

(1994) 03 GUJ CK 0038

In the Gujarat High Court

Case No : Civil Revision Application No. 594 of 1991

Anitaben and Others

APPELLANT

Vs

Abdulahakim Allarkhan Shaikh and Others

RESPONDENT

Date of Decision : 19-03-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 115

Citation : (1995) ACJ 831 : (1995) 1 GLR 479

Hon'ble Judges : H.L. Gokhale, J

Bench : Single Bench

Advocate : P.B. Seth, for Sandip Shah, for the Appellant; N.D. Gohil and K.F. Dalal, for the Respondent

Final Decision : Allowed

Judgement

H.L. Gokhale, J.—This civil revision application challenges the order dated 15.3.1991, passed by the Motor Accidents Claims Tribunal No. 1, Ahmedabad, in Motor Accident Claim Petition No. 31 of 1989, rejecting the application for interim compensation moved u/s 92-A of the Motor Vehicles Act, 1939. One Nalinkumar Manubhai Shah, aged about 38 years, reportedly died in an accident caused by an auto-rickshaw bearing No. GRX 281 on 18.2.1989. At the relevant time, the said auto-rickshaw was being driven by the respondent No. 1 and was owned by the respondent No. 2 herein. On that day, at the relevant time, i.e., at about 7.30 a.m. Nalinkumar was going to the Ahmedabad Railway Station when he met with the accident while crossing the road and died. He was an employee of the Gujarat Electricity Board. His wife and two minor children, therefore, filed Claim Petition No. 31 of 1989, claiming necessary compensation from the driver, owner and the insurer of the vehicle involved in the accident. The parents of the deceased were joined as respondent Nos. 3 and 4. In that petition, the wife and children moved an interim application seeking, amongst other prayers, an amount of Rs. 15,000/-, u/s 92-A of the Motor Vehicles Act, 1939, which provides for "no fault liability".

2. The said application was resisted through the affidavit-in-reply filed by the respondent No. 1 herein and also by United India Insurance Co. Ltd., which had been joined as the insurer in the claim petition, and which is respondent No. 5 herein. The owner of the vehicle, the respondent No. 2 herein, did not file any reply opposing the interim relief, but adopted the one filed by the driver. The driver of the auto-rickshaw stated in his reply that there was no accident as such but, at the relevant time, when his rickshaw was carrying the passengers with their load of vegetables, one person (i.e., Nalinkumar) was crossing the road and he fainted near the auto-rickshaw. He stated that he arranged to send the person concerned in another auto-rickshaw to a hospital for treatment as a humanitarian gesture and, thereafter, proceeded with his passengers. He has further stated in the reply that insurance premium had been paid by the respondents to the United India Insurance Co. Ltd. by cheque dated 17.2.1989 and they had no responsibility to pay any compensation for the accident. The insurance company stated in its objections that the policy particulars concerning the insurance of the rickshaw were not disclosed to it. The learned advocate for respondent Nos. 1 and 2 has shown me the photocopy of the receipt given by the agent of the said insurance company, mentioned in the driver's reply as referred above. It shows that the owner has signed the cheque concerning the insurance on 17.2.1989, i.e., just one day before the date of accident, but the receipt of the cheque is dated 28.3.1989. Be that as it may, the insurance company stated in its reply that since the existence of the policy was doubtful and even if it did exist, according to it, it did not appear to be legal and valid policy.

3. The papers concerning the police panchnama, post-mortem report, death certificate and the F.I.R. were produced before the Claims Tribunal. The nature of injuries is described as follows in the postmortem report:

Blood and blood clots all over the brain. Rupture of right and left frontal region and left temporal region of cerebral hemisphere.

The statements in the panchnama and the F.I.R. state that the deceased Nalinkumar was knocked down by the concerned rickshaw bearing No. GRX 281. The postmortem report gives the opinion as to the cause or the probable cause of death as follows:

Death caused by shock due to intra-cranial haemorrhage following head injury.

The learned Judge of the Motor Accidents Claims Tribunal, however, accepted the plea of the driver made on affidavit. The learned Judge held in para 8 of his order as follows:

For the present, there is no prima facie case and/or evidence to establish that the accident has arisen out of the use of the motor vehicle, i.e., auto-rickshaw, and in absence of any such prima facie evidence, no award u/s 92-A of the Motor Vehicles Act, 1939, can be passed.

Hence, he rejected the application for interim compensation. Being aggrieved by

the said order, the wife and two minor children of the deceased Nalinkumar have filed the present civil revision application.

4. The advocates for the petitioner and respondent Nos. 1 and 2 have taken me through the material on record and addressed me on their rival contentions. The advocate for the insurance company was not present though they were served. However, before the rival submissions are examined, it will be advisable to refer to the relevant legal provision. Section 92-A of the Motor Vehicles Act, 1939, has been brought in the statute book with a view to providing for immediate compensation on the principle of no fault liability. The said Section was inserted in the said Act by amending Act No. 47 of 1982 and brought in force from 1.10.1982. Sub-section (1) of Section 92-A reads as follows:

Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this Section.

The compensation payable is provided at Rs. 15,000/- in Sub-section (2) of Section 92-A in the event of death.

5. The provisions of this Section came up for consideration before the Hon''ble Supreme Court in the case of Shivaji Dayanu Patil v. Vatschala Uttam More 1991 ACT 777 (SC). At the end of para 44 and in para 45 thereof, the Hon''ble Supreme Court has observed as follows:

Moreover, for awarding compensation u/s 92-A of the Act, the Claims Tribunal is required to satisfy itself in respect of the following matters:

- (i) an accident has arisen out of the use of a motor vehicle;
- (ii) the said accident has resulted in permanent disablement of the person who is making the claim or death of the person whose legal representative is making the claim;
- (iii) the claim is made against the owner and the insurer of the motor vehicle involved in the accident.

45. The documents referred to in rules 291-A and 306-B will enable the Tribunal to ascertain the necessary facts in regard to these matters. Thepanchnama and the first information report will show whether the accident had arisen out of the use of the motor vehicle in question. The injury certificate or the post-mortem report will show the nature of the injuries and the cause of death. The registration certificate and insurance certificate of the motor vehicle will indicate who is the owner and insurer of the vehicle.

6. In the instant case, the above referred documents have been brought on record. The nature of injuries suffered by Nalinkumar, as described in the postmortem report, is serious enough. The cause of death is stated in the said

report to be shock due to intracranial haemorrhage following head injury. Undoubtedly, Nalinkumar received serious head injuries due to which he appears to have died. The panchnama and the F.I.R. have indicated the cause of death as the rash and negligent driving of auto-rickshaw No. GRX 281 by respondent No. 1. As against this documentary evidence, we have only the driver's affidavit and no other evidence in his support. The driver, in his affidavit, accepts that Nalinkumar very much came near to his vehicle while crossing the road. It is not his case that Nalinkumar was knocked down by any other vehicle. His only plea is that Nalinkumar came near his vehicle and fainted. The driver also states that he immediately arranged to send him to hospital for treatment. He is, however, totally silent as to how Nalinkumar was found to have sustained such serious head injuries leading to his death, though, according to him, Nalinkumar just fainted near his vehicle and yet was required to be immediately hospitalised, in which he helped the injured. The merits of the driver's reply will be examined by the learned Judge of Motor Accidents Claims Tribunal in details at the final hearing of the matter after the regular trial. However, the plea of the driver cannot be allowed to deny or postpone the claim for interim compensation on the basis of "no fault liability", as provided u/s 92-A of the Motor Vehicles Act, 1939. This is particularly so when in the facts of the present case, there is adequate documentary evidence in support of prima facie inference of the involvement of auto-rickshaw No. GRX 281 in the said accident and an implicit admission of involvement in the accident in the driver's reply, when the learned Judge recorded "...he clearly says that the person concerned sustained no injury due to fall and not by dashing of rickshaw." In fact, no submissions were advanced to counter the logical inference which flows from the material on record. The learned Judge, in his impugned order, nowhere refers to panchnama or postmortem report containing the nature of injuries and medical opinion on cause of death, leave aside discussing the inference flowing therefrom. The finding of the learned Judge in para 8 of his order referred to above that, "for the present there is no prima facie case and/or evidence to establish that the accident has arisen out of the use of the auto-rickshaw" is, thus, contrary to the material on record and, therefore, wholly unsustainable and has to be interfered with. It will have to be held that there is prima facie case and evidence to establish that the accident has arisen out of the use of the auto-rickshaw.

7. As observed by the Supreme Court in the above cited judgment, the relevant rules and the documents concerned contain adequate provisions which would enable the Claims Tribunal to satisfy itself in respect of the matters necessary for awarding compensation u/s 92-A of the Act of 1939. The object underlying the enactment of Section 92-A is to make available compensation as expeditiously as possible and the said award is to be made before adjudication of the claim u/s 110-A of the Motor Vehicles Act, 1939. The said object would be defeated if, while determining the interim compensation, the Claims Tribunal is required to hold a regular trial, in the same manner as for adjudicating a claim petition u/s 110-A of the Act. This has got to be done on the basis of documentary evidence

as provided in the relevant rules. In case the Tribunal entertains any doubts about the correctness of any of the documents, the relevant rules empower the Tribunal to obtain supplementary information from the concerned officers and hold a summary inquiry. However, without doing that, the Tribunal cannot discard, only on the basis of the driver's reply, the prima facie inference which flows from the documents on record as also from the driver's reply. By doing so, the Tribunal has failed to exercise a jurisdiction vested in it. An irreparable injury is already caused to the petitioners. The impugned order, if allowed to stand, would further aggravate the injury. They have received no compensation at all though more than five years have gone since the death of the only bread-earner in their family and the trial of the claim petition is yet not over. In view of the above referred reasons, this is a fit case to interfere and set aside the impugned order in exercise of powers of High Court u/s 115 of the Code of Civil Procedure.

8. Having interfered with the impugned order, it will have to be examined whether the Tribunal should be now directed to hold a summary inquiry to decide the interim application. Remanding the interim application to the Claims Tribunal for an inquiry, at this stage, will result into further delay in the award of interim compensation. However, as discussed above, there is adequate material on record to satisfy the requirements of Section 92-A. The rival advocates have fully addressed me on the interim application. Hence, there is no reason why the interim application should not be allowed. In the facts of the present case, however, the interim application will have to be allowed against the owner only as the exact particulars of the insurance are not available. He may, however, satisfy the insurance company by producing further evidence regarding insurance and claim the amount from it. The present order is on the basis of material on record as of now and the Claims Tribunal will be at liberty to arrive at appropriate conclusion regarding the insurance coverage in the main claim petition on the basis of the evidence that may be produced before it.

9. Hence, the following order:

The impugned order of the Motor Accidents Claims Tribunal No. 1, Ahmedabad, dated 15.3.1991, in Claim Petition No. 31 of 1989 is quashed and set aside. The interim application of the petitioners is allowed. The respondent No. 2 is directed to pay the petitioner, within six weeks hereof, the sum of Rs. 15,000/- only with interest at the rate of 12 per cent per annum thereon calculated from the date of main claim petition, as prayed in para 13 (A) of the interim application. Respondent No. 2 may, however, on satisfying the respondent No. 5, insurance company, about the insurance, claim the amount from it. The Motor Accidents Claims Tribunal, Ahmedabad, shall dispose of main Claim Petition No. 31 of 1989 preferably within three months from the receipt of the writ following this order since the matter is sufficiently old. The rule is thus made absolute in the above terms. Respondent No. 2 will pay to the petitioners the costs of this civil revision application.