(2019) 08 GUJ CK 0012

In the Gujarat High Court

Case No : R/First Appeal No. 2441 Of 2019

National Insurance Co. Ltd APPELLANT

Vs

Nathabhai Lakhubhai And Ors RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:
Motor Vehicles Act, 1988 — Section 2(13), 147, 147(1), 173

Citation : (2019) 08 GUJ CK 0012

Hon'ble Judges : R.M. Chhaya, J;B.N. Karia, J

Bench : Division Bench

Advocate : Dakshesh Mehta, Nayana V. Panchal

Final Decision : Partly Allowed

Judgement

B.N. Karia, J

1 . Present appellant, who is the original opponent No. 2 before the Motor Accident Claims Tribunal, has preferred this appeal under Section 173 of the Motor Accident Act 1988 (hereinafter referred to as "the Act") against the judgment and award dated 17th February 2009 passed by the M.A.C.T. (Aux.) Jamnagar (hereinafter referred to as "the Tribunal") in M.A.C.P. No. 634 of 2005 awarding compensation of Rs. 6,43,600/- along with interest @ 9% p.a.

2. Short facts of the present case may be summarized as under:

2.1. As per averments made in the claim petition preferred by the original claimants, who are the respondents No. 1 to 4, on 11th October 2005, Bhanuben Nathabhai and other passengers were traveling from Jamnagar to Dhrol in a motor vehicle jeep, as an owner of the goods, nearby Banugar Patiya at about 17.00 pm, Metador and a Utility jeep were collided, wherein, Bhanuben sustained grievous injuries and expired, and therefore, claimants prayed for compensation of Rs. 21,00,000/- before the Tribunal alongwith interest.

2.2. As per averments made in the claim petition, deceased Bhanuben was serving as a Nurse in the Public Health Centre at village Aamran and was earning Rs. 10,000/- per month. That, her age was 44 years at the time of accident and the claimants were dependent upon the deceased. That, she was likely to get promotion as a Supervisor during the course of her service and likely to get salary of Rs. 13,000/- per month. That, they have spent huge amount on funeral ceremony of the deceased and hence, it was requested by the original claimants to pass an award of Rs. 21,00,000/-.

2.3. The Tribunal issued notice to the respondents. Upon receiving the notice issued by the Tribunal, written statement was filed by the respondent No. 2 i.e., the present appellant vide Ex. 25 denying most of the contentions raised by the claimants in their claim petition. Averments made in respect of Metador coming from opposite side with a great speed and having dashed with Utility vehicle, bearing RTO registration No. GJ-3-Y-6742 were denied.

That, though the driver, owner and Insurance Company of the other vehicle were necessary parties, they were not joined by the claimants. It was further denied that the age of deceased was 44 years; huge expenses on funeral ceremony, accident took place with the vehicle which was insured with this company. As per the contention raised by the opponent No. 2, driver of the other vehicle was sole responsible for this accident, and therefore, opponent No. 2 is not liable to pay any compensation to the claimants. It was further contended that the deceased was unauthorized passenger of the goods vehicle, and hence, opponent No. 2 is not liable to pay any compensation. Without prejudice to other contentions, it is submitted that this is a case of contributory as well as composite negligency. That, the claimants are not entitled to get any compensation from this opponent. Without prejudice to other contentions, it was further submitted that the owner of M and M Utility vehicle, bearing registration No. GJ-3-Y-6742 has obtained "goods carrying commercial vehicle (Open) Policy-B-Package No. 300404-31-05-6300001191", bearing 1 MT endorsement numbers 7-21-39-390. As per terms and conditions of the policy and provisions of the Act, deceased was "an unauthorized passenger of the goods vehicle," and therefore, opponent is not liable to pay any compensation. That, the driver was driving the vehicle without a valid driving licence and he breached the terms of the insurance policy. Hence, it was requested by this opponent to dismiss the claim petition.

2.4. Learned Tribunal framed the issues vide Ex. 32 on 8th October 2006. After recording evidence, both-oral as well as documentary placed before the Tribunal; particularly oral deposition of the claimant No. 1-Nathabhai Lakhubhai (Ex. 48), witness Dr. A.J. Kanani (Ex. 61), Service record of the deceased (Ex. 62 to 64), complaint (Ex. 50), report of police summary (Ex. 80), panchnama of the scene of offence (Ex. 51) and arguments of the respective parties, learned Tribunal, by impugned judgment and order dated 17th February 2009, was pleased to hold that opponents No. 1 to 3 were jointly and severally liable to pay compensation to the original claimants amounting to Rs. 6,43,600/- along with interest @ 9% per annum from the date of filing of the claim petition till realization. Hence, this appeal.

3. Heard learned advocate Mr. Dakshesh Mehta for the appellant-Insurance Company and learned advocate Mr. Premal R. Rachh for the respondents No. 2, 3 and 4-original claimants. No arguments were advanced by rest of the respondents.

4. Learned advocate for the appellant has submitted that the impugned judgment and award passed by the Tribunal is contrary to law, against settled legal position, and therefore, it requires to be quashed and set aside. Mainly, it was focused by learned advocate for the appellant that the deceased Bhanuben was travelling alongwith other passengers in a Utility Jeep, which was a goods carrying vehicle. That, the deceased was an unauthorized passenger. Utility jeep was a commercial vehicle, which was used only for carrying the goods and the jeep was also insured for "commercial" purpose. It was further submitted that the policy does not cover risk of such passengers travelling in the Jeep, who were not "owner" and "authorized representatives" of such goods, and therefore, insurance company is not liable to satisfy the awarded amount. Learned advocate for the appellant has further submitted that insurance is a matter of contract between the owner of the vehicle and insurance company. That, the owner has committed breach of condition of the policy, then certainly the insurance company will not indemnify wrong committed by the owner. When the owner of a vehicle has permitted the deceased to travel in his goods vehicle and committed breach of conditions of the policy, the owner is liable to pay compensation to the victim and insurance company could not be saddled with such liability. That, the learned Tribunal has committed an error in holding that the deceased was travelling with utensils in the jeep. That, total 12 to 13 persons were travelling in the Jeep and utensils have not been treated as "goods", but were personal belongings. Referring to definition of "goods" given in Section 2(13) of the Act, it was submitted that "goods" means "livestock" and anything carried by a vehicle, except living persons, would not include "luggage or personal effects or personal luggage of passengers". That, the claimants have failed to prove that the deceased was travelling as an owner of the goods. That, the Tribunal ought to have exonerated the present appellant to pay compensation and at the most, the owner is only liable to satisfy the awarded amount. Relying upon a judgment passed by the Apex Court in the case of National Insurance Company Limited v. Cholleti Bharatamma and Ors., reported in 2008 (2) GLR 1403, it was submitted that the Apex Court has held that the insurer would be liable in respect of only the "owner of the goods" or "his authorized representative". Insurance policy is not required to cover passengers in a goods vehicle. Hence, it was requested by learned advocate for the appellant to quash and et aside the impugned judgment and award passed by the tribunal by allowing this Appeal.

5. Per contra, learned advocate for the respondents No. 2, 3 and 4 submitted that the impugned judgment and order passed by the learned Tribunal does not call for interference. He argued that considering the peculiar facts of the case,

the learned Tribunal has rightly observed that the deceased Bhanuben and others were travelling from Jamnagar to Dhrol by sitting in a Utility Jeep as owner of the goods on 11. 10.2005. That, factual findings arrived at by the Tribunal cannot be interfered by the Court in an Appeal preferred by the Insurance Company. Admittedly, deceased was travelling as an owner of the "goods" and it cannot be said that utensils were her personal belongings. That, Nathabhai Lakhubhai was examined by the claimants vide Ex. 40. He has specifically admitted in his cross examination that on 11th October 2005 i.e., on the date of accident, deceased was going from Jamnagar to Dhrol with articles to be distributed to the participants in connection with Garba Association. That, there were 20 participants in the scheduled "Garba". This fact could not be denied by the present appellant. That, the quantity of goods cannot be ascertained from the evidence led before the Tribunal. Nor it could be challenged by the present appellant before the Tribunal that there was any sitting facility in the Utility jeep. It was every possibility that the deceased, being a female was travelling in the cabin of the driver. In panchnama drawn by the Investigating Agency (Ex. 51), it is clear that the deceased was sitting in a cabin of the jeep. There was no breach of condition of the policy issued by the present appellant, and therefore, reasons arrived at by the Tribunal may not be interfered by this Court, in absence of any contrary evidence led by the present appellant. Hence, it was requested by learned advocate for the respondents No. 2, 3 and 4 to dismiss the appeal and confirm the impugned judgment and award.

6. No arguments were advanced by rest of the respondents.

7. A short question of liability of the present appellant, being an insurance company of a Utility Jeep is involved in the present appeal.

8. If we consider the documents produced on record by the claimants before the Tribunal, Ex. 50 is the complaint lodged by Rameshbhai Nathabhai Parmar against the driver of vehicle "Tata 407". As per his statement made in the complaint, on 11.10.2005, he himself and his sister Bhanuben had visited Jamnagar. While returning in a motor vehicle-Utility Jeep, bearing registration No. GJ-3-Y-6742, when they reached nearby Banugar Patiya, at that time, one vehicle having excessive speed came from opposite direction and dashed with the Utility Jeep, wherein, the complainant, his brother were sitting. On account of this accident, the complainant and deceased Bhanuben got injuries. His sister sustained serious head injury as well as another person-Rameshbhai also sustained some injuries. The said vehicle dashed with Utility Jeep and the driver of that vehicle - "Tata 407" immediately ran away from the place of accident. That, they were shifted to a Hospital, wherein, doctor declared Bhanuben as "dead" on account of grievous head injuries.

9. It further appears that the complainant himself has filed his affidavit in form of evidence vide Ex. 48. He has stated that on the date of accident, deceased was returning back in a Utility Jeep from Jamnagar to Dhrol, as an owner of the "goods". The driver of Utility Jeep was driving his vehicle rashly and negligently

and collided with a Metador. This accident occurred on account of negligence on the part of driver of Utility Jeep. In the cross-examination also, this witness has submitted that for distributing utensils to the participants of Garba Association, her sister went to Jamnagar on 11th October 2005 for purchasing the same. The fact of visiting to Jamnagar by the deceased and her travelling from Jamnagar to Dhrol in a Utility Jeep as well as purpose of her visiting Jamnagar for purchasing utensils for distributing the said articles to participants of Garba Association cannot be denied.

10. The panchnama was produced on record vide Ex. 51, which shows exact place of the accident. A motor vehicle, bearing registration No. GJ-3-Y-6742, was also found at the place of accident in damaged condition. Material evidence Ex. 52 is the policy document issued by the present appellant insuring the motor vehicle, bearing RTO registration No. GJ-3-Y-6742, involved in the accident. As per contents of the policy, there is limitation as to the use of motor vehicle. It is stated that no passengers were authorized to seat or travel in the said vehicle. As per terms of the policy, it being a "goods carrying commercial vehicle (Open) Policy-B-Package". Undisputedly, Utility Jeep involved in the accident can be said to be a "commercial vehicle" and not for carrying the passengers. However, it is the say of claimants in his examination-in-chief that the deceased was travelling in the motor vehicle, bearing RTO registration No. GJ-3-Y-6742, as an owner of the goods was not permitted to travel in the said vehicle as a passenger.

11. In the panchnama Ex. 51 of the scene of accident, no goods were found. RC book of the Utility jeep was produced vide Ex. 55 showing sitting capacity which includes driver plus 2=3. From the policy, it appears that the vehicle insured with the appellant-Insurance Company was a commercial vehicle for carrying the goods and not for carrying the passengers.

12. Hon'ble Supreme Court in the case of National insurance Company Limited v. Cholleti Bharatamma & Ors., reported i 2008(2) GLR 1403, referring to Section 147 of the MV Act held that requirement of Section 147(1) of the Act, the policy must cover "owner of the goods or his authorized representative". It is further held that the insurer would be liable in respect of only "the owner of the goods" or "his authorized representative".

13. Here, deceased Bhanuben was travelling with some utensils in a motor vehicle involved in the accident on 11.10.2005. Thus, she cannot be strictly said to be "owner of the goods", as per policy issued by the present appellant. However, this Court cannot deny the fact that she was travelling with utensils from Jamnagar on the day of accident and such utensils were purchased by her to distribute the same to the participants of a Garba Association. In the cross-examination of claimant, he has given his evidence, as made in the examination-in-chief. Thus, the Tribunal concluded on wrong decision, holding liability of the present appellant to pay compensation to the claimants, as the deceased was travelling in a vehicle, was a commercial vehicle, permitted to carry "the goods".

14. Here in such a situation, this Court would like to refer to the judgment of the Apex Court in case of Shivraj vs. Rajendra, reported in 2018 (10) SCC 432, wherein the appellant travelled in a tractor as a passenger even though tractor could accommodate only one person namely driver. Insurance Company was not held liable for loss or injuries suffered by appellant or even to indemnify owner of the tractor. However, in facts of the case, Apex Court held that High Court ought to have directed Insurance Company to pay compensation amount to claimant (appellant) with liberty to recover the same from owner of the tractor, and accordingly, insurance company was directed to pay compensation with liberty to recover from owner of the tractor.

15. Here also, as per the facts that the deceased Bhanuben was traveling with certain utensils in the motor vehicle as passenger, which was breach of the policy condition, as jeep was insured for commercial carrying goods purpose and not for passenger. The deceased undisputably was travelling in a Utility jeep as passenger, even though the jeep can accommodate only three persons including the driver. As a result, the present appellant would not be liable for the loss whichever suffered by the claimants or to indemnify the owner of the Jeep. The conclusion reached by the Tribunal, in our opinion, is unbelievable in the facts and circumstances of the present case. At the moment, however, in the facts of this case, the Tribunal ought to have directed the Insurance Company to pay compensation amount to the claimants with a liberty to recover the same from the jeep owner, in view of the consistent view taken in that regard by Hon'ble Apex Court in case of National Insurance Co. Ltd. v. Swarma Singh & Ors., 2004 3 SCC 297; Mangla Ram v. Oriental Insurance Co. Ltd., 2018 5 SCC 656, Rani & Ors. v. National Insurance Co. Ltd. & Ors., 2018 9 SCALE 310 and including Manuara Khatun and Others v. Rajesh Kumar Singh and Others, 2017 4 SCC 796.

16. In view of the above, the Appeal is partly allowed, as the appellant is not held liable to pay compensation as held by the Tribunal. However, in peculiar facts of the case, the appellant-Insurance Company to pay the compensation amount determined by the Tribunal in the first place and with liberty to recover the same from the owner of the Jeep, bearing RTO registration No. GJ-3-Y-6742 (respondent No. 5) in accordance with law. Appellant need not to file any separate Civil Suit for recovery of the compensation amount from the original owner.

