

**(2016) 03 GUJ CK 0135**  
**In the Gujarat High Court**

**Case No :** First Appeal No. 303 of 2016 with Civil Application No. 1447 of 2016.

Divisional Controller

APPELLANT

Vs

Dahiben Babubhai Waghri and Others

RESPONDENT

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**Date of Decision :** 17-03-2016

**Acts Referred:**

Employees Compensation Act, 1923 — Section 3, 4A

**Citation :** (2016) 149 FLR 466 : (2017) 2 LLN 435

**Hon'ble Judges :** S.G. Shah, J.

**Bench :** Single Bench

**Advocate :** Hardik C. Rawal, Advocate, for the Appellant; Yogendra Thakore, Advocate, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

S.G. Shah, J. (Oral) - Heard learned advocate Mr. Hardik Rawal for the appellant and learned advocate Mr. Yogendra Thakore for the defendants. Considering the facts and circumstances, when there is no substance in the appeal, it needs to be disposed of at such admission stage itself. Hence, admit. Learned advocate Mr. Yogendra Thakore waives notice of admission for the respondents.

2. The appellant is Gujarat State Road Transport Corporation (?GSRTC, for short), whereas respondents are legal heirs of driver of the said GSRTC, who met with an accident during the course of his employment as driver on 17.10.2003. Since the employee received injuries during the course of his employment and thereafter, when he died because of his injuries during his treatment, his legal heirs have preferred an application under the Employee's Compensation Act before the Ex-officio Commissioner for the Employees' Compensation and Labour Judge of Mehsana. The Commissioner has by impugned judgment and award dated 30.12.2014 in W.C. (Fatal) Case No.63 of 2008 awarded Rs. 3,26,140/- towards compensation with 12% interest, but did not award any amount towards penalty for not making payment within statutory period after the accident by the employer - G.S.R.T.C. The main grievance of the appellant - G.S.R.T.C. in this

appeal is two fold i.e. (1) The Commissioner has failed in considering that victim was in service of the G.S.R.T.C. and died because of accidental injuries and (2) award of interest @ 12% is on higher side.

3. So far as first ground is concerned, there is no substance in such ground for the simple reason that it is undisputed fact that victim - Babubhai Ramabhai was serving as a driver with the G.S.R.T.C. and it is also undisputed fact that he met with an accident on 16.6.2003 and received serious injuries on his spinal cord. However, an attempt was made by the appellant - G.S.R.T.C. To purport that the bus was dragged into the roadside ditch because the spring of the bus broke-down and thereupon, driver could not control the bus and therefore, he was negligent in his duties and that though incident had taken place on 16.6.2003, since victim died only on 17.10.2003, it is contended that there is no evidence to prove that death was because of accidental injury only.

4. It is sufficient to record herein that the liability to pay compensation under the Employee's Compensation Act is absolute when employee receives injuries during the course of his employment irrespective of his negligence. The provisions of law being Section 3 of the Employees' Compensation Act, 1923 is clear when it provides that if any personal injury is caused to employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II of the Act. Therefore, what is required for entitlement of compensation under the Act is only three things i.e. (1) personal injury, (2) accident and (3) arising of accident out of and in the course of employment. Therefore, when accident had occurred because of breaking of spring of the vehicle, when it was plying on road, it is certain that victim has received injuries during the course of his employment. So far as injuries are concerned, since there was serious spinal cord injuries, there is no reason to hold that there was no personal injury. Similarly, when documentary evidence in the form of certificate by Government Hospital, Visnagar and Civil Hospital, Mehsana as well as all other medical papers on record confirms that death of the victim was because of the injuries sustained by him in the accident and hence, this is a clear case wherein employer can certainly be held responsible and liable to pay compensation to the victim. So far as the evidence regarding service etc. is concerned, there is no dispute that victim was serving as driver and received injuries while driving the vehicle, when his salary slip is produced on record.

5. So far as rate of interest is concerned, though it can be said that 12% is on higher side, the fact remains that when appellant - employer has failed to deposit the amount of compensation as per their statutory liability to deposit it within 30 days of incident, and when Commissioner has not awarded any penalty for non-depositing the amount of compensation as per the provisions of law, I do not see any reason or substance so as to modify the interest part also.

6. In view of above facts and circumstances, I do not find any substance in the appeal so as to interfere and modify the impugned award. Therefore, the appeal

is summarily dismissed.

7. In view of the dismissal of the main First Appeal, the Civil Application also does not survive and stands disposed of accordingly.