IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 3207 of 2013

With
R/CROSS OBJECTION NO. 21 of 2015
In
R/FIRST APPEAL NO. 3207 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA Sd/-

and
HONOURABLE MR. JUSTICE R. T. VACHHANI Sd/-

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Approved for Reporting	Yes	No
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STATE OF GUJARAT & ORS.
Versus
JYOTIKABEN W-O MOHANLAL CHUNILAL PRAJAPATI & ORS.

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Appearance:
MS SURBHI BHATI, AGP for the Appellant(s) No. 1,2,3
DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESTENTATIVES for the Defendant(s) No. 9
MR ANKIT SHAH(6371) for the Defendant(s) No. 1,2,3,4
MR.JAY S SHAH(7244) for the Defendant(s) No. 1,2,3,4
RULE SERVED for the Defendant(s) No. 10,11
SWAPNESHWAR GOUTAM(9051) WITH MR RAHIL P. JOSHI, ADVOCATE for the Defendant(s) No. 5,6,7,8

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 16/09/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. This first appeal, under Section 96 of the Code of Civil Procedure, at the instance of original defendant no.1 and 2 – State of Gujarat and is directed against the judgment and decree dated 31.01.2013, passed by the

learned Senior Civil Judge, Surendranagar in Special Civil Suit No.9 of 2008, whereby the suit filed by the respondents no.1 to 4 – original plaintiffs, for compensation on account of death of Mohanlal Chunilal Prajapati, was decreed and the appellant–defendant-State was directed to pay a sum of Rs.12,79,372/- with interest @ 9% per annum from the date of filing of suit, till realization besides cost.

2. After filing of the first appeal, respondents no.1 to 4 – original plaintiffs have filed their cross-objections being Cross-objection No.21 of 2025 under Order 41 Rule 22 of the CPC, inter alia, stating that the amount of compensation having not been properly assessed and the amount so awarded is not just and reasonable amount.

3. For convenience, the parties shall be referred to as they were before the learned trial court.

4. Facts of the case:

4.1 The case of the plaintiffs, in brief is that, on 30.05.2006, the deceased Mohanlal and his brother Hasmukh Chunilal had gone to the Office of Narmada Water Resources, Water Supply and Kalpasar Department at Village: Lakhtar, Dist: Surendranagar in connection with the inspection of scrap materials, as by way of public auction, the defendant no.2 and 3 intend to dispose of unserviceable machinery, vehicles, steels and spare parts. It is the case of the plaintiffs that, at the premises of the defendant, there was old gantry crane (hand operated lifting arrangement) and the said crane suddenly crashed from its position and fell upon the deceased and others, as a result, the deceased sustained spinal and chest injuries. He was taken to Viramgam Civil Hospital and

then, he was advised to take treatment at Higher Centre i.e. Ahmedabad Civil Hospital. There was a strike of the Doctors attached with the Civil Hospital. The deceased was then transferred and admitted at Samved Private Hospital and during the treatment, he died on the same day i.e. 30.05.2006 at about 5:40 p.m. It is the further case of the plaintiff that, on the same day, the incident reported as accidental death with Lakhtar Police Station. The deceased was cremated without the post-mortem. On 20.06.2006, again, the incident reported in the form of A.D. with Lakhtar Police Station. A written complaint addressed to D.S.P., Surendranagar was submitted on 07.12.2006 which was culminated into FIR on 18.01.2007.

It is further case of the plaintiffs that, at the place of incident, the old dilapidated gantry was lying unused and was under control, management and/or supervision of the defendant authority. The defendant authority and its officers were negligent in maintaining the old gantry and at the time of auction proceedings and/or inspection of the scraps, the persons who permitted to enter premises, were entitled to expect that the place will not contain a dangerous structure or equipment which is liable to collapse and cause injury, unless appropriate warning, isolation or other safety measures have been taken. In the facts of the present case, the gantry which was under control of the defendant authority, fell upon the deceased which itself shows the negligent act on the part of the defendants and therefore, for the alleged tortious acts, the defendants were liable for amount of compensation.

It is further case of the plaintiffs that, the deceased died at the age of 34 and he was hale and hearty. He did graduation in B.Sc. He was

working with Tej Vasan & Metal Stores and Uttam Metal Industries and was having other source of income from the Commodities Exchange interest etc. The deceased was regularly paying income tax and his future was bright and there was all prospects of increasing his income if the incident would not have occurred. The deceased was married having a minor son. The widow as well as the parents had lost love and affection of the deceased. On sad demise of the deceased, they had spent huge amount towards his treatment and also spent amount towards funeral expenses etc.

In such circumstances referred to above, the widow, minor son and parents being legal heirs and representatives instituted a civil suit to recover the amount of compensation to the tune of Rs.50 lakhs from the State as well as the Officers of the concerned Departments.

4.2 The defendants contested the suit and denied each and every averment made in the plaint as well as the act of negligence and the grounds raised in the plaint for compensation. It was inter alia, pleaded in the written statement filed at Exh.15 that, the deceased and his brother did not have participated in the tender process and they were not entitled to inspect the scraps lying at the place of incident. On the contrary, they trespassed the place of incident and unauthorizedly entered into the premises. On the aspect of incident, it was inter alia, stated that, there was huge crowd at the place and the deceased being a part of the crowd, did not heed the request of the officers concerned and sat on the vertical frames of the gantry, as a result, a horizontal beam supported by two upright frames, collapsed and fell upon the deceased and others. Thus, it is specifically contended that, the deceased himself had contributed to the

death and as such, the defendants were not responsible for the occurrence and there was no negligence attributable to the defendant authority. It was specifically stated that, due to delayed FIR and absence of post-mortem, would create a suspicion on the true facts of the incident and on this ground, no compensation can be awarded.

5. On the basis of pleadings, the learned trial court framed the following issues:

(i) Do the plaintiffs prove that deceased Mohanlal died due to injury sustained on account of falling of the gantry at the place of incident?

(ii) Do the plaintiffs prove that, the incident occurred due to negligence and carelessness of the defendants and lack of necessary precautions?

(iii) Do the plaintiffs been able to prove the income of the deceased? If yes, what was the annual income?

(iv) What amount of compensation and rate of interest the plaintiffs are entitled to get?

(v) Do the defendants prove that, the plaintiffs' claim is time barred?

(vi) Do the defendants prove that, the deceased himself was negligent and they are not responsible for the alleged incident?

(vii) Are the plaintiffs entitled to the relief sought?

(viii) What is the final order and decree?

6. The issues framed by the trial court referred to above came to be answered as under:

(i) In affirmative;
(ii) In affirmative;
(iii) Partly in affirmative;
(iv) As per the final order;
(v) In the negative;
(vi) In the negative;
(vii) Partly in affirmative;
(viii) As per final order.

7. In support of their case, the plaintiffs have examined, widow Jyotikaben at Exh.28, eye witness and brother of the deceased – Hasmukh Chunilal at Exh.99, Dr. Mitesh Shah at Exh.116. The plaintiffs have produced before the trial court the deposition of Dr. Bharat Patel recorded in Criminal Case at Exh.128. The plaintiffs have relied upon the voluminous documents. The relevant documents proved and produced at Exh.59 to 61, 83 to 86, which are in the form of criminal case proceedings, FIR, death certificate, medical certificate and ITR Returns.

In order to discharge their burden, the defendants have examined Shailesh K. Patel (Defendant no.5 at Exh.133), eye witness Laljibhai Jethva at Exh.149, Karimkhan Battumiya at Exh.152 and defendant no.8, Rameshwar Taide at Exh.153.

8. The trial court after hearing the parties and upon appreciation of the evidence, held that, the defendants are liable for the death of the deceased as the doctrine of *Res ipsa loquitur* is applicable to the facts of the present case and the gantry which has caused the injury, was under the ownership and control of the defendants and the defendants have failed to maintain the gantry with its stability and safety. On the aspect of contributory negligence of the deceased is concerned, the defendants failed to prove the contributory negligence attributable on the part of the deceased. The trial court on the aspect of limitation, held and observed that, the suit filed within a period of two years from the date of cause of action and limitation governed by Article 82 of the Limitation Act. The trial court while awarding the compensation, had taken into account the annual income of the deceased of Rs.1,18,000/- and after deducting 1/3rd and applying the multiplier of 16, Rs.12,61,872/- was the amount of compensation awarded. The trial court relying on the case of ***Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [2010 (1) GLR 17]***, awarded Rs.5,000/- towards loss to the estate, Rs.2500 towards funeral expenses and Rs.10,000/- under the head of loss of consortium being awarded. In all, the amount of Rs.12,79,372/- with the interest @ 9% being directed to be paid by the State – defendant nos.1 to 3. The claim of the parents has not been considered and the suit qua them, came to be dismissed.

9. In such circumstances, being aggrieved and dissatisfied with the impugned judgment and decree, the State is before this Court by preferring the captioned appeal.

10. Ms. Surbhi Bhati, learned Additional Government Pleader, while assailing the impugned judgment and decree, made the following submissions:

(i) That, the impugned judgment and decree are bad in law and against the settled principle of law, as the trial court failed to appreciate the admitted facts that, the deceased was neither invitee, nor had authority to enter into premises, as he individually did not have participated in the auction proceedings and thus, he was simply a trespasser and in that case, there was no duty of care towards the trespasser and having regard to the peculiar facts of the case, there was no willful acts or deliberate intention of causing harm to the deceased. The evidence on record produced by the State before the trial court shows that, the deceased did not have participated in the tender process and thus, as such there is no contractual relation to permit him to enter into premises for the purpose of inspection of the scraps. Thus, therefore, the trial court miserably failed to appreciate that the defendant authority being an occupier of the place of incident, did not owe any duty of care to a trespasser. The deceased being a trespasser, had entered the property at his own risk and the occupier owes no duty to take any responsibility for his protection and in absence of any willful acts, the State and its departments cannot held liable for the death of the deceased.

(ii) That the entire incident create suspicion as after the incident,

the deceased was taken to Government Hospital at Viramgam, where inspite of his consciousness he did not disclose the incident to the doctor in form of history. On the contrary, the history of fall injury being noted by the Doctor - Mitesh Shah Exh. 116. The brother of the deceased failed to lodge a complaint on the same day i.e. 30.05.2006 and same was registered merely 6 months after the incident. The postmortem to ascertain the cause of death was not undertaken at the Government Hospital. There is sufficient evidence to show that on the day of incident, despite of strike of the doctors, the postmortem of the other dead bodies was being conducted by the doctors of the Government Hospital. The brother and other family members of the deceased were prosecuted for not conducting the postmortem. The officers of the department who have been joined as defendants are acquitted by the Criminal Court for the offence under Section 304A of the IPC, which shows that, merely the incident occurred within the premises of the State Government, the defendants cannot be held liable to the alleged incident and under such circumstances, the principle of *Res ipsa loquitur* cannot be applicable to the case of the present case.

(iii) That the suit itself is time barred as for the incident dated 30.05.2006, the suit was instituted on 08.02.2008 i.e. after delay of 2 years. The trial Court failed to appreciate this aspect while observing that the suit is filed within limitation.

(iv) That the trial Court while deciding the issue of contributory negligence, discarded the convincing and satisfactory evidence led by the defendants. The witnesses Exh. 133, 149 and 152 have categorically stated that the deceased and others despite of warning, sat on the support pipe of the gantry. The gantry was lying not at the inspection place but it was located from 200 feet away from the site. Thus, the deceased himself was responsible for the incident. However, the trial Court without any justification, discarded the cogent and acceptable evidence on the aspect of negligence of the deceased and therefore, having regard to the conduct of the deceased, the defendants cannot be held liable for the death of the deceased.

(v) That the compensation having been awarded on higher side and having regard to the evidence on record, the multiplier and calculation of it, not in consonance with the record because, the income of the deceased suddenly rise in the year 2006 compare to 2005, without any justification, which shows that, for the purpose of getting higher amount, the evidence of income being prepared and produced without proving the actual income of the deceased.

(vi) So far as cross-objection filed by the original plaintiff for enhancement of the compensation is concerned, it was submitted that, when the income of the deceased is not proved in accordance with law, then, question does not arise to consider the future prospective income and other

compensation on different heads.

11. Mr. Swapneshwar Gautam with Mr. Rahil Joshi, learned advocates appearing for and on behalf of the officers of the Narmada and Water Resources Department, have adopted the submissions made by the learned AGP Ms. Bhati and in addition to that, they further added that the deceased himself was responsible for the incident as there was no need for him to enter into other division of the office, where the gentry was lying and to prove this fact, the officers, who were present have categorically deposed about the misdeeds of the crowd and conduct of the deceased and despite of warning given to the deceased, they did not heed the request and sat on the center pipe of the gentry and therefore, when deceased himself acted negligently, no liability can be fastened upon the defendants for the death of the deceased.

12. In such circumstances, the learned counsels appearing for the defendants have prayed that the trial Court while determining the issues, has not properly considered the oral as well as documentary evidence in its true prospective and therefore the conclusion arrived at are contrary to the evidence and settled principle of law on the aspect of tortious liability and therefore, it is prayed that the trial Court was not justified in holding the defendants liable for the death of the deceased and it was further prayed that, by setting aside the judgment and decree, the suit of the plaintiffs may be dismissed with costs.

13. On the other hand, Mr. Jay Shah, learned advocate appearing for and on behalf of the plaintiffs, has supported the judgment and decree and submitted that,:-

(1) That, the brother of the deceased had paid tender fees in the name of 'Tej Vasan & Metal Store' on 29.05.2006 (Exh. 50) and on the next day, the deceased along with his brother took visit for the inspection of scrape materials. Thus, the contention with regard to trespasser cannot be accepted, as being employee of the firm and brother of Hasmukh Chunilal Exh. 99, who had applied in the tender process, had all the right to enter to inspect the goods - subject matter of auction. Thus, the defendants being occupier of the premises, was under a general duty of care towards the visitors for which, there was a breach of duty on their part because legally they are duty bound to protect the visitors from unreasonable harm. Admittedly, the old gentry lying at the place in a dangerous condition and it was under the control, management and /or supervision of the defendant authority. During the course of auction proceedings, the old gentry suddenly fell from its position and came upon the deceased. The defense with regard to self-negligence of the deceased having not been proved and established, as all the witnessed examined by the defendants have admitted in cross-examination that, they have not personally seen the incident. The factum of incident was reported to higher officers of the defendant on the next day of incident, wherein, it was stated that, the uncontrolled crowd sat on the center pipe of the gentry, despite of warning. However, the fact remained that, no any complaint in this regard being filed with any authority. Thus, the defense of self-negligence and/or contributory negligence of the deceased having not been proved and established. Thus, the trial Court on the basis of available evidence has rightly invoked the principle of *Res ipsa*

loquitur and held that the thing causing the injury is under the ownership and control of the defendants and the occurrence is such, as would not ordinarily take place without negligence, the circumstances themselves may rise the prima-facie inference of negligence.

(2) That, the dispute with regard to non-conducting of the postmortem report and delay in filing the complaint as raised by the defendants, having been properly dealt by the trial Court. It is settled position of law that, a person's death can be proved by examining the surrounding circumstances including the medical treatment etc. and as such law does not say that the death only be proved by conducting postmortem. In civil litigation, the findings on all disputed question of facts including the time of death can be arrived at from the evidence on record by applying principle of preponderance of probability and in the case on hand, the treating doctors have categorically opined the nature of injuries suffered by the deceased and resultant cause of death. So far as, delay in filing complaint is concerned, the police was informed on the same day, which has been considered by the trial Court. On the basis of FIR, the officers of the department were chargesheeted under Section 304 read with Section 114 of the IPC and the said evidence is a strong corroborative circumstances in a civil action where standard is preponderance of the probabilities and therefore, the failure to conduct postmortem as well as delay in lodging the FIR can be taken as a circumstances against the plaintiffs.

(3) On the aspect of limitation, the trial Court by taking into

consideration the limitation of 2 years, as provided under Article 82 of the Limitation Act, has rightly rejected the plea of limitation raised by the defendants.

(4) So far as amount of compensation is concerned, it was submitted that, the trial Court did not have awarded compensation proportionate to the loss suffered by the plaintiffs, who are widow, minor son and parents and therefore, trial court ought to have considered future prospect while fixing the amount of dependency loss and has not properly awarded the amount under the head of consortium etc.

14. In such circumstances as referred above, learned counsel Mr. Shah submitted that the trial Court while determining the liability of the respondent State has properly appreciated the evidence and assigned proper and sufficient reasons for conclusion for the issues involved and therefore, as such there is no perversity in the impugned judgment and decree and same does not require any interference. However, on the aspect of quantum, it was submitted that, same may be modified and enhanced as per the Constitutional Bench judgment, **(*National Insurance Company Limited vs. Pranay Sethi & Ors. [2017 (16) SCC 680]***.

15. We have heard at length the learned counsels for the respective parties. Perused the case records as well as the judgment impugned.

16. Having regard to the pleadings, evidence and submissions of the parties, the following points arise for determination of present appeal:

(1) Whether the learned trial Court was justified in holding the

appellate authority liable for the death of the deceased?

(2) Whether the doctrine of *Res ipsa loquitur* is applicable to the case of the present case?

(3) Whether any contributory negligence on the part of the deceased has been established?

(4) Whether the quantum of compensation awarded by the learned trial Court calls for interference?

(5) What order.

17. **Discussions & findings** : **Point Nos. (1) (2) and (3)**:

All these points are interconnected and are therefore being considered together.

18. Before the trial Court, the widow Jyotikaben was being examined at Exh. 28. She has produced the copy of the FIR and other criminal case papers at Exh. 59 to 61 and also produced medical certificate as well as death certificate of the deceased at Exh. 52 and 53. She has also produced the receipt of fees at Exh. 50 to prove the fact that the deceased and his brother were interested in purchasing the scrape materials in the auction held at the place of incident. The witness has no personal knowledge about the occurrence of the incident. The witness Exh. 116 – Dr. Mitesh Shah and the copy of the deposition of Dr. Bharat Patel produced at Exh. 128 and OPD case papers of Viramgam Civil Hospital produced at Exh. 139 and 140 would go to show that on 30.05.2006, after 2-30 the deceased was treated by Viramgam Civil Hospital for the spinal injury and later on, deceased Mohanlal was shifted to Private Hospital at

Ahmedabad. Thus, the injury certificates as well as the death certificate issued by Samved Hospital proves and established that, the deceased has sustained serious injuries over his spine. The defendants have relied upon internal communication made by the Section Officer of Charad Section, addressed Deputy Engineer, Viramgar, wherein, it was disclosed that on account of collapse of gentry, some of the persons, who has come to inspect scrape materials had sustained injuries. It is no doubt true that, the family of the deceased without informing the police about the death, have cremated the deceased for which the action was taken by the police. In such circumstances, having regard to the evidence on record, it is proved and established that on 30.05.2006, the deceased Mohanlal and his brother Hasmukhlal Exh. 99 had gone to the office of the defendant at Lakhtar for inspection of scrape materials because the brother – Hasmukhlal had applied to participate in the auction proceedings by paying necessary fees (Exh. 50) and during the inspection, the deceased had sustained injuries because the gentry suddenly fell from its position and came upon the deceased, as a result, he succumbed to the injuries. In such circumstances, in absence of autopsy report, there is sufficient evidence to prove and establish that there is a reasonable connection with the alleged death and injuries sustained by the deceased. It is no doubt true that, on the same day, no complaint was filed by the family of the deceased. However, the fact remains that, the information about the incident was within the knowledge of Lakhtar Police Station as it was noted by the police in form of accidental death about the alleged incident and thereafter, a written complaint dated 07.12.2006 was submitted with the higher police authority and accordingly, the offence under Section 304 came to be registered on 18.01.2007. Thus, having regard to the

factum of chargesheet and other attending circumstances, would clearly establish that the incident in question being occurred at the place where the auction proceedings of the scrap material being held and organized by the defendants herein. It is not mandatory and precondition when the suit is filed on the cause of action of civil wrong, that the FIR must be registered and at the most, the evidence of criminal proceedings would be a corroborative piece of evidence and cannot be admitted as substantial evidence. Thus, we have no doubt in our mind about the incident as alleged and resultant death of the deceased on account of falling of parts of manual gantry at the place.

19. Now the question is whether the appellant authority could be held liable for the death of deceased. The plaintiffs being legal heirs and dependents of the deceased Mohanlal, instituted the suit claiming compensation on the ground that the accident occurred due to negligence and failure of the defendant authority to maintain the premises and the manual gantry in a reasonably safe condition and to take necessary precautions despite the obvious age and dangerous condition of the crane. In such tortious liability, usually falls under specific legal doctrines under the Law of Torts and foundation of such cases would be principle of negligence, strict liability and vicarious liability. In the present case, the manual overhead gantry crane, composing a horizontal beam supported on two vertical frames with centrally suspended hoisting mechanism and same was parked and/or lying at the place where the public auction proceedings were undertaken. The presence of the deceased and his brother at the place is proved and established. The defendants-appellants heavily argued that the deceased was unauthorized visitor and he would termed as trespasser and therefore, they cannot be held negligent and

liable for the damages. We do not find any substance in the submissions as advanced. The State and its Departments by public notice, invited tender for selling the scrap materials lying at the place of incident. The brother of the deceased Hasmukh Chunilal (Exh.99) by paying a necessary fee of Rs.250/-, filled a form for taking participation in the bid process and it was submitted in the name of firm "Tej Vasan & Metal Stores" (Exh.50). As per the conditions of the bid, one person along with the bidder was permitted to take part in the auction proceedings including the inspection etc. Admittedly, on the next day of the incident, the fee of Rs.250/- was refunded to Hasmukh Chunilal. In such circumstances, it cannot be said that the deceased and his brother unlawfully entered into the premises where the incident occurred and they were the invitee and in such circumstances, the act of the deceased entering into premises cannot in any manner said to be a trespass. In the facts of the present case, on the ground of actionable negligence, the suit for recovery of damages is filed. It is settled position of law that, the liability in tort arises when a person's act or omission, without lawful justification, causes harm to another in violation of legal recognized duty of care or obligation. Thus, the essence of tortious liability lies in the breach of duty imposed by law, independent of any contractual or statutory relationship between the parties. Thus, the foundation of tort of law is the protection of legal rights and the maintenance of a standard of reasonable conduct so that every individual and/or statutory authority must ensure that they do not cause unjust harm to others. There are three categories tortious wrongs namely (i) intentional torts; (ii) negligence and (iii) strict or absolute liability. In the case of intentional torts, harm is caused deliberately, whereas, in the case of negligence, there is a failure to exercise reasonable care, resulting in

untended harm to another person and in the third category i.e. strict or absolute liability, imposes responsibility without proof of fault, in a situation where inherently dangerous activities or substances are involved and public safety demands a higher standard of accountability.

20. The present case falls under the category "negligence" and in that case, the fundamental principle of law is that every public authority or body discharging public functions owes a duty of care towards every citizen who may reasonably be affected by its acts or omissions. The duty requires the authority to take reasonable and forceable precautions to prevent injuries or harm.

21. Applying the aforesaid settled principle of law to the facts of the present case, the manual overhead gantry crane admittedly was found at the place of incident and having regard to the photographs of it produced before the trial court, it shows that, the crane composing a horizontal beam supported on two vertical frames with centrally suspended hoisting mechanism and as per the case of the plaintiffs, the supporting beam as well as vertical frames suddenly crashed and fell upon the deceased and others. The defense was set up to the effect that, the uncontrolled crowd, wherein the deceased was one of the member, despite of warning, sat on the gantry, as a result, the incident occurred. The defense as set up, is prudently not believable because the framework of the gantry was such that it is humanly impossible to climb on the vertical and horizontal frames of the gantry. The oral evidence to this effect of the officers led before the trial court would prove contrary to the defense set up as none of the witnesses had seen the incident. The second defense was taken to the effect that the manual gantry was parked in other division and there

was no reason for the deceased to take inspection of that division. In our opinion, this defense cannot be accepted as once the person entered into the premises control and supervision of the defendant, then, it is their duty to take care and precautions to prevent injury and harm. It is not the case of the defendants that, the fall was caused by unpredictable factors. In such circumstances, when the gantry which was parked in the premises where the visitors had access, than the defendant held liable for non-maintaining the structure of the gantry in proper manner. The plaintiffs have established and proved the factum of incident and resultant death of the deceased. In such circumstances, the collapse of gantry on the deceased would establish the prima-facie negligence on the part of the defendant and in that view of the matter, the principle of *Res ipsa loquitur* which is a Latin phrase meaning "the things speaks for itself" would be applicable. In the legal terms, it allows the presumption of negligence when the nature of an accident is such that it implies negligence by the defendant and the doctrine is particularly useful when the direct evidence of negligence is available. The explanation of the defendants about the sole negligence of the deceased is not convincing and acceptable and in absence of any rebuttal evidence, the collapse of gantry on the deceased clearly establish and prove the negligence on the part of the appellants-defendants. We may profitably refer the case of ***Municipal Corporation of Delhi vs. Subhagwanti and Ors. (1966 AIR 1750)***. The case before the Supreme Court revolves around the tragic collapse of clock tower owned by the Municipal Corporation of Delhi, resulting in the untimely deaths of three individuals. The heirs of the deceased filed a suit seeking damages ascertaining negligence on the part of the corporation in maintaining the structural integrity of the clock

tower. The Supreme Court while applying the principle *Res ipsa loquitur,* held that, the collapse of tower presented at prima-facie case of negligence, as the corporation had exclusive control and ownership of the clock tower and the structure was very old, exceeding its expected life span and on account of lack of systematic inspection and maintenance, would constitute the negligence. It is relevant to note that, the Supreme Court in the said judgment had discussed the latent and patent defects. It was said that, latent defects are hidden flaws or weaknesses in a structure that are not discoverable by reasonable inspection. Unlike patent defects, which are obvious and visible, latent defects require thorough investigation to identify. The Supreme Court clarified that, the negligent liability can arise even from latent defects if proper maintenance is not conducted.

22. Reverting back to the facts of the present case, the manual gantry crane was old one and parked in the premises of the defendants. The defendants failed to produce any cogent evidence to show that the gantry was in a usable condition and regularly inspection was done and there was no defect in its structure. In the present case, there is also no specific satisfactory evidence showing that the deceased had been warned or that access to the place where the gantry was parked had been effectively restricted. The witnesses examined by the defendants have categorically stated that the affidavit in chief examination was being prepared in the office and they have not personally seen the incident. Thus, the theory of giving warning to the deceased and others for not to sit on the manual gantry, cannot be believed and accepted on the version of the witnesses who belong to the office of the defendants. It is on record that, one Mukeshbhai was also having sustained injuries in the said incident, but

somehow, he was not examined by the defendants to prove their defense. It is relevant to note that, after the incident, no any complaint being filed against the uncontrolled crowd, according to their case, they sat on the gantry despite of warning given by the concerned officer. Thus, the defense set up seems to be afterthought and in absence of any independent, cogent and acceptable evidence, it cannot be believed that the deceased was warned not to sit on the manual gantry and was cautioned about the dangerous situation of it. So far as issue of contributory negligence is concerned, in our opinion, the defendant failed to prove that the deceased despite of warning given to him, carelessly sat on the horizontal and vertical supporting beam of the gantry. Thus, nothing on record to prove that it was the deceased who was responsible in causing the incident.

23. Thus, therefore, having regard to the facts of the present case, we have no hesitation to held that the incident occurred due to negligence and failure of the defendant authority to maintain the gantry in a reasonably safe condition, for which the defendants no.1 to 3 were liable for the death of the deceased and also for the damages claimed by the plaintiffs.

24. Accordingly, we answer the point no.1, 2 and 3, holding that the trial court was justified in holding the appellants liable for death of the deceased and having regard to the facts of the case and evidence on record, the doctrine of "*Res ipsa loquitur"* would certainly applicable and trial court has properly decided the issue of negligence as well as the issue of contributory negligence.

25. It was the contention of the appellants that, suit is not filed within limitation. We are not agreed with the contention. The trial court has rightly determined the issue of limitation as Article 82 of the Limitation Act provides the time period of two years from the date of death of the person wronged. In the present case, suit is filed on 08.02.2008. The accident occurred on 30.05.2006. Thus, within limitation of two years, suit was filed by the defendants.

26. On the aspect of quantum, the appellants have raised the contention that, the income of the deceased having been considered on higher side and the amount of compensation is excessive. On this issue, before the trial court, the plaintiffs have proved and produced the ITRs (Exh.83 to 86) to prove the annual income of the deceased. The deceased was working with "Taj Vasan & Metal Store" and "Uttam Metal Industries". Both the business run by family. The trial court discarded the income mentioned in the ITR which was filed after the death. Thus, in our opinion, so far income is concerned, the trial court has rightly determined the income of Rs.1,18,000/- annually. By Cross-objection, the plaintiffs have raised the contention that, considering the age of the deceased, if accident would not have occurred, there were all chances of increasing his income and therefore, the future prospects require to be considered while determining the amount of dependency loss which factors having not been properly appreciated by the trial court. In support of this submission, heavy reliance being placed on the judgment of Constitutional Bench of the Supreme Court in case of ***Pranay Sethi (supra).*** Against which, the State was having strong objection to consider the amount of future prospects and it was contended that, the claim is filed under the Fatal Accident Act and therefore, the amount as claimed,

cannot be awarded by adopting the methodology for awarding compensation as settled by the Supreme Court for the cases filed under the provisions of The Motor Vehicles Act, 1988.

27. In the present case, the compensation sought by filing a suit under The Fatal Accident Act and as per the statutory provision, the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively. However, the suit claiming compensation under the provisions of Fatal Accident Act, in order to determine the damages, proportionate to the loss, after the decision of the Supreme Court in case of ***General Manager, Kerala S.R.T.C. vs. Susamma Thomas & Ors. (AIR 1994 SC 1631)***, the multiplier method became well established in the Indian Law. In ***Sarla Verma (supra)***, the Supreme Court has attempted to standardize the determination of the multiplication and multiplier to bring about uniformity in determination of compensation payable in case of death and thereafter, Five Judge Constitutional Bench in the case of ***Pranay Sethi (supra)***, issued further directions following the decision of ***Sarla Verma (supra)***. In such circumstances, in our opinion, the trial court while following the case of ***Sarla Verma (supra)***, failed to appreciate the fact that, the deceased was having a steady income from the family business and having regard to the directions issued in the case of ***Pranay Sethi (supra)***, the Court and/or Tribunal is duty bound to consider the addition of income for future prospects. In the case of ***Pranay Sethi (supra)***, it was directed that while determination of the income in the case of deceased, who was self-employed or on a fixed salary, an addition of 40% of the established income should be added where the deceased was below the age of 40 years. In the present case, the income of the deceased was Rs.1,18,000/-

as held by the trial court. However, the future prospects of 40% was not considered by the trial court.

28. Thus, in order to determine compensation proportionate to the loss, we are recalculating the total amount of compensation under the different heads as under:

1. Established income	Rs.1,18,000/- per annum
2. Addition of 40% towards future prospects	Rs.47,200/-
	Rs.1,65,200/-
3. Less personal expenses-1/3rd	Rs.55,000/-
	Rs.1,10,200/-
4. Applying multiplier of 16 (Rs.1,10,200 x 16)	Rs.17,63,200/-
5. Amount under the conventional heads (Lost to estate – Rs.15,000/-, loss of consortium – Rs.40,000/- & funeral expenses – Rs.15,000/-)	Rs.70,000/-
	Rs.18,33,200/- (Total)

29. In such circumstances, having regard to the facts and evidence on record, the plaintiffs – respondents are entitled to recover the total amount of compensation of Rs.18,33,200/-, instead of Rs.12,79,372/-. The claim of the parents dismissed by the trial court observing that, the father was having an independent income from the business. However, without entering into merits of the contention on the aspect of dismissal of the claim, we do not enter into right of the parents as considering the enhanced amount of compensation as awarded, we do not deem it fit to reconsider the claim of the parents.

30. For the reasons aforementioned, the appeal filed by the appellant-State stands dismissed. The Cross-objections is partly allowed in the aforesaid terms as referred in para-29. The plaintiffs are entitled for the interest @ 6% on the enhanced amount (Rs.5,53,828/-) from the date of disposal of the suit i.e. 31.01.2013 till realization. The decree to this

effect is modified and to be drawn accordingly. The appellants are directed to deposit the entire amount of compensation with interest and proportionate cost within a period of three months. The plaintiffs are permitted to withdraw the deposited amount with accrued interest, if any and also permitted to withdraw the remaining amount including the enhanced amount with interest. The R & P be transmitted back to the trial court concerned.

Sd/-
(ILESH J. VORA,J)

Sd/-
(R. T. VACHHANI, J)

TAUSIF SAIYED

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: TAUSIFAHMED SAIYED(HC01401), PRIVATE SECRETARY, at High Court of Gujarat on 16/09/2026 11:51:36