

Gujarat High Court

National vs Jayashreeben on 28 January, 2010

Author: R.M.Doshit,&NbspHonourable Mr.Justice K.M.Thaker,&Nbsp
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IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST
APPEAL No. 88 of 2010

With

CIVIL
APPLICATION No. 677 of 2010

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NATIONAL
INSURANCE COMPANY - Appellant(s)

Versus

JAYASHREEBEN
WD/O MANHARBHAI GORDHANBHAI PATEL & 5 - Defendant(s)

=====

Appearance
:
MR
DAKSHESH MEHTA
for
Appellant
None for
Defendants

=====

CORAM

:

HONOURABLE

MS. JUSTICE R.M.DOSHIT

and

HONOURABLE

MR.JUSTICE K.M.THAKER 28th January 2010

ORAL
ORDER

(Per : HONOURABLE MS. JUSTICE R.M.DOSHIT) This Appeal preferred under Section 173 of the Motor Vehicles Act arises from the judgment and order dated 9th October 2009 passed by the Motor Accident Claims Tribunal, Panchmahals, Godhara in Motor Accident Claim Petition No. 180 of 1998.

The appellant before this Court is the Insurance Company, insurer of the offending vehicle-Truck bearing registration No. GJ-17-X-3738. On 5th January 1998, at around 2.30pm., the offending truck had an head-on collision with the oncoming scooter No. GCF 9965 on Anand Sarasa road. In the said accident, scooter driver-one Manharlal, aged about 42 years, lost his life. His widow and children lodged above referred claim petition no. 180 of 1998 for compensation in the sum of Rs. 33,00,000/=.

The claim petition was contested by the appellant-Insurance Company. The Tribunal below has awarded compensation in the sum of Rs. 4,15,000/= and interest @ 8% per annum and the cost.

Feeling aggrieved, the opponent-Insurer of the offending truck has preferred the present Appeal. Learned advocate Mr. Daxesh Mehta has appeared for the appellant. He has challenged the impugned award on the sole ground that the Tribunal below has not considered the factum of contributory negligence. Mr. Mehta has submitted that considering that the accident occurred in a broad day light, in the middle of 22' wide road, fifty per cent of the negligence ought to have been attributed to the scooter driver-the deceased-Manharlal. Mr. Mehta has relied upon the evidence of the eye-witness one Kalpesh Ambalal Patel.

We have perused the record. The panchnama Exh.34 of the scene of accident reveals that the accident occurred in the middle of the road, slightly on the right side i.e., the wrong side of the truck. Considering the position of the vehicles after the accident, the 10' long brake marks of the truck, we do not agree that 50% of the negligence ought to be attributed to the scooter driver the deceased. May be, the scooter driver was marginally negligent but such negligence is too insignificant to be considered in the Appeal before us.

For the aforesaid reasons, the Appeal is dismissed in limine.

Civil Application stands disposed of.

{Ms.

R.M Doshit, J.} {K.M Thaker, J.} Prakash* Top