

(1984) 04 GUJ CK 0031
In the Gujarat High Court

Dashrathlal Jesinghbhai Brahmbhatt	APPELLANT
Vs	
Bai Ganga and Others	RESPONDENT

Date of Decision : 04-04-1984

Acts Referred:

Citation : (1984) 2 ACC 392 : (1985) ACJ 410

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

Bench : Division Bench

Judgement

N.H. Bhatt, J.—The heirs and legal representatives and mother of Bhikhaji Kacharaji had filed the M.A.C.T. Application No. 56 of 1977 before the Motor Accidents Claim Tribunal, Mehsana for recovering Rs. 50,000/- contending that deceased Bhikhaji, alongwith two other persons, hired jeep car bearing No. GJD 7950 on 17-12-1976 from Mehsana for going to a village Bhandhu. The jeep car was owned by the appellant. It was driven by one Bhailal Chhaganlal Patel, who is the respondent No. 1 in this appeal. The claimants also joined the insurance company as party. It was contended that when jeep was proceeding ahead towards Bhandu on the Highway, all of a sudden the driver applied the brakes and the jeep took a some result and fall in a ditch. The deceased was sitting in front seat and he fell down. He was seriously injured and was removed to the Civil Hospital, Mehsana, where he expired. It was contended that the jeep car was driven rashly and negligently by the driver, and, as a result of which the accident took place.

2. The said application was contended by the appellant-owner, who filed the written statement. He denied that the driver of the jeep car was rash and/or negligent. He also contended that the respondent No. 1 herein was not his driver at the relevant time. The driver has not filed his written statement before the tribunal, but he is examined at edh. 64. The insurance company contended that the insurance company was not liable to pay the amount, as the risk was not covered by insurance policy and the vehicle was driven against the conditions of the policy.

3. After appreciating the evidence on record, the Tribunal by its judgment and award dated 18-3-78 directed the appellant and the driver of the jeep car to pay compensation of Rs. 30,000/- with proportionate costs of the application and interest at 6% per annum from the date of the application till realisation. It also held that the insurance company was not liable to pay the said amount in view of the decision of the Supreme Court in the case of Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co. 1977 ACJ 343.

4. In this appeal, the learned advocate for the appellant, raised the following contentions:

(i) There is no evidence to show that the driver was rash and negligent in driving the jeep car because, according to his submission, the accident took place as two persons, who were sitting along with the driver, were dozing and fall on the steering wheel;.

(ii) The appellant-owner had never directed the respondent No. 1 driver to take the vehicle, which was kept for repairs, and that without his permission, the jeep car was taken by the respondent No. 1 herein. Therefore, the appellant is not liable to pay compensation to the heirs of the deceased;.

(iii) In any case, he submitted that the insurance company, the respondent No. 2 herein, was liable to pay the compensation.

5. With regard to the first contention of the learned advocate, looking to the evidence of Mangaji Kaluji, exh. 52, is clear that he along with Bhikhaji and other persons hired the jeep car from Mehsana for going to Bhandu and they paid Rs. 40/- as fare for the jeep car. The jeep car suddenly toppled and it fell in a chokadi. Because of the said accident, Bhikhaji, who was sitting in the front seat alongwith the driver, fell down and he was seriously injured. He was removed to the Civil Hospital, where he expired. It is this case that deceased Bhikhaji and Gokaji were sitting in the front seat alongwith the drive. To this witness, a suggestion was made in cross examination that on the previous night, they had not slept, but no suggestion was made to him that because deceased Bhikhaji or Gokaji fell on the steering wheel, the accident took place. To the other witness Laxmanbhai Varvabhai, exh. 53, no such suggestion was made. He was also going to Bhandu alongwith deceased Bhikhaji in the said jeep. Even the driver Bbailalbhai in his deposition at exh. 64 has stated that at the instance of appellant Dashrathbhai, he was going to Bhandu from Mehsana in the jeep car belonging to the appellant, Dashrath Bhai had paid him Rs. 10/- for the said purpose. It is his say that the jeep car toppled when he tried to save a cyclist, who was going ahead. He further deposed that in the front seat, alongwith him there were two other passengers, who were dozing. It is his say that other passengers, who were dozing. It is his say that when he was taking a turn, they fell on him and thereby he lost control over the steeing and the car jeep toppled. From the evidence of the driver Bhailal, it is clear that the jeep car toppled because he tried to save a cyclist, the was going ahead. His further improved

inconsistent say that when he was taking a turn, two passengers, who were sitting along with him and who were dozing, fell on him and, therefore, he lost control cannot by any reasoning be believed and the tribunal was right in holding that the driver of the jeep car was rash and negligent in driving the said-jeep car. The Tribunal has also taken into consideration that the driver Bhailal has not filed any written statement to the aforesaid effect and, therefore, the said statement was rightly not believed or relied upon by the tribunal.

6. The next contention which requires consideration is whether Bhailal took the jeep car without the permission of the appellant owner. From the evidence of Bhailal, it is clear that he took the said jeep car at the direction of the appellant and the appellant had promised to pay him Rs. 10/- for going to Bhandu from Mehsana. Even it was not suggested to this witness that the jeep car was lying at the garage of one Yusuf bhai. Even the appellant has not cared to examine Yusuf bhai, the owner of the garage. He has also not examined Jawanji, who, according to him, was the driver of his jeep. In this set of circumstances, the tribunal was right in holding that Bhailal was driving the said vehicle at the instance and under the order of the appellant and, therefore, the appellant owner of the said jeep car would be liable to pay compensation.

7. The learned advocate further contended that the insurance company would be liable to pay the amount of compensation. Now if we refer to the insurance policy of the jeep car, which is a private vehicle at exh. 58, it is clear that the insurance company would not be liable to pay compensation as the jeep car was used for hire. The limitation clause of the said policy exh. 68, reads as under:

Limitation as to use; Use only for social domestic and pleasure purposes and for the insured's business. The policy does not cover" use for hire or reward or for organised racing pace making reliability trial speed testing, carriage of goods (other than samples) in connection with any Trade or Business or use for any purpose in connection with the Motor Trade.

From this policy, it is clear that the jeep car was required to be used only for social, domestic and pleasure, purposes and for the insured's business. The policy specifically provides that the policy does not cover the risk, if the jeep car was used for hire or reward. In this set of circumstances, it cannot be said that the insurance company would be liable to pay any compensation. In the case of New India Assurance Co. Ltd. and Anr. v. Smt. Nathiben Chatra-bhuj and Ors. 23 GLR 411, the Full Bench of this Court has considered and approved the decision of this Court in the case of Bhoi Vanaji Dhulaji and Another Vs. Patel Shivabhai Kashibhai and Others, . In paragraph 36, the court has held that when the policy of insurance specifically provided the limitation as to use. the insurance company is not liable to pay compensation. As said above, the policy itself in unambiguous terms provides that it does not cover the use of the vehicle for hire or reward. The Full Bench in the aforesaid case in paragraph 32 has laid down that the insurer, in order to successfully disclaim his liability, will have to establish that there was a specified condition in the policy which excluded the use of the

insured vehicle for the carriage of any passenger for hire or reward. As this condition is established in this case, in our opinion, the Tribunal was right in holding that the insurance company was not liable to pay compensation.

8. No other contention was raised. Hence the appeal is dismissed with no order as to costs.