
(1994) 08 GUJ CK 0007

In the Gujarat High Court

Case No : Special Civil Application No's. 8442, 8444, 8445, 8449, 8450 and 8451 of 1993

Kalpanaben M. Shah and Others

APPELLANT

Vs

Navinchandra Jeevanlal Acharya and Others

RESPONDENT

Date of Decision : 17-08-1994

Acts Referred:

Bombay Motor Vehicles Taxation Rules, 1959 — Rule 311
Civil Procedure Code, 1908 (CPC) — Order 19 Rule 1
Evidence Act, 1872 — Section 137
Motor Vehicles Act, 1988 — Section 110, 169

Citation : (1996) 2 ACC 543 : (1996) ACJ 113 : AIR 1995 Guj 176

Hon'ble Judges : K.R. Vyas, J

Bench : Single Bench

Advocate : N.A. Pandya, for the Appellant;

Judgement

K.R. Vyas, J.—The petitioners on this group of Applications are the original applicants in a group of eleven petitions before the Motor Accident Claims Tribunal, Valsad at Navsari for compensation to the tune of Rs. 9,999/ -. It was the case of the applicants in all the petitions that they were travelling in a Matador towards Saputara and when they reached village Baj, all of a sudden, an ST bus came from the opposite direction driven by the original opponent No. 1 (respondent No. 1 herein) in an excessive speed, rashly and negligently and dashed with the Matador as a result of which the petitioners were seriously injured, and therefore, the claim for damages as prayed for in their respective petitions. The learned M.A.C. Tribunal by his common judgment and award dismissed the petitions against which the present petitioners (original applicants) have preferred the respective appeals. Since the amount of compensation claimed was below Rs. 10,000/- the appeals have been converted into the present group of Spl. Civil Applications. All these applications raise identical questions, arise from similar facts and from the same common judgment and award, hence, they are being conveniently disposed of by this judgment.

2. Mr. N. A. Pandya, learned Advocate for the petitioners after having invited my attention to the impugned judgment submitted that the Tribunal ought not to have dismissed the application of the petitioners when the Tribunal has held that the driver of the bus in question was rash and negligent. In the submission of Mr. Pandya, the Tribunal while disposing of the applications followed the summary procedure under Rule 311 of the Bombay Motor Vehicles Rules, 1959 considering them as cases of minor accidents, but the Tribunal rejected the applications of the petitioners mainly on the ground that the petitioners have not offered themselves for cross-examination even though the Tribunal has ordered to that effect. In the instant case, it so happened that all the petitioners have filed affidavits to substantiate their claim. The respondents gave application Exh. 94 seeking the cross-examination of the petitioners on 28-8-1989 whereupon the Tribunal passed an order directing the petitioners to offer themselves for cross-examination as sought for by all the respondents. However, the learned Advocate for the petitioners made an endorsement to the effect that it is not possible to produce the petitioners for cross-examination and thereafter by Exh. 95, the petitioners closed their evidence by giving Purshis. It appears that thereafter also the matter was heard and before the pronouncement of the judgment an application (Exh. 125) was given by the petitioners seeking permission to appear for cross-examination which also came to be heard and allowed. In spite of this, the petitioners did not turn up on the date fixed as well as on the next date, and thereafter the learned trial Judge passed the impugned order. Mr. Pandya submitted that in the summary procedure followed by the Tribunal, it is not necessary to strictly follow the provisions of CPC and as per the decision rendered by the Division Bench of this Court in the case of Gagubhai and Others Vs. Goswami Bhikhu Gangaram, , the claim applications could have been decided on affidavits. The Division Bench of this Court in the said judgment has laid down that (at p. 6):

"It is crystal clear from a reading of Rules 300, 310 and 311 that when the claim exceeds Rs. 25,000/- the Claims Tribunal, Main or Auxiliary as the case may be, has to follow the procedure laid down in the C.P.C. for trial of suits. The Claims Tribunal has to record evidence which each party may desire to produce after the issues are framed when the claim exceeds Rs. 25,000/-. Such procedure has to be followed when the claim exceeds Rs. 25,000/-. It may be mentioned that Clause (b) of Rule 311 refers to Order 19, C.P.C., Rule 1 of Order 19, C.P.C. gives power to the Court to decide any point to be proved by affidavit. This can be done only when the claim does not exceed Rs. 25,000/-. In this view, where the claims Tribunal followed the procedure of deciding claims for compensation for amounts exceeding Rs. 25,000/- by following the procedure of deciding them on affidavits, its awards were liable to be set aside. In this connection, the notifications issued u/s 110 prescribing pecuniary jurisdiction have no bearing on the question of procedure to be followed."

There cannot be any dispute with regard to the principle laid down in the said judgment. As far as the present case is concerned, admittedly the amount

claimed by the petitioner is below Rs. 10,000/- and, therefore, the Tribunal has decided to proceed with the case on affidavits to be filed by the parties. It appears that the respondents have challenged the truthfulness of the averments made in the petition by the petitioners and, therefore, applied to the Court seeking the cross-examination of the petitioners. Merely because the Tribunal has adopted a summary procedure by proceeding with the case on affidavits that by itself would not deprive the respondents of their right to cross-examine the petitioners. The procedure cannot take away the right of a party to cross-examine the other side when the genuineness of the contents of their application is doubtful. If the submissions advanced by Mr. Pandya is accepted there will not be any cross-examination and the Court has to accept the applications if the amount claimed is below Rs. 10,000/- in all cases. In the instant case, the Tribunal has in fact ordered to produce the petitioner for cross-examination, however, on behalf of the petitioners an endorsement was made by their learned Advocates that it is not possible to produce them and by filing Purshis he has closed the evidence. Not only that even after the arguments were heard an application Exh. 125 was given by the petitioners for permitting them to appear for cross-examination. The said application was also granted by the tribunal by fixing a date for the petitioners to remain present, however, for the reasons best known, the petitioners did not remain present. Under the circumstances, the tribunal dismissed the application and, in my view, rightly so. Since the petitioners have failed to prove their case about the injury sustained by them, about the treatment they have taken and the expenses incurred by them for the treatment, the tribunal rightly dismissed the claim of the petitioners. In this view of the matter, the Id. Advocate for the petitioners has failed to make out any case for my interference in these applications. Hence, rejected in limine.