

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SECOND APPEAL NO. 350 of 2025****With  
R/SECOND APPEAL NO. 351 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE SANJEEV J.THAKER Sd/-**

Approved for Reporting	Yes	No
	✓	

DISTRICT DEVELOPMENT OFFICER - RAJKOT & ORS.  
Versus  
GULABBEN RASIKBHAI VANALIYA & ORS.

Appearance:  
KAASH K THAKKAR(7332) for the Appellant(s) No. 1,2,3

**CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER****Date : 14/10/2025****ORAL JUDGMENT****INTRODUCTION**

1. The present Second Appeals are filed under Section 100 of the Code of Civil Procedure, 1908 (for short "CPC") challenging the judgement and decree passed in Regular Civil Appeal No. 39 of 2024, and Second Appeal No. 351 of 2025 is filed, challenging the judgement and decree passed in Regular Civil Appeal No. 38 of 2024 passed by the 13<sup>th</sup> Additional District Judge, Rajkot.
2. For the sake of brevity and convenience, the parties are

referred to as per their original status as that in the suit.

### **BRIEF FACTUAL MATRIX**

3. The brief facts giving rise to both these Second Appeals are as follows: On 19.05.2013, at about 5:30 p.m., the original Plaintiff's wife, Manuben, along with their minor children, Artiben and Dhaval Rasikbhai Vanaliya, were filling water from a government water tank when the surrounding wall of the tank, suddenly collapsed. The debris fell upon Manuben and the two minor children, trapping them beneath the rubble and causing severe injuries. As a result of the grievous and life-threatening injuries sustained, Manuben succumbed during medical treatment on 24.05.2013, while the minor child, Artiben, suffered multiple fractures to her right leg and serious injuries to her head and back, and the minor Dhaval also sustained severe bodily injuries.
4. The husband of the deceased, being the original Plaintiff, instituted Special Civil Suit No. 79 of 2015 seeking compensation. The Learned Trial Court partly allowed the Suit and directed the Defendant to pay a sum of ₹8,00,000/- with interest at the rate of 9% per annum in respect of the claim pertaining to the death of the Plaintiff's wife. Aggrieved thereby, the Defendant preferred Regular Civil Appeal No. 39 of 2024. Upon reappraisal of the oral and documentary

evidence, the Learned First Appellate Court confirmed the findings and decree of the Trial Court and dismissed the Appeal. The said judgment and decree passed in Regular Civil Appeal No. 39 of 2024 have now been challenged by the Defendant by way of Second Appeal No. 350 of 2025.

5. The father of minor Artiben, who is also the husband of deceased Manuben, instituted Special Civil Suit No. 80 of 2015, seeking compensation on behalf of his injured daughter. Upon appreciation of the oral and documentary evidence on record, and after framing and deciding all the relevant issues, the Learned Trial Court partly decreed the Suit and awarded compensation of ₹3,00,000/- along with interest at the rate of 9% per annum.
6. The said judgment and decree came to be challenged by the Defendant by filing Regular Civil Appeal No. 38 of 2014. After reappreciating the evidence and considering the reasoning of the Learned Trial Court, the Learned First Appellate Court dismissed the Appeal and confirmed the decree passed in Special Civil Suit No. 80 of 2015. Aggrieved by the said concurrent findings of both the Courts below, the Defendant has now preferred Second Appeal No. 351 of 2025 before this Court.

### **ARGUMENT OF THE DEFENDANT - APPELLANT**

7. Learned advocate for the Defendant has primarily contended that both the Trial Court and the Appellate Court failed to properly consider the provisions of Section 270(3) of the *Gujarat Panchayats Act, 1993*. It is argued that, as per the said provision, any action or proceeding against the Panchayat must be initiated within six months from the date on which the cause of action arises. In the present case, according to the Defendant, the Suit was instituted much beyond the prescribed period and without serving the mandatory notice contemplated under Section 270(2) of the said Act. It is therefore urged that, in absence of such statutory compliance, the entire proceedings are vitiated in law and the judgments of both Courts below stand rendered unsustainable.
8. It has further been contended that while determining the compensation payable for the death of the Plaintiff's wife, Manuben, both the Learned Trial Court and the Learned First Appellate Court failed to properly assess her notional income. The Learned Advocate for the Defendant submitted that since the deceased was a housewife, her income ought to have been notionally fixed at ₹3,000 per month, and the Courts below erred in assessing a higher figure without proper basis.
9. With regard to the claim pertaining to the Plaintiff's minor daughter, Artiben, it has been argued that the Courts below

failed to correctly evaluate the extent of her disability. Relying on the judgment of the Hon'ble Supreme Court in *Rajkumar v. Ajaykumar*, reported in (2011) 1 SCC 343, the Learned Advocate submitted that the disability should have been considered as affecting only half of the body as a whole, rather than being treated as total or permanent disability.

10. It has also been reiterated that the Suit itself was barred under Section 270(3) of the *Gujarat Panchayats Act, 1993*, as it was not filed within six months of the cause of action, and no statutory notice as required under Section 270(2) was ever served. The Learned Advocate therefore contended that both Courts below failed to consider these legal infirmities and overlooked the binding precedent of *Rajkumar v. Ajaykumar* (supra). On that basis, it has been urged that substantial questions of law arise for determination in the present Second Appeals, as formulated in the memorandum of Second Appeal No. 350 of 2025.
11. It has also been submitted that the Courts below failed to apply the correct legal principles while adjudicating upon the claims arising out of the unfortunate incident. The Learned Advocate for the Defendant contended that both the Trial Court and the First Appellate Court overlooked the mandatory provisions of law and failed to consider the legal bar contained in Section 270(3) of the *Gujarat Panchayats Act, 1993*, which clearly stipulates that no Suit against a Panchayat can be instituted after

the expiry of six months from the date on which the cause of action arises. It was further urged that the statutory notice contemplated under Section 270(2) of the said Act was never served, thereby rendering the entire proceedings illegal and without jurisdiction.

12. In view of these submissions, it has been contended that substantial questions of law arise for determination in the **Second Appeal No. 350 of 2025**, and the Appeal be admitted on the following substantial questions of law:
  - I. Whether the Courts below have applied the correct law to the facts of the case?
  - II. Whether the Courts below have erred in interpreting the law of limitation, considering that no Suit against the Panchayat can be filed after six months from the accrual of the cause of action under Section 270(3) of the *Gujarat Panchayats Act, 1993*?
  - III. Whether the Courts below have erred in ignoring the mandatory provisions of the *Gujarat Panchayats Act, 1993*, inasmuch as no notice under Section 270(2) was served, thereby rendering the proceedings illegal?
  - IV. Whether the Courts below have correctly appreciated the documentary evidence on record and properly interpreted the same while arriving at their findings?

13. In **Second Appeal No. 351 of 2025**, the Learned Advocate for the Defendant has further submitted that the findings recorded by both the Courts below are legally unsustainable and contrary to the settled position of law. It has been urged that the Courts below have failed to consider the bar of limitation prescribed under Section 270(3) of the *Gujarat Panchayats Act, 1993*, as well as the mandatory requirement of notice under Section 270(2). It has also been argued that the Courts below misapplied the principles laid down by the Hon'ble Supreme Court in the decisions governing assessment of compensation in cases of disability to minors.
14. Accordingly, it has been argued that the appeal be admitted on the following substantial questions of law formulated in the memorandum of **Second Appeal No. 351 of 2025** as under:
- I. Whether the lower courts have applied the correct law?
  - II. Whether the lower courts have erred in interpreting the law of limitation as no suit against the panchayat can be filed after expiry of 6 months of the cause of action as per S. 270 (3) of the Gujarat Panchayats Act, 1993.
  - III. Whether the lower courts have erred in ignoring the provisions of Gujarat Panchayats Act, 1993 which provides that that no notice under S. 270(2) of the Gujarat Panchayat Act, 1993 is given and therefore the proceedings are illegal proceedings.

- IV. Whether the lower courts erred in ignoring the judgment of Raj Kumar v. Ajay Kumar reported in (2011) 1 SCC 343?
- V. Whether the lower courts misapplied the judgment of Master Mallikarjun v. Divisional Manager, The National Insurance Company reported in 2013 ACJ 2445?
- VI. Whether the lower courts have properly interpreted the documents and whether relevant evidences have been considered by the lower Courts?

### **ANALYSIS**

15. Having heard the Learned Advocate for the Defendant, it is observed that the primary contention raised on behalf of the Defendant is twofold: first, that no statutory notice as required under Section 270(2) of the *Gujarat Panchayats Act, 1993* was served prior to the institution of the Suit, and second, that in view of the limitation prescribed under Section 270(3) of the said Act, no Suit can be maintained against a Panchayat after the expiry of six months from the date of accrual of cause of action. Since both these contentions have been raised in Second Appeal Nos. 350 and 351 of 2025, they are being considered together.

### **Tortious Liability**

16. The fact remains that the Suit instituted by the Plaintiff was based on the allegation of negligence on the part of the Defendant–Panchayat in maintaining the government water tank, the collapse of which resulted in the tragic incident. Therefore, the nature of the claim is not contractual or **statutory alone**, but one founded upon **tortious liability**, arising from the negligence of a public authority in discharge of its statutory duties.
17. The field of tort law represents the broad framework within which English law affords redress for civil wrongs and protects certain private rights. Its historical development, rooted in the early forms of common law pleading, resulted in the emergence of distinct and independent branches such as trespass, nuisance, and negligence. Consequently, many legal scholars have regarded tort law as a composite of particularised rules addressing specific injuries, rather than as a system governed by a single, overarching principle of liability. Yet, it is equally well settled that the common law is not static. It has, over time, evolved to recognise new duties and responsibilities where justice and social necessity so require. The recognition of a new cause of action, however, must necessarily be founded upon established legal principle, sound reasoning, or binding precedent; for, the expansion of liability in tort must rest upon

coherent development of law and not upon conjecture or judicial innovation untethered to principle.

18. The general principle of liability in the law of tort rests upon the maxim *ubi jus ibi remedium*. Meaning, where there is a right, there must be a remedy. Liability in tort arises when a person's act or omission, without lawful justification, causes harm to another in violation of a legally recognised duty of care or obligation. The essence of tortious liability lies not in the mere existence of damage, **but in the breach of a duty imposed by law, independent of any contractual or statutory relationship between the parties**. Such liability is primarily fault-based, though in certain cases the law imposes strict or absolute liability, recognising that public policy and social welfare demand responsibility even in the absence of negligence. Thus, the foundation of tort law is the protection of legal rights and the maintenance of a standard of reasonable conduct so that every individual, while exercising their own rights, must ensure that they do not cause unjust harm to others.
19. Tortious wrongs may broadly be classified into three principal categories (i) intentional torts, (ii) negligence, and (iii) strict or absolute liability. Intentional torts arise when harm is caused deliberately, as in cases of assault, battery, false imprisonment, or defamation.
20. Negligence, on the other hand, stems from a failure to exercise

reasonable care, resulting in unintended harm to another person. The third category, strict or absolute liability, imposes responsibility without proof of fault, in situations where inherently dangerous activities or substances are involved and public safety demands a higher standard of accountability.

**Negligence and breach of duty of care**

21. The present case becomes one that of negligence and consequential liability.
22. In cases resting on negligence, the fundamental principle of law is that every public authority or body discharging public functions owes a duty of care towards citizens who may reasonably be affected by its acts or omissions. This duty requires the authority to take reasonable and foreseeable precautions to prevent injury or harm. In the present case, the Defendant Panchayat was under an obligation to maintain the water tank and the adjoining structures in a safe and secure condition. The failure to do so, resulting in the collapse of the wall and the consequent injuries and death, clearly establishes a breach of that duty.
23. Once such breach is proved and a causal connection between the act of negligence and the injury is established, the liability of the Panchayat, being a statutory body, becomes absolute in tort. The Trial Court and the Ld. First Appellate Court have

rightly held that this dereliction of duty on the part of the Panchayat gives rise to a valid cause of action for compensation.

24. In *Jacob Mathew v. State of Punjab*, (2005) 6 SCC 1 the Hon'ble Apex Court held as follows:

***Negligence as a tort***

**10.** *The jurisprudential concept of negligence defies any precise definition. Eminent jurists and leading judgments have assigned various meanings to negligence. The concept as has been acceptable to Indian jurisprudential thought is well stated in the Law of Torts, Ratanlal & Dhirajlal (24th Edn., 2002, edited by Justice G.P. Singh). It is stated (at pp. 441-42):*

*“Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property. ... the definition involves three constituents of negligence: (1) A legal duty to exercise due care on the part of the party*

*complained of towards the party complaining the former's conduct within the scope of the duty; (2) breach of the said duty; and (3) consequential damage. Cause of action for negligence arises only when damage occurs; for, damage is a necessary ingredient of this tort."*

*11. According to Charlesworth & Percy on Negligence (10th Exn., 2001), in current forensic speech, negligence has three meanings. They are: (i) a state of mind, in which it is opposed to intention; (ii) careless conduct; and (iii) the **breach of a duty to take care that is imposed by either common or statute law**. All three meanings are applicable in different circumstances but any one of them does not necessarily exclude the other meanings. (para 1.01) The essential components of negligence, as recognised, are three: "duty", "breach" and "resulting damage", that is to say:*

*(1) the existence of a duty to take care, which is owed by the defendant to the complainant;*

*(2) the failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and*

*(3) damage, which is both causally connected with such breach and recognised by the law, has been suffered by the complainant. (para 1.23)*

*If the claimant satisfies the court on the evidence*

*that these three ingredients are made out, the defendant should be held liable in negligence. (para 1.24)*

25. In ***Rajkot Municipal Corpn. v. Manjulben Jayantilal Nakum***, (1997) 9 SCC 552 the Hon'ble Apex Court has held as follows:

***41. The proper approach, therefore, is to consider whether a duty of care situation exists in public law tort which the law ought to recognise and whether in that situation the defendant's conduct was such that he should have foreseen the damage that would be inflicted on the plaintiff. As a general rule of law, one man is under no duty to control another so as to prevent the latter from doing damage to a third. The first question to be considered is whether the plaintiff has established necessary relationship giving rise to the duty of care. The next question is whether there is any negligence at the time when the act in question was committed? The act complained of must have a rational relationship to the damage caused. The tort of negligence does not depend simply on the question of foreseeability. Foreseeability is not the sole criterion nor does the fact that the damage is foreseeable create any onus. What the court would ask or look at is the operational structure of the Act. Is this a situation where a duty does exist towards the plaintiff or the class of persons to which he belongs keeping in mind the nature of the functions and the interest of the community. The further question would be whether the damage to the plaintiff is so foreseeable.***

*In that behalf it must be further seen whether there was sufficiently proximate relationship between the plaintiff and the defendant. In Hadley v. Baxendale [(1854) 9 Exch 341 : (1843-60) All ER Rep 461] , the celebrated judgment, the accident can be said to have been the natural and probable result of the breach of duty. That principle was accepted in Haynes v. Harwood [(1935) 1 KB 146 : 1934 All ER Rep 103, CA] wherein Greer, L.J. had laid thus : (All ER p. 107)*

...

26. Therefore, the law of negligence, as a branch of the law of torts, is founded on the principle that every person owes a duty of care to another, to avoid acts or omissions which can reasonably be foreseen as likely to cause harm. To establish negligence, three essential elements must co-exist: (i) the existence of a legal duty of care owed by the defendant to the plaintiff, (ii) a breach of that duty by the defendant, and (iii) damage or injury suffered by the plaintiff as a direct consequence of such breach. In determining negligence, the test applied is that of a reasonably prudent person whether, in similar circumstances, a person of ordinary caution and foresight would have acted differently to prevent the harm. Once it is shown that the defendant failed to exercise such reasonable care, and that failure caused injury, liability in negligence is established.

27. In the present case, the wrong complained of falls within the domain of negligence, where the liability is premised upon breach of a legal duty to take reasonable care, leading to foreseeable injury. The duty of the Panchayat to ensure safety around a public water tank was one of care and supervision, and its failure to maintain the structure in a sound and secure condition has directly resulted in the unfortunate incident giving rise to this litigation.
28. Negligence is often associated with inadvertence, though the two are not synonymous, and their coexistence is not inevitable. In many instances, negligence arises from carelessness. A failure to foresee or consider the likely consequences of one's conduct. Typically, the negligent individual neither intends the resulting harm nor even contemplates its possibility; the outcome simply does not cross their mind. However, negligence is not confined to such unintentional inattention. The law recognises a distinct form of *wilful or conscious negligence*, where the wrongdoer, though not desiring the harmful outcome, is fully aware of the risk yet proceeds with reckless disregard for it. Such conduct reflects not mere inadvertence but a deliberate indifference. A mental attitude of carelessness or disregard towards evident and foreseeable risks that any reasonable person could and would have avoided.

**Liability of the Panchayat / State**

29. In cases such as the present one, where the incident arises from the collapse of a public structure maintained and controlled by a statutory authority, liability of the State comes into play. The State and its instrumentalities, including local bodies such as Panchayats, are under a continuing duty to ensure that public premises and utilities are maintained in a safe and secure condition. When a public authority fails to discharge this duty and such failure results in injury or loss of life, liability attaches even without specific proof of negligence.
30. This principle flows from the public law doctrine that where the State undertakes an activity inherently hazardous or involving public use, it bears an absolute and non-delegable responsibility to prevent harm. The citizens, being users of public facilities, are entitled to protection, and any breach of this obligation whether by omission, neglect, or failure of supervision, renders the State strictly liable for the consequences.
31. This will be further clear from the judgment of the Hon'ble Apex Court in *Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat, (1994) 4 SCC 1*

*8. Winfield has defined tortious law arising from breach of a duty primarily fixed by law; this duty is*

*towards persons generally and its breach is redressable by an action for unliquidated damages. In general, torts consist of some act done without just cause or excuse.*

*“The law of torts exists for the purpose of preventing men from hurting one another whether in respect of their property, their presence, their reputations or anything which is theirs.”*

***Injury and damage are two basic ingredients of tort. Although these may be found in contract as well but the violations which may result in tortious liability are breach of duty primarily fixed by the law while in contract they are fixed by the parties themselves. Further in tort the duty is towards persons generally. In contract it is towards specific person or persons. An action for tort is usually a claim for pecuniary compensation in respect of damages suffered as a result of the invasion of a legally protected interest. But law of torts being a developing law its frontiers are incapable of being strictly barricaded. Liability in tort which in course of time has become known as ‘strict liability’, ‘absolute liability’, ‘fault liability’ have all gradually grown and with passage of time have become firmly entrenched. ‘Absolute liability’ or “special use bringing with it increased dangers to others”(Rylands v. Fletcher [LR (1868) 3 HL 330 : 37 LJ Ex 161 : [1861-73] All ER Rep 1] ) and ‘fault liability’ are different forms which give rise to action in torts. The distance (sic difference) between ‘strict liability’ and ‘fault liability’ arises from***

*presence and absence of mental element. A breach of legal duty wilfully, or deliberately or even maliciously is negligence emanating from fault liability but injury or damage resulting without any intention yet due to lack of foresight etc. is strict liability. Since duty is the primary yardstick to determine the tortious liability its ambit keeps on widening on the touchstone of fairness, practicality of the situation etc. In Donoghue v. Stevenson [(1932) AC 562 : 1932 All ER Rep 1] a manufacturer was held to be liable to ultimate consumer on the principle of duty to care. In Anns v. Merton London Borough Council [(1978) AC 728 : (1977) 2 All ER 492] it was, rightly, observed:*

...

32. Negligence is often accompanied by inadvertence, but the two are not identical, and their concurrence is not inevitable. In most cases, negligence stems from a careless disregard of likely consequences, resulting in a failure to even consider them. Ordinarily, a negligent person neither intends the harmful result nor gives any thought to its possibility; the risk simply does not occur to them. However, negligence is not always unintentional. The law also recognises wilful or conscious negligence, where a person, though not intending the harm, is fully aware of the potential danger yet proceeds in disregard of it. In such cases, the wrongdoer deliberately

exposes others to a known risk. This state of mind has aptly been described as a conscious indifference to obvious and foreseeable hazards.

**Doctrine of *res ipsa loquitur***

33. In the field of tortious negligence, it is often challenging to establish a direct causal link between the act complained of and the resulting injury or damage through concrete evidence. To address such situations, the legal doctrine of *res ipsa loquitur*. Meaning “the thing speaks for itself”. This was developed in English law and has since been adopted in Indian jurisprudence as well. This principle operates in cases where the very nature and circumstances of the accident inherently suggest negligence.
34. When an incident occurs under conditions that ordinarily would not have happened without negligence, and where the cause lies within the exclusive control of the defendant, the occurrence itself serves as prima facie evidence of negligence. Thus, when the cause of an accident is unknown and no reasonable or satisfactory explanation is offered by the opposing party, the presumption of negligence arises by virtue of the *res ipsa loquitur* doctrine.
35. It therefore becomes essential to apply the doctrine of *res ipsa loquitur* when evaluating and determining claims for

compensation arising from tortious negligence. This doctrine is invoked in cases where the nature of the accident is such that it would not ordinarily occur if those responsible for its management and control had exercised due care, caution, and reasonable prudence. Moreover, the instrumentality or event causing the accident must have been under the exclusive control of the defendant, for it is the defendant who is in a better position to explain how the mishap occurred. The doctrine does not merely imply that negligence has occurred but attributes that negligence to the party responsible for control of the situation.

36. In India, the rules governing the burden of proof are contained in the Indian Evidence Act, 1872, which generally places the onus of proving negligence on the person alleging it. However, to ease this burden, the law recognises certain presumptions that may arise in appropriate cases such as permissive presumptions, presumptions of fact, rebuttable presumptions of law, and irrebuttable presumptions of law. The doctrine of *res ipsa loquitur* thus operates as a evidentiary tool, allowing the Court to draw reasonable inferences of negligence from the circumstances of the case.
37. Since the present proceedings arise from a claim for damages based on negligence in tort, the primary burden of proof undoubtedly lies upon the Plaintiff. However, it is not always essential for the Plaintiff to lead direct evidence of negligence.

It is sufficient if the Plaintiff establishes facts and circumstances from which a reasonable inference of negligence on the part of the Defendant may be drawn. Negligence, in essence, is not a matter of direct proof but a legal inference derived from the facts proved before the Court. The Plaintiff can succeed if the established facts are inconsistent with the exercise of reasonable care and diligence by the Defendant.

38. In certain cases, the Plaintiff may prove only the occurrence of the accident itself without being able to identify a specific act or omission on the part of the Defendant. Where the nature of the accident is such that it is more consistent with negligence than with any other possible cause, the Court is entitled to infer negligence unless the Defendant provides a reasonable explanation demonstrating that the mishap could have occurred even in the absence of negligence. This evidentiary principle, known as *res ipsa loquitur*, literally means “the thing speaks for itself.” It does not constitute a rule of substantive law but rather a rule of evidence pertaining to the burden of proof. The doctrine proceeds on the rationale that certain types of accidents ordinarily do not occur unless there has been some want of care, and therefore, the mere occurrence of such an event may justifiably give rise to a presumption of negligence.

8. In **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."*

39. In **Narasappa v. Kamalamma, AIR 1968 Mysore 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.
40. Moreover, in **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.

41. It has further been observed that negligence signifies a failure to exercise due consideration for the likely consequences of one's actions and is generally understood as conduct that falls short of what a prudent and reasonable person would have done in similar circumstances. The essence of the tort of negligence lies in the existence of some act or omission reflecting a lack of reasonable care, often arising from inadvertence, though not exclusively so. However, not every act of carelessness that results in harm will amount to actionable negligence. The test of liability is whether the person concerned failed to take precautions that a reasonable and prudent individual would have taken, having regard to the surrounding facts and circumstances. The emphasis, therefore, is on the quality of the conduct rather than the mere occurrence of harm, and it is this failure of reasonable foresight and caution that forms the foundation of liability in tort.
42. Therefore, without delving into the precise cause of the accident or engaging in an elaborate examination of technical evidence, the Court is entitled to draw an inference of negligence when the surrounding facts and circumstances speak for themselves. This approach is permissible in law, particularly where the incident is of such a nature that it would

not ordinarily have occurred without some lapse of care or breach of duty on the part of the authority responsible. In such situations, the doctrine of *res ipsa loquitur* justifies shifting the evidentiary burden upon the Defendant to offer a plausible explanation for the occurrence. The rationale underlying this principle is that the material facts concerning the management, supervision, and maintenance of the structure or instrumentality causing the injury are within the exclusive knowledge of the Defendant, and therefore, in the absence of a satisfactory explanation, the presumption of negligence stands established.

**Section 270 of the Gujarat Panchayats Act**

43. In this context, it becomes necessary to examine the scope and intent of Section 270(2) of the Gujarat Panchayats Act, 1993, which provides as follows:

***“Bar of action against panchayat, etc. and previous notice before institution.”***

*\*(2) No action shall be brought against any panchayat or any member, officer, servant or agent of such panchayat, or any member of a committee of a panchayat acting under its direction, for anything done or purported to have been done by or under this Act, until the expiration of one month next after notice in writing has been left or delivered at the office of the*

*panchayat, and also at the residence of the member, officer, servant or agent thereof against whom the action is intended to be brought. The notice shall state the cause of action, the nature of the relief sought, the amount of compensation claimed, and the name and place of abode of the person who intends to bring the action.*

44. This provision, in essence, imposes a procedural requirement of prior notice before instituting legal proceedings against a Panchayat or its functionaries for any act done in the discharge or purported discharge of their statutory functions. It seeks to ensure that the Panchayat is afforded an opportunity to examine and, if necessary, redress the grievance before the matter reaches the stage of litigation.
45. In the present case, however, it is not necessary to dwell upon or interpret the scope of Section 270(2) of the Gujarat Panchayats Act, 1993, in detail, since the issue at hand does not directly arise from any act done by the Panchayat in the discharge or purported discharge of its statutory duties. The cause of action in the present matter emanates from an allegation of negligence resulting in personal injury and loss of life, which cannot be equated with an act done under the authority of the statute. Hence, the requirement of prior notice under Section 270(2) does not operate as a bar to the institution of the present proceedings.

46. In the present case, the act complained of is one of negligence attributed to the Defendant, which is alleged to have caused the collapse of the wall surrounding the water tank, resulting in the debris falling upon the Plaintiff's wife and two minor children. The central question that arises is whether such an action for damages can be regarded as one instituted for an act done or purported to have been done under the Gujarat Panchayats Act. From the record, it is evident that there is no allegation by the Plaintiff that any affirmative or deliberate act was undertaken by the Defendant leading to the incident. The substance of the allegation is that the Defendant failed to exercise reasonable care in maintaining the structure and ensuring its safety. The liability sought to be fastened upon the Defendant is, therefore, one arising under the common law principle of negligence and not from any statutory obligation.
47. The general principle of law is that every person or authority having control over a property or structure owes a duty to maintain it in a safe condition so as not to cause injury or danger to others. The Plaintiffs' grievance, therefore, does not stem from any action or omission performed in pursuance of the statute but from the breach of this common law duty of care. The wall surrounding the tank was vested in the Defendant and was required to be maintained at public expense. The claim for damages is founded solely on the allegation that the Defendant failed to take reasonable

precautions to ensure that the wall did not pose a risk to human life.

48. In light of these facts, the liability of the Defendant clearly arises under the law of torts, and the Plaintiffs' claim is based entirely upon principles of common law. Since the action is not one for any act done under the Gujarat Panchayats Act, 1993, but for failure to discharge a general duty of care, the bar under Section 270(2) of the said Act has no application. Accordingly, there is no merit in the contention raised on behalf of the Defendant, and the Second Appeals are liable to be dismissed on that count.

**Quantum of compensation**

49. While assessing the income of the deceased Manuben, wife of the Plaintiff, the Ld. First Appellate Court carefully considered that at the time of her death, the deceased was aged 35 years, thus falling within the multiplier age group of 31–35 years. It has come on record through oral and documentary evidence that at the time of the incident, the deceased was engaged in imitation and labour work, earning approximately Rs.5,000 per month. Taking into account the year of the incident, the nature of her work, prevailing daily wage rates, cost of living, economic conditions, and the decreasing interest rates on fixed deposits, the Court reasonably concluded that her monthly

income was Rs.5,000, amounting to Rs.60,000 annually. Considering her age and occupation as a self-employed woman, and by applying the multiplier of 16 as prescribed in the judgment of the Hon'ble Supreme Court in *Sarla Verma and Others v. Delhi Transport Corporation and Another*, 2009 (2) ACJ 1298, the Ld. First Appellate Court rightly determined the total loss of dependency at Rs.10,08,000. Consequently, it found no reason to interfere with the findings of the Ld. Trial Court and accordingly dismissed the appeal filed by the Defendant concerning the compensation awarded for the death of Manuben.

50. As regards the claim relating to the minor child Artiben, the Ld. First Appellate Court considered that the minor was approximately 10 years old at the time of the incident, which occurred on 19.05.2013. The medical evidence on record, particularly the injury certificates at Exhibits 59 and 60, established that the minor had suffered 25% permanent disability. Relying on the principle laid down by the Hon'ble Supreme Court in *Master Mallikarjun v. Divisional Manager, The National Insurance Company*, 2013 ACJ 2445, the Court awarded a just and reasonable compensation of Rs.3,00,000.
51. Upon reappraisal of the evidence, the Appellate Court found the assessment fair and consistent with the settled legal position, thereby dismissing the appeal filed by the Defendant with respect to the claim of minor Artiben.

52. In *Raj Kumar v. Ajay Kumar*, (2011) 1 SCC 343 the Hon'ble Apex Court with regard to permanent disability has held as follows:

*9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.*

*10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the*

*percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.*

53. Therefore, in view of the foregoing discussion and the findings recorded hereinabove, there are no substantial questions of law in both the Second Appeals. The concurrent findings of the Ld. Trial Court and the Ld. First Appellate Court are based on proper appreciation of evidence and settled principles of law. There is neither any misinterpretation of statutory provisions nor any perversity in the reasoning adopted by the Courts below so as to warrant interference in Second Appeal.
54. In the present case, both the Ld. Trial Court and the Ld. First Appellate Court have arrived at concurrent findings of fact after a detailed appreciation of the oral and documentary evidence on record. The findings are based on sound reasoning

and a proper application of legal principles governing negligence and compensation. There is no perversity, illegality, or misreading of evidence which would justify interference by this Court in the exercise of its jurisdiction under Section 100 of the Code of Civil Procedure. The concurrent findings being well supported by evidence and in conformity with settled law, do not call for any reappraisal or reassessment at the stage of Second Appeal.

55. In view of the same the present second appeals are dismissed.

URIL RANA

**Sd/-**  
**(SANJEEV J.THAKER,J)**