(2020) 01 GUJ CK 0101

In the Gujarat High Court

Case No : R/First Appeal No. 2124 Of 2017

HDFC ERGO General Insurance Company LTD — APPELLANT

Vs

Omprakash Jagdishprakash Swami & 5 Other(s) — RESPONDENT

Date of Decision : 30-01-2020

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 166, 173

Citation : (2020) 01 GUJ CK 0101

Hon'ble Judges : N.V.Anjaria, J

Bench : Single Bench

Advocate : Vibhuti Nanavati

Final Decision : Disposed Of

Judgement

N.V.Anjaria, J

1. Heard learned advocate Mr.Vibhuti Nanavati for the appellant insurance company. None appears for the respondents though served in the Appeal.

2. The present Appeal is directed against order dated 16th November, 2016 passed by Motor Accident Claims Tribunal (Main), Patan below Exh.5 in Motor Accident Claims Petition No.298 of 2015 whereby Rs.50,000/- was awarded to the claimants.

3. The vehicular accident occurred on 1th October, 2015 when the deceased Sajubha Kunvarsinh was going on motorcycle bearing registration No.GJ-8-AR-6827 from Unn to Radhanpur. At around 08.00 p.m. in the night, half kilometer away from Village Jetalpura on the road to Radhanpur, another motorcycle bearing registration No.RJ-32-SB-0370 came rashly and negligently on the wrong side to dash with the motorcycle of the deceased. Deceased fell down from the motorcycle to receive serious injuries and succumbed to them.

3.1 The applicants-heirs of the deceased filed application under Section 140 of the Motor Vehicles Act, 1988 claiming compensation on the ground of no-fault liability to the tune of Rs.50,000/- which was allowed by the Tribunal to culminate into the impugned order.

4. It was submitted by the learned advocate for the appellant that Tribunal ought not to have awarded the amount and ought not to have allowed the application. The following grounds were raised. (i) Claimants did not join the rider of motorcycle who was a primary tort feasor; (iii) there was a collusion between the claimant-rider of the motorcycle and owner of the motorcycle which dashed with the claimant's motorcycle, therefore Tribunal ought to have dismissed the application under Section 140 of the Act; (iv) it was contended that fraud was perpetrated which was a good ground to dismiss the application.

4.1 By pressing into service decision in New India Assurance Company Limited v. Kalabhai Maganbhai Koli [2016(1) GLH 68] it was submitted that Tribunal was required to consider the issue of legal liability of the insurance company on the ground that insurance company had raised dispute with any of these issues, the Tribunal would be required to give finding by summary inquiry. It was submitted that though the Tribunal referred to decision in Kalabhai Maganbhai Koli (supra), it failed to comply the principle laid down therein. It was submitted that motorcycle bearing registration No.RJ-32-SB-370 which collided with the motorcycle of the deceased was not insured on the date of accident, that is 11th October, 2016.

5. The contention could hardly be countenanced, having regard to the nature of the provision, the legislative intent and the fact that the same relates to no-fault liability. It is well settled that if basic facts of occurrence of accident, the involvement of the motor vehicle in the accident, sufferance of death or permanent disability of the person making claim and that the claim made is against the owner and the insurer, are shown to be in existence, the liability to pay under the provision on the ground of no-fault, would arise.

5.1 At the same time, appellant insurance company what is advanced by the is a material aspect as above has to be examined on evidence in the proceedings of the main claim application which may have been filed under Section 166 of the Act. Therefore, it is clarified that though this Appeal is not entertained and dismissed since challenge is directed against order passed in the proceedings under Section 140 of the Act, it would be open for the appellant company to raise the aforesaid issue and the contention in the main claim petition to be considered in accordance with law and the evidence.

6. The present Appeal is dismissed subject to above clarification.

7. This Court on 21st July, 2017 passed order in Civil Application No.7571 of 2017, which is extracted in its relevant part as under.

"The main appeal filed under Section 173 of the Motor Vehicles Act, 1988 has been admitted vide order dated 22.6.2017. In facts of this case, the impugned judgment and award is stayed till final disposal of the appeal. The Trial Court shall invest 70% of the amount in a Fixed Deposit Receipt in a nationalized Bank initially for a period of 3 years and renewable from time to time for similar period till final disposal of the appeal and 30% of the amount shall be given to the claimants upon proper verification. The claimants shall also be entitled to periodical interest that may accrue on the Fixed Deposit Receipt.

In the facts of the case, the said order shall continue to operate during the pendency of the claim application.