

(2012) 02 GUJ CK 0125
In the Gujarat High Court

Case No : First Appeal No. 2055 of 1992 with First Appeal No. 2056 of 1992

Narayanbhai Kalidas Patel and 2

APPELLANT

Vs

Chandulal Hardashbhai Patel and 2

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Citation : (2012) 02 GUJ CK 0125

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

Bench : Single Bench

Advocate : Tushar L Sheths, Mr. Divyesh Sejpal, for the Appellant; Maulik J Shelat for Defendant : 3, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri

1. By way of these appeals the claimants have challenged the common judgement and award dated 07.10.1991, passed by the Motor Accident Claims Tribunal, Surendranagar, in M.A.C.P. No. 26 and 27 of 1985, whereby the tribunal has dismissed the claim petitions filed by the claimants. The brief facts leading to filing of this appeal are that on 06.11.1984 an accident occurred between Car bearing registration No. GJR 3201 and truck bearing registration No. GTF 3582 and due to the said accident one Janakbhai and Arvindbhai sustained grievous injuries and one Jayaben expired. Therefore, claim petitions being M.A.C. P. 26 and 27 of 1985, before the Tribunal for compensation. The Tribunal after hearing learned advocates for both the parties and after recording the evidence dismissed the claim petitions against which the present appeals are filed by the appellants-original claimants.

2. Learned counsel for the appellants has contended that The tribunal failed to appreciate the material on record in its true perspective. It is submitted that the the Panchnama on record clearly established that the accident occurred on account of negligence of the driver of the truck. The Tribunal further committed

serious error in holding that the driver of the truck was not negligent for the accident. It is further submitted that the Panchanama clearly established that the driver of the truck came from the opposite side of the road and dashed the ambassador car. Hence, the Tribunal ought not to have dismissed the claim petition.

3. In support of his contention he relied upon the decision of the Apex Court in the case of Kaushnuma Begum Vs. New India Assurance Co. Ltd. and Ors., reported in 2001, GLR, 593 and the decision of this Court in the case of Shardaben W/o. Dhirajbhai Rayjjibhai Patel and Ors. Vs. Parshottambhai Pate. and anrs. Reported in 2010(3), 344, more particularly paragraph Nos. 4.1 and 4.2, which are reproduced as under:-

3.1 After appreciation of the contents of Panchnama, the finding is recorded by the learned Tribunal that, both the drivers were equally negligent. This finding cannot be found fault with though it is argued by the learned Advocate for the appellant that the Tribunal ought to have held that deceased Kiransinh driver of GRV 6217 was wholly negligent because it was his dumper which came on wrong side and collided with the dumper driven by the deceased husband of the appellant. The learned Advocate for appellants submitted that it is specifically mentioned in Panchnama that right front wheel of GRV 6217 had burst. Besides it is also on record that it was GRV 6217 which came on wrong side and therefore his driver (deceased Kiransinh) is to be held 100 % negligent and not the deceased husband of the appellant herein.

This argument cannot be accepted for the simple reason that bursting of tyre cannot be considered to be act attributable to the driver. It is a "real accident". Once tyre gets burst, it is natural that driver cannot control the vehicle. It is a misfortune of both the drivers that the time and place of "bursting of tyre" was such that both the vehicles collided resulting into death of both the drivers.

4. Learned counsel for the respondents supported the impugned judgement and award of the tribunal and submitted that the judgement and award of the Tribunal is just and proper and no interference is called for by this Court. He further submitted that the accident occurred on account of event i.e. bursting of the tyre, which was beyond the control of the driver of the truck. Hence, the appeal deserves to be dismissed.

5. Heard learned counsel appearing for the respective parties. It appears from the record that the Tribunal has dismissed the claim petitions mainly on the ground that the driver of the Truck was not found to be negligent for the accident. It appears from the record that before the accident occurred the tyre of the truck had bursted on account of which the driver of the Truck lost the control over the vehicle and thereafter it dashed the ambassador car, which was coming from the opposite direction. Considering the situation in which the accident took place, under no circumstance, it could be said that the accident occurred on the part of the sole negligent of the driver of the Truck. It is required to be noted

that before the accident took place the tyre of the Truck had bursted. In this situation any person who has been driving the vehicle would not under any control of the vehicle. Similar situation of the driver who was driving the truck and the tyre of which truck got bursted at the relevant time. Considering the situation in which the accident took place and it is also evident from the Panchanama and the scene of accident, I am of the opinion that the tribunal has justified in rejecting the claim petitions filed by the appellants.

6. So far as the decision relied upon by learned counsel for the appellant is concerned, in that case it is true that the tyre of the offending vehicle got bursted prior to the accident. However, in that case, it is also evident that offending vehicle was on the wrong side of the road. In this case it is not the case that the truck in question was coming from the wrong side of the road. Therefore, the decision relied upon by learned counsel for the appellants will not apply in the present case. Since in this case the truck was coming from the correct direction whereas in that case the truck was coming from the wrong side. In the premises aforesaid, I do not find any merits in these appeals. Therefore, the present appeals stand dismissed.