NEUTRAL CITATION
2025:GUJHC:72815

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 519 of 2020
FOR APPROVAL AND SIGNATURE:
HONOURABLE MRS. JUSTICE M. K. THAKKER

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Approved for Reporting	Yes	No
	YES	

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VADODARA MUNICIPAL CORPORATION
Versus
MOMINABEN MALBULBHAI GHANIVALA & ORS.

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Appearance:
MR SS ACHARYA(3272) for the Appellant(s) No. 1
ROHAN A SHAH(7497) for the Defendant(s) No. 1,2,3,5
RULE SERVED for the Defendant(s) No. 4,6
RUSHABH H SHAH(7594) for the Defendant(s) No. 1,2,3,5

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CORAM:**HONOURABLE MRS. JUSTICE M. K. THAKKER**
Date : 17/12/2025
ORAL JUDGMENT

1. The present appeal is filed under Section 96 read with Order XLI of the Code of Civil Procedure, 1908, challenging the judgment and decree dated 31.03.2018 passed by the learned 7th Additional Senior Civil Judge, Vadodara, in Special Civil Suit No.615 of 2008, whereby the suit filed by the present opponent–original plaintiff was partly decreed and the present appellant–original defendant was directed to pay an amount of Rs.4,84,473/- with interest at the rate of 9% per annum from the date of institution of the suit till its realization, jointly and severally with defendant No.2.

Factual Matrix:

2. The present opponent–original plaintiff is the wife of

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the deceased, Makbul Gaffarbhai Ghaniwala. Opponent Nos.2 and 3 are the sons of the deceased, whereas opponent Nos.4 and 5 are the parents of the deceased.

2.1. On the fateful day, i.e. 27.09.2007, the deceased Makbul Gaffarbhai Ghaniwala left his residence at Nagarwada at about 5:30 p.m. on his motorcycle bearing registration No. GJ-6-BJ-7655, proceeding towards his transport office. When he reached the Karelibaug area, opposite Utkarsh Petrol Pump, a stray bull suddenly rushed onto the road and struck the deceased with its horns, as a result of which he fell from the motorcycle and sustained serious head injuries.

2.2. The deceased was immediately taken to the hospital, where-after, following preliminary treatment, he was admitted to Baroda Institute of Neurology. He remained under treatment for a period of 53 days. As his condition did not improve, the doctors advised that he be taken home, where he ultimately expired on 29.11.2007.

2.3. On the day following the accident, news items describing the occurrence were published in the newspaper. On the basis thereof, a police complaint was lodged and investigation was carried out, which revealed that the accident

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occurred due to the dashing of the stray bull. The plaintiffs, therefore, claimed an amount of Rs.5,00,000/- towards medical expenses, along with compensation for loss of income, loss of life support, and mental pain, shock, and loss of love and affection, in all amounting to Rs.15,00,000/-, as damages against the present appellant–Corporation.

2.4. The present appellant–original defendant No.2 appeared before the learned trial Court and filed a written statement below Exhibit-10, contending inter alia that as per the panchnama drawn pursuant to the complaint filed by the heirs of the deceased, it transpired that on 27.09.2007 at about 6:30 p.m., a stray bull coming from the Ambawadi slum area dashed against the motorcycle rider, who was allegedly driving the vehicle in a rash and negligent manner. The appellant thus sought to shift the burden of negligence upon the deceased and denied the liability alleged by the plaintiffs.

2.5. It was further contended that it is the statutory duty of the police authorities to impound stray animals from public and private properties, recover penalties, and initiate proceedings under the Bombay Police Act. The only duty assigned to

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the Corporation is to provide cattle *dabbas* for impounding stray cattle, which had already been arranged. On these grounds, it was contended that the defendants were not liable to pay any compensation as claimed by the plaintiffs.

2.6. The learned trial Court, upon appreciation of the evidence led by both the parties, held that the appellant was guilty of contributory negligence to the extent of 70% and accordingly directed the present appellant to pay the compensation as referred in the first part of the judgment. The said findings and directions are the subject matter of challenge before this Court.

2.7. At the outset, learned advocate Mr. Acharya appearing for the appellant submitted that the present appeal is confined only to the issue of liability as recorded by the learned trial Court and that the quantum of compensation awarded has not been challenged by the appellant.

Arguments Of Learned Advocates For The Respective Parties:

3. Learned advocate Mr. Acharya appearing for the appellant submits that the learned trial Court has committed a grave error in fastening liability upon the present appellant in the absence of any cogent or reliable material establishing its responsibility for the

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accident in question. It is further submitted by the learned advocate Mr. Acharya that the evidence adduced during the course of the trial clearly reveals that the accident occurred solely due to the rash and negligent driving of the deceased himself. Therefore, the finding of the learned Court attributing 70% contributory negligence to the present appellant is wholly unsustainable in law and on facts, and consequently, the impugned judgment deserves to be interfered with and the appeal is required to be allowed.

4. Per contra, learned advocate Mr. Shah appearing for the defendants–original plaintiffs submits that due to the dashing of a stray bull, the deceased was thrown off his motorcycle and sustained serious injuries. He was immediately taken to Deep ICCU, where he underwent surgical intervention, and the medical bills in support thereof are produced on record below Exhibit 42 onwards. It is submitted by the learned advocate Mr. Shah that thereafter the deceased was shifted to Baroda Institute of Neurological Hospital, where he remained admitted for a period of 53 days and was discharged on 17.11.2007.

4.1. Referring to the discharge summary produced below Exhibit 34, learned advocate Mr. Shah submits that the deceased underwent two surgical

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operations, first on 27.09.2007 and thereafter on 09.10.2007. The medical history recorded therein indicates that the deceased was suffering from convulsions and vomiting and had sustained a serious head injury. Ultimately, the deceased succumbed to the said injuries on 29.11.2007. As per the medical certificate produced at Exhibit 34, the cause of death is stated to be hemorrhage in the left Sylvian fissure.

4.2. Learned advocate Mr. Shah further submits that by applying the principle of *res ipsa loquitur*, the learned trial Court has rightly awarded compensation and correctly fastened liability to the extent of 70% upon the present appellant. In view thereof, no interference is warranted and the appeal deserves to be dismissed.

Point For Consideration:

5. From the aforesaid facts, the point for consideration that arises before this Court is whether the learned trial Court was justified in decreeing the suit by holding that the accident occurred due to the negligent act of the Corporation, thereby fastening liability upon the Corporation under the principles of common law, namely, tortious liability.

The answer is affirmative.

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Reasons:

6. To determine the aforesaid point, the relevant undisputed facts involved in the present case are required to be narrated.

6.1. On 27.09.2007, at around 05:30 p.m., the deceased met with an accident near the Karelibaag area, opposite Utkarsh Petrol Pump, when a stray bull suddenly dashed against him with its horns, as a result of which the deceased fell down from the motorcycle.

6.2. On 03.10.2007, the deceased was taken to Dwarkesh Hospital. It also emerges from the cross-examination as well as from Exhibit-42 that on 27.09.2007 itself, during the night hours between 03:00 a.m. to 04:00 a.m., the deceased was operated at Deep ICCU Hospital and thereafter shifted to Vins Hospital, where he remained admitted till 17.11.2007. During the course of treatment, another surgery was performed on 09.10.2007. As per Exhibit-34, the deceased was diagnosed with subdural haemorrhage in the left temporal region. After being discharged from the hospital, the deceased ultimately expired on 29.11.2007, as reflected from the death certificate produced below Exhibit-101.

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6.3. An FIR came to be registered being I-C.R. No.279 of 2007 for the offences punishable under Sections 279, 337 and 338 of the Indian Penal Code. In connection with the said FIR, a panchnama was drawn. As per the panchnama produced below Exhibit-93, and on the basis of the statement of one witness, namely Shyam, it is recorded that on 27.09.2007 at around 06:30 p.m., a bull coming from the Ambawadi slum area dashed against a motorcyclist, who was allegedly driving in a rash and negligent manner, as a result of which the motorcyclist sustained head injuries and was taken to Dwarkesh Hospital.

6.4. As per Exhibit-91, a newspaper publication describing the incident has been placed on record, wherein it is reported that a stray bull attacked the motorcyclist and caused injuries to him by its horns.

6.5. The suit came to be filed seeking damages against the Corporation as well as the State of Gujarat. Considering the written statements filed by the defendants, the learned Trial Court framed the issues below Exhibit-17 and answered the same in the following manner:

1. Whether the plaintiff proves the alleged incident due to negligence of the defendants as alleged by the

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plaintiff ?
Ans: Partly Affirmative

1-A Whether the defendant no.2 proves that defendant no.2 is not liable and responsible for removing stray cattle from the public roads as alleged ?
Ans: In Negative

2. entitled to Whether the plaintiff can claim damages worth of RS.15,00,000/- from the defendant ?
Ans: Partly Affirmative

3. Whether the plaintiff suit is barred by the law?
Ans: In Negative

4. Whether the plaintiff is entitled to get interest? If yes, at what rate ?
Ans: Yes, @ 9%

5. What order and decree?
Ans: As per firnal order.

7. The learned trial Court applied the principle of *res ipsa loquitur* and held that there was contributory negligence on the part of the deceased to the extent of 30%, while the Corporation was held negligent to the extent of 70%. Accordingly, the Corporation was directed to pay the compensation as referred to hereinabove.

8. To absolve the liability of corporation, in the written statement, the learned advocate for the Corporation has contended that it is the duty of the police authorities to remove such encroachments. At this

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stage, it is necessary to make a reference of Section 63 of the Bombay Provincial Municipal Corporations Act, 1949 is required to be made, wherein, under clause (19), the duty of removal of obstructions and projections in or upon streets, bridges and other public places is specifically cast upon the Corporation. For discharge of such duty, the Corporation is required to take appropriate measures which it is lawfully competent to undertake.

9. However, in view of the aforesaid statutory provision, this Court is of the opinion that the primary liability rests with the Corporation to maintain public roads and streets in a manner that ensures they are free from stray cattle, so as to safeguard the safety of road users, including pedestrians as well as persons riding vehicles. It is the statutory duty of the Corporation, which collects taxes from the public, to take appropriate and effective preventive measures to address the menace of stray cattle and to ensure that the fundamental right of the public to enjoy life and personal safety is duly protected and not jeopardized on account of such hazards.

10. This Court has referred the decision rendered by the Coordinate Bench of this Court in the case of **Faiyazhussain Nazirahmed Ansari vs. Ahmedabad Municipal Corporation,** reported in

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2018 (3) GCD 2144 wherein in identically situated case this Court has observed as under:

> "25. Ordinary meaning of the word in the law of torts is a high degree of carelessness. It is the doing of something which in fact involves a grave risk to others, whether the doer realises or not. Obviously, therefore, the test is objective and not subjective, as it is in criminal law.
>
> 26. The tort, negligence and inadvertenceness has been succinctly explained and expounded in the following decisions:
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> > The decision of the House of Lords in Donoghue v. Stevenson, (1932) A.C.562 (HL) treats negligence, where there is a duty to take care, as a specific tort in itself, and not simply as an element in some more complex relationship or in some specialised breach of duty. Actions do not lie for a state of mind. Negligence is conduct, not a state of mind conduct which involves an unreasonably great risk of causing damage. There is no necessary element of "fault" in the sense of moral blameworthiness involved in a finding that a defendant has been negligent. It is negligence in the objective sense that is referred to in t well known definition of Alderson B.
> >
> > > "Negligence is the omission to do something which reasonable man, guided upon those consideratio which ordinarily regulate the conduct of human affai would do, or doing something which a prudent a reasonable man would not do."
> > >
> > > So also Lord Wright said:
> > >
> > > "In strict legal analysis, negligence means

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more than needless or careless conduct, whether in omission commission; it properly connotes the complex conce of duty, breach and damage thereby suffered by t person to whom the duty was owning".

There is one another interesting aspect of tort negligence which is required to be highlighted. It is emergence of liability without tort. In this connection, observations made by Salmond & Heuston on the Law of Torts, may be noted:
(Twentieth Edition, R.F.V.Heuston and R.A.Buckley).

"In certain cases, liability is independent of intention or negligence. Liability in libel does not depend on the intention of the defamer, but on the fact of defamation; so too there is strict liability for damage done by a wild animal, or by the escape of dangerous things accumulated for some non-natural purpose (the rule in Rylands v. Fletcher); again, liability is strict when one is vicariously responsible for the acts of another. In cases such as these the security of the particular interest of the plaintiff is predominant over the defendant's interest in freedom of action. It is a mistake, however, to think of the predominance as complete. In appropriate cases defences such as act of God or act of a third party are available. Liability may be strict but it is never absolute.

The plea of inevitable accident is that the consequences complained of as a wrong were not intended by the defendant and

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> could not have been foreseen and avoided by the exercise of reasonable care and skill.
>
> An accident in its popular sense is any unexpected injury resulting from any unlooked-for mishap or occurrence. In law a happening is only regarded as an accident if it is one out of the ordinary course of things, something so unusual as not to be looked for by a person of ordinary prudence. So an ordinary fall of snow is not an accident, but only an incident which happens in the ordinary course of things. One form of inevitable accident is that which is due to an act of God, as when a car-driver has a sudden affliction, such as a stroke. The driver will not be liable if his actions were wholly beyond his control."

27. In the realm of tort negligence, at times, it becomes difficult to establish the nexus, with the result or the consequence or the cause thereof by leading direct evidence. In order to mitigate such a contingency, a very interesting concept and philosophy of doctrine of 'res ipsa loquitur' has been evolved in English Law and we have also followed in tort negligence. Rule of 'res ipsa loquitur', in reality, belongs to law of tort. Where negligence is in issue, peculiar circumstances constituting the event or accident in a particular case might themselves proclaim in concordant, clear, consistent and unambiguous basis the negligence of somebody as a cause of the event or the accident. The primary facts, constituted from the record would give a rise to such a concept if cause of accident is unknown and no reasonable explanation as to its cause is coming forth from the opposite party. In such a fact situation, the

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maxim of 'res ipsa loquitur' comes into play.

28. It is, therefore, necessary to invoke such a doctrine in examining, determining and adjudicating upon the claim of compensation founded upon the tort negligence. The event or the accident must be a kind which would not happen in ordinary course of event or nature or thing if those who have the management and control of the thing has exercised due, appropriate and reasonable standard of care and caution. Further, the events are caused, the accident must be within the control of the defendant or the adversary. The reason for second requirement is that where the defendant or the adversary has the control of the thing which caused the injury, he was in a better position than the plaintiff to explain as to how the incident or the accident has occurred. Moreover, 'res ipsa loquitur' must not be speaking negligence but pin it on the defendant. In our country, the rules of evidence are governed by the Evidence Act, 1872, under which the general rule is with the burden of proving negligence as to the cause of the accident is on the party who propounds it. In order to lighten this burden, there are certain provisions and the doctrines, namely, (1) Permissive presumption, (2) presumption of fact, (3) rebuttable presumption of law (4) irrebuttable presumption of law.

29. This being an action in tort for damages on the ground of negligence, the legal burden of proof, no doubt, rests on the plaintiffs. It is not, however, always necessary that direct proof of negligence should be adduced by the plaintiffs. It is enough if they prove the circumstances from which a reasonable inference of negligence on the part of the defendants can be drawn. Negligence

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is not a question of evidence but it is an inference to be drawn from proved facts. The plaintiffs succeed if the facts proved are inconsistent with the diligence and care on the part of the defendants. There may be cases where the plaintiff proves the happening of the accident and nothing more. He may or may not be in a position to prove any specific act or omission on the part of the defendant. The mere happening of the accident itself may be more consistent with negligence on the part of the defendant than with other causes and if that is so, the Court finds negligence on the part of the defendant unless he gives a reasonable explanation to show how the accident may have occurred without negligence on his part. This maxim is known in legal parlance as 'Res Ipsa Loquitur'. The general purport of the words 'Res Ipsa Loquitur' is that the accident 'speaks for itself or tells its story. The burden of proof will be on the defendant to explain and to show that the accident occurred without any fault on his part. It is not a rule of law but is merely a rule of evidence relating to burden of proof and nothing more (See Cole v. De Traflord No. 2 (1918) 2 KB 523)."Where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care." This is based on the theory that there are certain happenings which do not occur normally unless there is negligence. Therefore, in the case of such happening the claimant is entitled to rely, as evidence of negligence, upon the mere happening of such accident. (See S. K. Devi v. Uttam Bhoi, AIR 1974

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Orissa 207). In the leading case of Scot v. London and Katherine Docks Co., (1865) 3 H and C 596, it was held as follows:

> "Where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."

30. In Syed Akber v. State of Karnataka, AIR 1979 SC 1848: (1980) 1 SCC 30: 1979 Cri LJ 1374, the Supreme Court. Considered the applicability of the maxim 'Res Ipsa Loquitur' in civil as also criminal cases in the light of the provisions of the Evidence Act and observed as follows:

> "The rule of Res Ipsa Liquitur, in reality, belongs to the law of torts where negligence is in issue. But the peculiar circumstances constituting the event or accident, in a particular case, may themselves proclaim in concordant, clear and unambiguous voices the negligence of somebody as the cause of the event or accident. It is to such cases that the maxim Res Ipsa Loquitur may apply, if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant. To emphasise the point, it may be reiterated in such cases, the event or accident must be of a kind which does not happen in the ordinary course of things if those who have the management and

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> control use with due care. Further the event which caused the accident must be within the defendant's control. The reason for this second requirement is that where the defendant has control of the things which caused the injury, he is in a better position than the plaintiff to examine how the accident occurred."clear and unambiguous voices the negligence of somebody as the cause of the event or accident. It is to such cases that the maxim Res Ipsa Loquitur may apply, if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant. To emphasise the point, it may be reiterated in such cases, the event or accident must be of a kind which does not happen in the ordinary course of things if those who have the management and control use with due care. Further the event which caused the accident must be within the defendant's control. The reason for this second requirement is that where the defendant has control of the things which caused the injury, he is in a better position than the plaintiff to examine how the accident occurred."

31. In Municipal Corpn. of Delhi v. Subhagwanti, AIR 1966 SC 1750, the Supreme Court had to deal with a case where a clock tower owned by the Municipal Corporation and abutting the high way collapsed resulting in the death of some persons passing along the highway. It was held that the Municipal Corporation had a special obligation to ensure the safety of the structure and it was liable for damages for loss of life caused whether by patent or latent defects and

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that the principle of Res Ipsa Loquitur was attracted to the case.

32. In Narasappa v. Kamalamma, AIR 1968 Mys 345, a cement concrete beam under construction by a contractor under the control and supervision of the State Electricity Board suddenly collapsed causing the death of a workman. Though the cause of the accident was unknown and specific allegations of negligence were not proved, the Court, applying the maxim 'Res Ipsa Loquitur', drew a presumption as to negligence and held both the contractor and the Electricity Board liable in damages.

33. Collector, Ganjam v. Chandrama Das, 1975 ACJ 249, was a case in which the portico of a medical college building fell down causing the death of two persons. The Supreme Court held that the portico had fallen on account of the defect in construction and how it had happened is within the exclusive knowledge of the defendants and accordingly the Court, applying the principle of 'Res Ipsa Loquitur', awarded damages.

34. Syam Sundar v. State of Rajasthan, 1974 ACJ 296: (AIR 1974 SC 890), is again a case where the Supreme Court held that the doctrine of Res Ipsa Loquitur is applicable when the cause of the accident is primarily within the knowledge of the defendant and the mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering damages.

35. In Ramesh Kumar Nayak v. Union of India, AIR 1994 Orissa 279, a Division Bench of the Orissa High Court was dealing with a case where a compound wall of the Post Office collapsed and fell on a person passing by, causing him injuries.

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In defence to the claim for damages, it was pleaded that the wall collapsed due to torrential rain and it was, therefore, attributable to a natural calamity. The Court, however, negatived the said contention and held that the Post Office was bound to ensure the safety of the wall and to see that it in no manner endangers any other's property or person and the inaction to maintain the wall in good condition can be said to be an act of negligence. It was further observed that if the wall was in good condition as alleged, it would not have collapsed for a length of about 30 feet as acceptedly happened. It can certainly be inferred from the aforesaid facts that the wall was not in good condition. The inaction to maintain the wall in a good condition whereby the property or person were endangered, can be said to be an act of negligence, because proper care was not taken. Accordingly the opposite parties were held liable for payment of compensation to the petitioner in that case.

36. The Supreme Court, in the case of Rajkot Municipal Corporation (supra), explained in detail the meaning of 'negligence' in the field of tort. In this case, after analysing the plethora of English and Indian case law on this subject, the Supreme Court held that negligence is failure to use such care as a reasonable, prudent and careful person would use, under similar circumstances. It is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances. Negligence also is an omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing or

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something which a reasonable and prudent man would not do. Negligence would include both acts and omissions involving unreasonable risk of having done harm to another. The breach of duty must cause damage. How much of the damage to be compensated by the defendant should be attributed to his willful conduct and how much to his willful negligence or careless conduct or remissness in performance of duty, are all relevant facts to be considered in a given act or omission in adjudging duty of care. The element of carelessness or the breach of duty and whether that duty is towards the plaintiff or the class of persons to which the plaintiff belongs are important components in tort of negligence. Negligence would, therefore, mean careless conduct in commission or omission of an act, whereby another to whom the plaintiff owed duty of care has suffered damage. The duty of care is crucial in understanding the nature and scope of tort of negligence.

37. It was also held that negligence connotes inadvertence to the consequences of his conduct which can be a measure of behaviour where one person had been careless in that he did not behave as a prudent man would have done whether by inadvertence or otherwise. The tort of negligence always requires some form of careless conduct which is usually, although not necessarily, the product of inadvertence. Not every careless conduct which causes damage, however, will give rise to an action in tort. The negligence lies in failure to take such steps as a reasonable, prudent man would have taken in the given circumstances. What constitutes carelessness is the conduct and not the result of inadvertence. Thus negligence in this sense is a ground for

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liability in tort.

38. In every case giving rise to tortuous liability, tort consists of injury and damage due to negligence. Claim for injury and damage may be founded on breach of contract or tort. The liability in tort may be strict liability, absolute liability or special liability. The degree of liability depends on degree of mental element. The elements of tort of negligence consist in (a) duty of care; (b) duty owed to the plaintiff; (c) careless breach of such duty. Negligence does not entail liability unless the law exacts a duty in the given circumstances to observe care. Duty is an obligation recognised by law to avoid conduct fraught with unreasonable risk of damage to others. The question whether duty exists in a particular situation involves determination of law.

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40. Now Section 487 referred to above prescribes that no suit shall be instituted against the Corporation in respect of any act done or purported to be done in pursuance or execution or intended execution of the Act or in respect of any alleged neglect or default in the execution of the Act, unless it is commenced within six months next after the accrual of the cause of action. The crucial words in the section material for the purpose of the present appeal are in respect of 'any alleged neglect or default in the execution of the Act'. In every case, therefore, where the defence of action being time-barred is raised, it must be ascertained whether the act in respect of which the suit is filed is an act done or purported to be done in pursuance or execution or intended execution of the Act or in respect of any alleged

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neglect or default in the execution of the Act.”

11. Considering the aforesaid decision as well as the circumstances of the accident, which speak for itself and narrate the entire incident, it clearly emerges that the stray bull dashed to the deceased while he was riding his motorcycle. The facts on record demonstrate that the accident occurred under the management and control of the appellant Corporation and its servants, and such an accident would not ordinarily occur if those entrusted with such management had exercised due and reasonable care. The doctrine of *res ipsa loquitur* is, therefore, squarely applicable, as no reasonable explanation has been forthcoming from the appellant regarding the cause of the accident, which was otherwise within the control of the defendant. Had due care been taken, such an unfortunate incident could have been avoided.

11.1. The inaction on the part of the appellant Corporation in maintaining the public road in a condition safe for its users, including pedestrians and vehicle riders, clearly reflects wilful negligence, carelessness, and remissness in the performance of its statutory duties. Such negligent conduct has resulted in the tragic loss of a valuable human life. In this background, this Court

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has no hesitation in holding that the appellant Management was negligent in discharging its duties and committed a clear breach thereof.

11.2. In the considered opinion of this Court, the impugned judgment and decree do not warrant any interference, and the appeal deserves to be dismissed. However, since the amount awarded towards compensation is paid from the public exchequer, the same shall be recovered, after holding a necessary inquiry, from the Market Officer or the concerned erring officer who remained negligent in performing his duties. A report regarding the action taken against the erring officer shall be submitted before this Court within a period of three months from the date of receipt of a copy of this judgment.

12. Resultantly, the appeal is dismissed. The judgment and decree dated 31.03.2018 passed by the learned 7th Additional Senior Civil Judge, Vadodara in Special Civil Suit No.615 of 2008 is hereby confirmed. For compliance of the aforesaid directions, the Registry is directed to forward a copy of this judgment to the Municipal Commissioner, Vadodara.

(M. K. THAKKER,J)

M.M.MIRZA