(2011) 12 GUJ CK 0035

In the Gujarat High Court

Case No : F.A. No''s. 552 and 551 of 1992

National Insurance Co. Ltd. APPELLANT

Vs

Jilubhai Sidabhai Koli and Six Others RESPONDENT

Date of Decision : 26-12-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 95, 95(2)(b)

Citation : (2012) 2 TAC 909

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

Bench : Single Bench

Advocate : Sunil B. Parikh, for the Appellant; R.R. Trivedi, Advocate for the Respondent Nos. 6 and 7 and Shri Bhavesh P. Trivedi, Advocate for the Respondent Nos. 7.2.1., 7.2.2., 7.2.3, for the Respondent

Judgement

K.S. Jhaveri, J.—These appeals are directed against the judgment and award dated 10th February, 1992 passed by the Motor Accident Claims Tribunal (Aux.), Rajkot, in MACP Nos. 16 and 43 of 1985 whereby the said claim petition was allowed and the claimant was awarded a sum of Rs. 84,000/- & Rs. 1,02,000/- alongwith interest at the rate of 12% per annum. The claim petition was filed in pursuance of an accident which had occurred on 23rd November, 1984 at about 8.45 p.m. between near Navagam Bridge, when a bus bearing Registration No. GTX 3076 collided with the motorcycle on which the deceased Shri Punabhai Surabhai Koli and Sidabhai Koli were travelling. The heirs and legal representatives of said deceased Punabhai filed Claim Petition No. 43/85 and the deceased Sidabhai filed Claim Petition No. 16/85. Both the claim petitions were heard together and the Tribunal passed the aforesaid award.

2. Mr. Sunil Parikh, learned Counsel for the appellant has contended that the policy at Ext. 23 is an Act Policy and in the circumstances the liability of the appellant is limited to Rs. 50,000/- only. He has further contended that the Tribunal ought to have held that in view of the specific provisions contained in Section 95(2)(b) of the Motor Vehicles Act, the Insurance Company''s liability in

respect of persons other than passenger carried for hire or reward is limited to Rs. 50,000/-.

2.1 Mr. Parikh in support of his submissions relied upon the decision of the Apex Court in the case of National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, and submitted that the said decision explains the term ''Comprehensive Insurance'' and clarifies that the use of the said term does not convey that the limit of the liability with regard to the third party''s risk is unlimited or higher than the statutory liability fixed under sub-section (2) of Section 95 of the M.V. Act.

3. The Apex Court in the case of National Insurance Co. Ltd (supra) has held that it is not obligatory for the owner of a vehicle to get it comprehensively insured for which a higher premium than for an "act only" policy is payable. Such comprehensive insurance entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle insured. Comprehensive insurance of the vehicle and payment of higher premium on this score, as was done in the instant case do not mean that the limit of the liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under sub-section (2) of Section 95 of the Act. For this purpose a specific agreement has to be arrived at between the owner and the Insurance Company and additional premium paid. It is further held therein that a perusal of the policy indicates that the liability undertaken with regard to the death or bodily injury to any person caused by or arising out of the use of the vehicle has been confined to "such amount as is necessary to meet the requirements of the Motor Vehicles Act 1939", which was at the relevant time Rs. 20,000 only. An award against the appellant could not, therefore, have been made in excess of the said statutory liability.

4. The relevant part of Section 95(2)(b) reads as under:

95 (2) subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:-

(a) xxx xxx xxx

(b) where the vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment,-

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all,

(ii) in respect of passengers, a limit of ten thousand rupees for each individual passenger.

5. A perusal of the said section shows that the liability, is limited to an extent of Rupees fifty Thousand for persons other than passengers carried for hire or reward at the relevant time. The accident in question is of the year 1984 and,

therefore, the liability would not be more than Rs. 50,000/ - qua the Insurance Company as per the policy. This view is supported by the decision in the case of National Insurance Co. Ltd (supra). Learned Counsel for the respondent-original claimant is not able to contest the aforesaid legal position. Therefore the award of the Tribunal which extends to Rs. 84,000/- and Rs. 1,02,000/- is patently erroneous. In the premises aforesaid, the present appeals are partly allowed. It is held that the liability of the original opponent Nos. 1 and 2 shall remain intact to meet the entire claim awarded with interest as awarded by the Tribunal. However, so far as the present appellant-Insurance Company is concerned, the award will stand modified and instead of Rs. 84,000/- & Rs. 1,02,000/- the amount awarded against the appellant will be Rs. 50,000/- with running interest thereon at the rate of 12% per annum from the date of the application till realization in each case. The remaining amount lying in the FDR alongwith interest shall be refunded to the Insurance Company. It will be open to the original claimants to recover the remaining amount from the owner of the bus. However, if the amount is already withdrawn by the claimants, the said amount shall be recovered from the owner of the bus. The award of the Claims Tribunal shall stand modified accordingly. No order as to costs.