
(2010) 12 GUJ CK 0036
In the Gujarat High Court
Case No : First Appeal No. 2309 of 1992

Bipinbhai Natwarlal Shah

APPELLANT

Vs

Ashok Raghavan Nair and Others

RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Citation : (2010) 12 GUJ CK 0036

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : H.M. Parikh, for the Appellant; Tejas Satta, for A.V. Trivedi for Defendant 3 and Shalin N. Mehta, for Defendant 5, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—This appeal has been filed against judgment and award dated 08.02.1991 passed in M.A.C.P. No. 898 of 1984 by the Motor Accident Claims Tribunal (Auxi.), Nadiad, whereby the claim petition was partly allowed.

2. The facts in brief are that on 08.04.1984, Mr. Bipinbhai Natwarlal Shah, the applicant-original Petitioner alongwith other persons were going towards Vadodara in an ambassador car bearing registration No. GAA 6663. He himself was driving the ambassador car. At that time, one Tanker No. GTJ 5957 was coming with great speed and was driven by the opponent No. 1 rashly and negligently. It dashed with the ambassador car, which was virtually crushed. Resultantly, the applicant sustained severe injuries. He claimed Rs. 10,00,000/- by way of compensation. However, the tribunal has held the applicant responsible 70 per cent for the contributory negligence and awarded only 30 per cent amount of Rs. 1,59,360/-. Hence, this appeal.

3. Counsel for the Appellant-original Petitioner contented that in view of the panchnama at Exh. 46 the tribunal has committed error in holding that the applicant is negligent to the extent of 70 per cent.

4. While considering the issues about the negligence, the tribunal has discussed

the evidence in detail at paras 38 and 39. Para 39 reads as under:

39: We have seen that there is sufficient reliable and trustworthy evidence on the record including that of P.S.I. Karamsinh Harijbhai Desai Exh. 151 that the driver of the ambassador car Bipinbhai Natwarlal Shah tried to overtake the truck and dashed with the tanker. Though it is stated by Bipinbhai in his police complaint at Exh. 164 and also by certain witnesses whose statements are produced at Exhs. 165 and 166, that the driver of the truck going ahead of the car gave signal for overtaking the truck ultimately, it was the driver of the car, who ought to have taken care to see whether there is sufficient space and time to overtake the truck. The fact that the car driver Bipinbhai could not successfully overtake the truck undoubtedly prove that either there was no space for the car driver to overtake the truck or there was no sufficient time. It is the clear case of misJudgment of the driver of the ambassador car. It clearly shows that he simply relied upon the signal of the truck driver, if at all the truck driver gave the signal and therefore the primary responsibility of the accident is of the car driver Bipinbhai. The tanker driver, opponent No. 1, also cannot be absolved from the liability of the accident, because while driving the motor-vehicle it is not sufficient to be careful enough not to commit mistake in driving but the driver should also be careful to see that there is all possibility of a mistake of a driver of other vehicle on the road and a careful, cautious and an alert driver should also try to avoid accident in a case of mistake committed by the driver of the other vehicle on the road. Had the opponent No. 1 been more cautious, careful and vigilant, he could have avoided the accident. Though primary responsibility of the accident is of the car driver to certain extent, the tanker driver also is responsible for the accident as he did not take immediate action to avoid the accident. In my candid opinion, therefore, the car driver Bipinbhai is negligent to an extent of 70 per cent whereas the driver of the tanker opponent No. 1 is responsible to an extent of 30 per cent. I, therefore decide the points accordingly.

5. After discussing the evidence, the tribunal came to the conclusion that the applicant has given a complete go-bye to the story before the Tribunal to shirk the responsibility of the accident on the head of the driver of the tanker. The tribunal held responsible the applicant to an extent of 70 per cent and the driver of the tanker-opponent No. 1 to an extent of 30 per cent.

6. In my opinion, view taken by the Tribunal is just and proper. No inference is called for and the appeal deserves to be dismissed. The appeal is dismissed.