

(1984) 04 GUJ CK 0013
In the Gujarat High Court
Case No : First Appeal No. 1164 of 1981

Arjanbhai Bhikhabhai

APPELLANT

Vs

Babusing Ramsing and Others

RESPONDENT

Date of Decision : 20-04-1984

Acts Referred:

Motor Vehicles Act, 1988 — Section 95

Citation : (1986) 60 CompCas 598

Hon'ble Judges : N.H. Bhatt, J;M.B. Shah, J

Bench : Division Bench

Advocate : M.C. Bhatt, for the Appellant; D.R. Bhatt and B.R. Shah, for the Respondent

Judgement

Bhatt, J.—This is an appeal by the original claimant of the Motor Accidents Claims Petition No. 40 of 1979 decided by the learned Motor Accidents Claims Tribunal at Bhavnagar. The applicant-appellant who was a working at the relevant time, i.e., December 11, 1978, as a labourer on the truck No. GTD 5252 driven by respondent No. 1 and belonging to respondent No. 2 had come to sustain injuries when the truck was playing between Tajpur and Lathidad in Bhavnagar District. When Lathidad was about a kilometre away from the place of the unfortunate accident, the driver got the axle between the front wheels broken by his unduly fast and rash driving, with the result that the petitioner-appellant who was sitting in the body of the truck got a violent jerk with the result that the spare-wheel also jumped and violently fell on his back causing serious injuries to him. He had, therefore, filed the claim petition for Rs. 70,000 in all under various heads detailed by him in his application. The learned Tribunal ultimately accepted the claim application and directed payment of Rs. 70,000 by way of total compensation, but the liability was kept confined to the driver and the owner of the truck in question. Having little to rejoice about the exoneration of the insurance company (respondent No. 3), the original claimant had presented the present the present first appeal.

2. The only question that would survive for our consideration in this first appeal would be, whether the insurance company was liable or not. We have devoted our very anxious thought to this question. Mr. B. R. Shah appearing for the insurance company submitted that as far as the statutory liability in respect of this loader was concerned, the insurance company could not disown the same, but here, there was an attempt to saddle the insurance company on the basis of a contract of insurance covering the risk over and above the one statutorily provided for. His argument was that this extension of the liability, being a matter of contract, was required to be specifically pleaded and proved and the contract of insurance evidenced by the policy of insurance in his submission left little doubt that the loader was not so specially covered. It is this question which we would say is not free from doubt on our own assessment and calls for a closer examination. The front page of the policy of insurance mentions the schedule of premium which is reproduced below :

Rs. P. "Basic premium 1,861.00 + Unlimited PI and PD 39.00 Rs. 1,50,000 + Riot and strike 100.00 + WC to a paid driver and a 16.00 cleaner -----
2,016.00 - 15% N.C.B. 301.50 ----- 1,714.50 - 10% Special discount
171.45 ----- 1,543.05 Net rounded off premium : 1,543.00"

3. This limit of liability is set out therein and the further endorsement is also reproduced hereinbelow :

Limit of the amount of the company's liability u/s 11(1) (i) in respect of any one accident. "Limits of liability Unlimited personal injury. Limit of the amount of the company's liability u/s 11(1) (ii) in respect of any claim or series of claims arising out of one event. 1,50,000 property damage. Subject to clause (mvc) and endorsement Nos. 23, 16, 21, 26 and red slip as annexed."

4. This would mean that over and above the statutory liability, because of endorsements Nos. 23, 16, 21, 26 and red slip, there was some additional contract between the insurer and the insured. We, on our part, are concerned with endorsement No. 16, the whole of which is required to be reproduced below :

"Endorsement No. 16 In consideration of the payment of an additional premium, it is hereby understood and agreed that notwithstanding anything contained herein to the contrary, the company shall indemnify the insured against his legal liability under :-

The Workmen's Compensation Act, 1923, and subsequent amendments of that Act prior to the date of this endorsement, the Fatal Accidents Act, 1855, or at common law in respect of personal injury to any paid driver (or cleaner or conductor or person employed in loading and/or unloading) whilst engaged in the service of the insured in such occupation in connection with the and will in addition be responsible for all costs and expenses incurred with its written consent.

The premium having been calculated at the rate of Rs. 8 per driver (and/or cleaner or conductor and/or person employed in loading and/or unloading), the insured shall certify at the expiry of each period of insurance the maximum number of drivers and/or cleaners and/or conductors and/or persons employed in loading and/or unloading employed at any one time during such period in connection with the belonging to him and the premium shall be adjusted accordingly"

5. Mr. Shah's argument was that there was no evidence to show that the additional risk in respect of the person employed in loading and/or unloading was provided for because additional premium at the rate of Rs. 8 per person employed in loading and/or unloading is not shown to have been paid. Inviting our pointed attention to the front page of the insurance policy, he said that additional premium of Rs. 16 was paid only qua the driver and the cleaner. The above-quoted schedule of premium, however, does not show that was the additional premium paid for covering the additional liability, but it is the premium worked out for covering the liability arising under the Workmen's Compensation Act. The word "W.C." in the context of this law can reasonably be understood to mean "workmen's compensation". Unfortunately, for the insurance company, no evidence was led on its behalf to explain this contract. So, the payment of Rs. 16 noted on the front page of the insurance policy, exhibit 37, cannot be said to be referring to this "wider coverage", and, therefore, the argument of Mr. Shah that this additional premium was paid only to cover the driver and the cleaner in terms of endorsement No. 16 is difficult to be entertained. The basic premium of Rs. 1,861 may include some additional premium referred to in clause 16 of the insurance policy. We are constrained to say so because the insurance document itself mentions that the endorsement No. 16 is a part and parcel of this agreement. We have already quoted above, slip No. 16 and it specifically mentions that in consideration of the payment of an additional premium (which unfortunately had not been specified separately anywhere in this document, exhibit 37, but which is to be presumed to have been paid because of the annexation of this slip No. 16), the insurance company had agreed to indemnify the insurer against his liability in respect of all persons specified therein, namely, the driver, the conductor and the persons employed in loading and/or unloading work. There is no escape from the fact that there was a contract for giving wider coverage than the one envisaged by the statute, namely, section 95 of the Motor Vehicles Act. In view of the text of that endorsement No. 16, it is required to be assumed that this endorsement No. 16 was inserted to cover all persons including the driver, the conductor and the loader, i.e., a person employed in the act of loading and unloading.

6. This type of interpretation is not coming up for the first time before us. On as many as two earlier occasions, similarly worded policies had come to be considered by the Division Benches of this court. The first is the case of Gujarat Mineral Development Corporation Ltd. Vs. Varjubhai Lallubhai Bhil and Others etc., ; Gujarat Mineral Development Corporation Ltd. Vs. Varjubhai Lallubhai Bhil

and Others etc., , and other is the case of Punjabhai Prabhudas and Co. v. Sakinaben Mahmedbhai [1977] ACJ 44. In the case of Gujarat Mineral Development Corporation, the insurance policy mentioned specifically that additional premium was charged at the rate of Rs. 5 for the conductor and the driver and it was so specifically stated in the schedule of premium also. In the instant case, this additional amount is mentioned as the extra premium paid for covering the "W.C. liability." Endorsement No. 16 was a blank there as it is before us and in those circumstances, the Division Bench held that because of endorsement No. 16, the liability was fully covered and the payment of monies was a matter which could have been elaborated by the insurance company. Similar is the situation in Punjabhai's case [1977] ACJ 44 . In order to be satisfied about the ratio in those two cases, we had called for the original record before those two respective Tribunals, one at Baroda and the other at Ahmedabad (Rural) at Narol and amazingly we have found that despite this endorsement No. 16 in those two policies and despite the situation being of the type which is presented to us in this first appeal, the Division Benches had interpreted those endorsement slips likewise. We find no way out but to follow the same line of reasoning on the strength of almost identity of the terms of the insurance policies.

7. In the above view of the matter, we allow this appeal by directing that the insurance company, respondent No. 3 herein, also shall be liable to make good the entire amount of the award passed in favour of the claimant-appellant. This appeal stands accordingly allowed, but in the facts and circumstances of the case, we say that the parties shall bear their own costs of this first appeal.