATION NO. 13482 of 2014
 In
FIRST APPEAL NO. 3898 of 2014

FOR APPROVAL AND SIGNATURE:**HONOURABLE MR.JUSTICE MOHINDER PAL**

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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 or any order made thereunder ?

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RELIANCE GENERAL INSURANCE COMPANY LIMITED....Appellant(s)

Versus

GIRISHBHAI SUKHABHAI CHAUDHARY & 4....Defendant(s)

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Appearance:

MR VIBHUTI NANAVATI, ADVOCATE for the Appellant(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE MOHINDER PAL

Date : 26/02/2015

ORAL JUDGMENT

1. This appeal against the award rendered by the Motor Accident Claims Tribunal (Main), Surat on 5.7.2014 in MAC

Petition No.49 of 2010; wherein, the Tribunal has awarded compensation of Rs.4,36,500/- on account of death of one Jayeshbhai Jayantibhai.

2. Brief facts of this case are that on 8.10.2009, the deceased was traveling in a vehicle bearing Registration No.GJ-5-AT-1336 and was serving as a Cleaner in the said vehicle. When this vehicle reached near the place of accident i.e. on the road near Bus Stand of Village: Jetpor, ahead of Bardoli, on National Highway No.6, at that time, one Truck No.GJ-5-YY-7575 came from the opposite direction. The truck was being driven by its driver at full speed in rash and negligent manner. The truck came on wrong side of the road and dashed heavily against van, as a result of which, two occupants of the van received injuries and died while the driver also received injuries on his face and other parts of the body. Immediately, service of 108 was requisitioned. The driver of van was taken out from the vehicle by the police personnel. However, driver of the truck managed to ran away from the spot leaving behind the truck. Police conducted the investigation and thereafter, case under Sections 279, 338, 304A of Indian Penal Code and 177 and 184 of M.V.Act was registered against the driver of the truck. In proceedings before the Tribunal, claimant No.1, Jayantilal B.Vasava put an appearance. The Tribunal taking into account documentary evidence and oral evidence adduced by the witnesses, awarded aforementioned compensation. Aggrieved from this award, the Insurance Company has come in the appeal.

3. While arguing on behalf of Insurance Company, learned counsel has raised two fold arguments. According to him, it was a case of contributory negligence. In support of this submission, he has referred to the proceedings of the police; wherein, it has been found that front portion of the truck involved in the accident was having dent and was damaged. Secondly, it has been submitted that there is no issue regarding negligence framed by the Tribunal and as such, award passed by the Tribunal requires to be reversed.
4. I have heard learned counsel for the appellant-Insurance Company.
5. Accident in question is not in dispute. It is also not in dispute that two persons have lost their lives because of this accident. The only contention raised on behalf of the appellant is that, it is a case of contributory negligence. However, there is no evidence coming forth on behalf of the appellant in this regard except panchnama. Perusal of the panchnama, it no where states that it was a case of contributory negligence rather a criminal case under Sections 279, 338, 304A of Indian Penal Code and 177 and 184 of M.V.Act has been registered against the driver of the truck.
6. Another important aspect which has been emerged in this case is that the driver of the truck ran away

from the place of occurrence. It was the first duty of the driver to save the driver of the van and to take care of the persons who later on died because of the accident. Rather than doing any help to the injured or to the deceased, the driver has chosen to run away from the spot. This fact goes against the appellant. Otherwise also, driver of the offending vehicle was the right person to depose in faovur of Insurance Company in case it was case of contributory negligence. For the reasons best known to the respondents, none of the witnesses of the respondents has been examined to prove a case of contributory negligence.

7. In absence of any evidence regarding contributory negligence, the Tribunal has not committed any error in holding that driver of the offending vehicle was negligent in causing death of two innocent lives.
8. Secondly, it was argued that there was no issue regarding negligence. It is joint duty of both the lawyers and Court to frame issues on basis of pleadings. But if no issue is framed, parties having dispute on facts can always request the Court to frame particular issue. Both lawyers have chosen not to point out at the relevant time that such issue was necessary in this case. Once the lawyers themselves are found negligent in not bring it to the notice of Court that particular issue was necessary in appeal. Such point cannot be raised.

9. As a result of foregoing discussion, this appeal is being devoid of any merits and is dismissed at the stage of admission.

In view of dismissal of appeal, no order in civil application is passed and the same stands disposed of.

(MOHINDER PAL, J.)

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