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(2025) 09 GUJ CK 1064

In the Gujarat High Court

Case No : R/First Appeal No. 3444 Of 2011

M D Modern Road Makers Pvt Ltd — APPELLANT

Vs

Naginbhai Chandubhai Parmar & Ors — RESPONDENT

Date of Decision : 17-09-2025

Acts Referred:
Motor Vehicles Act, 1988 — Section 147

Citation : (2025) 09 GUJ CK 1064

Hon'ble Judges : Mool Chand Tyagi, J

Bench : Single Bench

Advocate : Hriday Buch, GC Mazmudar, Hg Mazmudar, Vibhuti Nanavat

Final Decision : Allowed

Judgement

Mool Chand Tyagi, J

1. The present appeal is filed against the judgment and award dated 20.04.2009 passed by the Learned Motor Accident Claim Tribunal (Main) Sabarkantha at Himmatnagar (hereinafter referred to as learned Tribunal) in Motor Accident Claim Petition No.59 of 2004, whereby the learned Tribunal held responsible the respondent no.2, 3 and 4, jointly and severally to satisfy the award.

2. The certain facts leading to file the present appeal is that the present appeal has been preferred on behalf of the owner of the dumper bearing registration no.GJ-9-V-3978 for challenging his liability. The claimants of deceased Mr. Naginbhai Chandubhai Parmar filed the claim petition on the averments that deceased Mr. Naginbhai Parmar was going towards Shamlaji from Rajendranagar by driving his dumper bearing registration no.GJ-9-V-3978 and when he reached near Gadadar Bridge, in the meantime the driver of the luxury bus bearing registration no.RJ-27-P-4055 came from the opposite direction and driving the vehicle in a rash and negligent manner in a full speed and dashed with the dumper, as a result of which, the driver of the dumper Mr. Naginbhai Parmar sustained fatal injuries and died on the spot. The learned Tribunal after

considering the material on record exonerating the Insurance Company namely United India Insurance Company Limited on the ground that the driver of the dumper was negligent to the extent of 50% therefore, the Insurance Company was exonerated and learned Tribunal has fastened the liability against the appellant and the owner, driver and the Insurance Company of the bus.

3. Learned advocate for the appellant vehemently submitted that the learned Tribunal has committed an error in exonerating the Insurance Company of the dumper on the ground that the deceased was himself negligent to the extent of 50% therefore, the Insurance Company of the dumper was held not liable to pay the awarded amount. He further submitted that the insurance policy of the dumper involved in the accident, had been proved on record at exhibit-69. Learned advocate for the appellant has drawn attention of the Court to the insurance policy at exhibit-69 and submitted that the additional premium of Rs.100/- paid by the appellant. Therefore, the claim of the driver of the appellant was duly covered under the policy. In support of his contention learned advocate for the appellant relied upon the judgment of Full Court rendered in the case of Valiben Laxmanbhai Thakore (Koli) WD/O Late Laxmanbhai Ramsingbhai Thakore (Koli) & 3 Ors. Vs Kandla Dock Labour Board & 1 Ors. passed in First Appeal no.3907 of 2017 and allied matters. Relying upon the ratio of the aforesaid judgment, learned advocate for the appellant submitted that the impugned judgment to the extent of exoneration of the Insurance Company of the dumper is not sustained, therefore, the same may be modified accordingly.

4. On the other hand, Mr. Vibhuti Nanavati learned advocate appearing on behalf of the Insurance Company of the dumper fairly considered that the claim of the driver of the dumper is covered in the policy under the head of WC to employee 7 and for which the premium of Rs.175/- had been accepted by the insurance company.

5. Having considered the submissions of the learned advocates for the parties and perused the record. On perusal of the record it transpires that the policy of dumper was proved at exhibit-69. As per the policy, Insurance Company has accepted the additional premium of Rs.100/- under the head of Compulsory PA to Owner-Driver and a premium of Rs.175/-under the head of WC to employee 7. Thus, the claim of the driver was duly covered under the policy, as Insurance Company has accepted the additional premium for the driver. Issue involved in the present case is no more res-integra and the same has been settled by the Full Bench of this High Court in the judgment rendered in First Appeal no.3907 of 2017 and other allied matters in the case of Valiben Laxmanbhai Thakore (Koli) WD/O Late Laxmanbhai Ramsingbhai Thakore (Koli) & 3 Ors. Vs Kandla Dock Labour Board & 1 Ors, wherein the Full Bench of this High Court observed as under:-

13. Thus, when the owner of a vehicle pay additional premium and same is accepted by the Insurance Company, liability of the Insurance Company gets extended under the Motor Vehicles Act. Section 147 of the Act clearly prescribes

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for statutory liability to cover risk of paid Driver and Conductor under the Insurance Policy, which is a matter of contract. On payment of such additional premium by the owner, the liability of the owner shifts upon the Insurance Company. Thus, the risk of paid Driver and Conductor would be covered under the Insurance Policy. Only when the additional premium is not paid, liability would be as per the Employees Compensation Act, 1923 and in such cases, compensation would be computed as prescribed under the Act which is limited to the extent provided under provisions of the Act. However, when owner pays additional premium to cover the legal liability of his paid driver and conductor to the Insurance Company, as such, the Insurance Company is enlarging the scope for unlimited liability for payment of compensation, when additional premium is accepted. The liability of the Insurance Company gets extended and it has no right to raise issue of self negligence or otherwise of the such class of the driver of the Insured vehicle. By accepting additional premium as per the IMT 28, the Insurance Company expressed its willingness to extend its liability under the Clause of Legal Liability to the Paid driver and conductor as envisaged under Section 147 of the Act. Thus, in our opinion, Insurance Company has no legal right to avoid its legal liability under the indemnity clause arising from the contract of insurance towards the insured - owner of such classes of vehicles.

6. In view of the judgment in the case of Valiben Laxmanbhai Thakore (Koli) (supra) the present appeal is deserved to be allowed to the extent of the liability of the Insurance Company of dumper involved in the accident. The Insurance Company of the dumper is held liable jointly and severally with the original respondents no.2,3 and 4 to satisfy the award. The impugned judgment and award is modified to that extent. Appeal stands allowed partly. No order as to costs.

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