
(2012) 02 GUJ CK 0091
In the Gujarat High Court
Case No : First Appeal No. 2214 of 1999

National Insurance Co. Ltd.	Vs	APPELLANT
Smitaben and Others		RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 145, 146, 147, 147(1), 149(1)

Citation : (2012) 02 GUJ CK 0091

Hon'ble Judges : C.L. Soni, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Rajni H. Mehtas 1, for the Appellant; Rahul Dave, AGP for Respondent 6, for the Respondent

Judgement

Honourable Mr. Justice Akil Kureshi

1. This appeal is directed against the award of the Motor Accident Claims Tribunal, Nadiad, dated 19.1.99, in so far as MACP No. 1670 of 1992

is concerned. The appeal arose in following factual background. 2. Respondent Nos. 1 to 4 were the original claimants who had filed the above

mentioned claim petition seeking compensation from the driver, owner and Insurance Company of the vehicle for the death of Shri Bohgilal

Jagjivandas Gadhia who died in the vehicular accident. Respondent No. 5 was the driver of the vehicle and respondent No. 6 Government

Department was the owner of the vehicle. The appellant herein had insured the vehicle in question through insurance policy covering risk for the

period from 2.5.92 to 1.5.93. 3. The vehicle in question happened to be a Mahindra & Mahindra Jeep of 1992 model. The vehicle was being

driven by respondent No. 5 who was an employee of respondent No. 6 owner of the vehicle. One Shri Bhogilal Gadhia who was Section Officer in

the Department of Revenue in the State Government was traveling in the jeep along with a co-passenger, viz. Muljibhai Rathod. They were travelling from Valsad to Gandhi agar where they had gone for official work. The said vehicle met with an accident at Raghavnaj Chokdi when the driver lost control over the vehicle and dashed against a tree. Shri Bhogilal Gadhia received fatal injuries and co-passenger Shri Muljibhai Rathod received bodily injuries. Heirs of Bhogilal Gadhia, therefore, filed claim petition being MACP No.1670/92 claiming compensation of Rs.15 lacs. Rathod Muljibhai also filed a separate claim petition. We are not concerned with the facts of such proceedings and therefore, we would not burden this order with such unnecessary details. In so far as the present claim petition is concerned, the claimants in addition to producing documentary evidence such as, part of the insurance policy, FIR lodged by the driver with respect to the incident in question, also examined claimant No.1 Smitaben, wife of the deceased at Ex.35. Evidence of Muljibhai Rathod, co-passenger was also recorded by the Tribunal at Ex.41 in the consolidated proceedings of the claim petition. 4. In the FIR Ex.29, driver of the vehicle had stated that on 1.7.92, he along with Shri Bhogilal Gadhia and Shri Muljibhai Rathod had gone to Valsad in Government jeep for official work. After completion of the work at Valsad, they had stayed for the night at Valsad and on the next day, they had left from Valsad in the afternoon to reach Gandhi agar. During such time, the accident took place. Shri Muljibhai also in his deposition at Ex.41 clearly stated that he was traveling from Valsad to Gandhi agar in Government jeep along with deceased Shri Gadhia. Additionally, we notice that Smitaben, wife of the deceased, in her deposition, Ex.35, had stated that her husband along with Shri Muljibhai was returning from Valsad where they had gone for official work. 5. Before the Claims Tribunal, the Insurance Company resisted the claim petition filing written statement and taking general denials. The Claims Tribunal by the impugned award, held that the accident occurred on account of the negligent driving of the vehicle. In so far as the quantum of compensation was concerned, the Claims Tribunal assessed Rs.5,31,000/-. The Tribunal held that the driver, the owner and the Insurance Company of the vehicle were jointly and severally liable to satisfy the award. It is this award of the Tribunal which the Insurance Company had challenged before us primarily on one ground, viz. that in view of the

policy of insurance and 6. Counsel for the appellant Insurance Company raised one single ground before us, viz. that the Insurance Company was not liable to satisfy the claim looking to the insurance policy and the statutory provisions contained in the Motor Vehicles Act, 1988. In so far as the negligence of the driver and the quantum of compensation is concerned, no dispute was raised, perhaps none could have been raised by the Insurance Company. Be that as it may, we have examined only one legal contention of the Insurance Company i.e. whether, in view of the terms of the insurance policy, the Tribunal was justified in requiring the Insurance Company to satisfy the claim. 7. We are conscious that such a pointed ground was not raised by the Insurance Company before the Tribunal either in the defence statement or in any other manner during the course of hearing of the claim petition. However, from the facts on record, we find that the question presented before us is a pure question of law and therefore can be allowed to be raised for the first time at the appellate stage. 8. Counsel for the appellant Insurance Company taking us through the insurance policy submitted that the policy taken by the State Government, owner of the vehicle, was an Act policy and contained no further liability to cover any further risk on the Insurance Company. It was pointed out that the policy covered liability to third parties. Our attention was drawn to the general exceptions which, inter alia, provided that the Insurance Company shall not be liable in respect of any claim arising out of any contractual liability and further that the same would also not include any liability except so far as it was necessary to meet the requirements of the Motor Vehicles Act. The exception also apply in case of death arising out of and in course of employment of a person in the employment of the insured. 9. Our attention was drawn to the provisions contained in section 147 of the Act to contend that in terms of proviso to sub-section (1) of section 147, statutory liability of the Insurance Company would not cover any liability in respect of death or bodily injury sustained by an employee arising out of and in course of the employment other than one arising under the Workmen Compensation Act, 1923. 10. On the other hand, learned AGP submitted that the Insurance Company was rightly held liable to satisfy the award by the Claims Tribunal and no interference is called for. 11. Having thus heard the learned counsel for the parties and having perused the documents on record, few facts emerge from the record as

undisputed. Deceased Bhogilal was an employee of the State Government. He had travelled in the Government vehicle for his official work to

Valsad. After completing his work while returning from Valsad, the vehicle in which he was travelling met with an accident. The vehicle was being

driven by the driver of the Government. Short question, therefore, which calls for our consideration in view of such factual background is whether

the Insurance Company was liable to satisfy the claim of the heirs of the deceased. 12. From the record, it also emerges that the insurance policy

was a limited liability policy looking to the statutory provisions, the Insurance Company is not liable to satisfy the claim. section 147, statutory

liability of the Insurance Company would not cover any liability in respect of death or bodily injury sustained by an employee arising out of and in

course of the employment other than one arising under the Workmen Compensation Act, 1923. and covered only the statutory risk. The insured

had not paid any additional premium to cover any additional risk. Clause 1 of the terms of the policy pertained to liability to third parties and

provided that subject to the limited liability as laid down in the Motor Vehicles Act, the Insurance Company will indemnify the insured in the event

of accident caused by or arising out of the use of the Motor Vehicle. The policy also contained such general clauses of exceptions. Clauses 2 and 3

which are relevant for our purpose are as under: 2. The Company shall not be liable in respect of any claim arising out of any contractual liability. 3.

Except so far as is necessary to meet the requirements of the Motor Vehicles Act the Company shall not be liable in respect of death arising out of

and in the course of employment of a person who is indemnified under this policy or bodily injury sustained by such person arising out of and in the

course of such employment. Combined reading of the terms of the policy would reveal that the same was made to cover only statutory liability

contained under the Motor Vehicles Act and no further. In particular, it provided that the Insurance Company shall not be liable in respect of death

arising out of and in the course of employment of a person in the employment of the insured. 13. Section 147 of the Motor Vehicles Act pertains to

requirements of policies and limits of liability. Sub-section (1) thereof which is relevant for our purpose reads as under: 147. Requirements of

policies and limits of liability.-(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which- (a) is

issued by a person who is an authorized insurer; and (b) insures the person or classes of persons specified in the policy to the extent specified in

sub-section (2)- (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any

property of a third party caused by or arising out of the use of the vehicle in a public place; (ii) against the death of or bodily injury to any

passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place; Provided that a policy shall not be

required- (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the

policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising

under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee- (a) engaged in

driving the vehicle, or (b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or (c) if it is a

goods carriage, being carried in the vehicle, or (ii) to cover any contractual liability. Explanation.-For the removal of doubts, it is hereby declared

that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have

arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was

not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place. Proviso to sub-section

(1) of section 147 in clear terms provides that the policy shall not be required to cover liability in respect of death arising out of and in the course of

employment of the employee of a person insured by the policy. In the present case, the deceased was travelling in the vehicle insured by the policy

of the Insurance Company as employee of the owner. When the accident took place, therefore, in our view, the Insurance Company was not liable

to satisfy the claim awarded by the Tribunal for the death of such a person. 14. The issue is no longer res integra and is squarely covered by the

decision of the Apex Court in the case of The Oriental Insurance Company Limited Vs. Meena Variyal and Others, . Facts in the said case were

very similar to those involved in the present appeal. The vehicle was owned and insured by the Company. The deceased died when the vehicle met

with an accident in which he was travelling. It is unclear whether the deceased himself was driving the vehicle or the vehicle was being driven by driver Mahmood Hasan at the time of the accident. The Apex Court considered the legal situation in both the eventualities. The Court was of the opinion that if the deceased himself was driving the vehicle at the time of the accident, the situation would be that on such count itself, heirs of the deceased may not be entitled to claim any compensation. The Apex Court also considered the alternative situation that if it was found that the deceased was a mere passenger and the vehicle was being driven by Mahmud Hassan, the driver. In that background, the Apex Court considered the policy and the provisions contained in section 147 of the Act and came to the following conclusion :- 10. Chapter XI of the Act bears a heading, ""Insurance of Motor Vehicles against third party risks"". The definition of ""third party"" is an inclusive one since Section 145(g) only indicates that ""third party"" includes the Government. It is Section 146 that makes it obligatory for an insurance to be taken out before a motor vehicle could be used on the road. The heading of that Section itself is ""Necessity for insurance against third party risk"". No doubt, the marginal heading may not be conclusive. It is Section 147 that sets out the requirement of policies and limits of liability. It is provided therein that in order to comply with the requirements of Chapter XI of the Act, a policy of insurance must be a policy which is issued by unauthorized insurer; or which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by the owner in respect of the death of or bodily injury or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. With effect from 14.11.1994, injury to the owner of goods or his authorised representative carried in the vehicle was also added. The policy had to cover death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. Then, as per the proviso, the policy shall not be required to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment, other than a liability arising under the Workmen's Compensation Act, 1923 in respect of the death of, or bodily

injury to, an employee engaged in driving the vehicle, or who is a conductor, if it is a public service vehicle or an employee being carried in a goods

vehicle or to cover any contractual liability. Sub-section (2) only sets down the limits of the policy. As we understand Section 147 (1) of the Act,

an insurance policy there under need not cover the liability in respect of death or injury arising out of and in the course of the employment of an

employee of the person insured by the policy, unless it be a liability arising under the Workmen's Compensation Act, 1923 in respect of a driver,

also the conductor, in the case of a public service vehicle, and the one carried in the vehicle as owner of the goods or his representative, if it is a

goods vehicle. It is provided that the policy also shall not be required to cover any contractual liability. Uninfluenced by authorities, we find no

difficulty in understanding this provision as one providing that the policy must insure an owner against any liability to a third party caused by or

arising out of the use of the vehicle in a public place, and against death or bodily injury to any passenger of a public service vehicle caused by or

arising out of the use of vehicle in a public place. The proviso clarifies that the policy shall not be required to cover an employee of the insured in

respect of bodily injury or death arising out of and in the course of his employment. Then, an exception is provided to the last foregoing to the effect

that the policy must cover a liability arising under the Workmen's Compensation Act, 1923 in respect of the death or bodily injury to an employee

who is engaged in driving the vehicle or who serves as a conductor in a public service vehicle or an employee who travels in the vehicle of the

employer carrying goods if it is a goods carriage. Section 149(1), which casts an obligation on an insurer to satisfy an award, also speaks only of

award in respect of such liability as is required to be covered by a policy under clause (h) of sub-section (1) of Section 147, (being a liability

covered by the terms of the policy). This provision cannot therefore be used to enlarge the liability if it does not exist in terms of Section 147 of the

Act. 11. The object of the insistence on insurance under Chapter XI of the Act thus seems to be to compulsorily cover the liability relating to their

person or properties of third parties and in respect of employees of the insured employer, the liability that may arise under the Workmen's

Compensation Act, 1923 in respect of the driver, the conductor and the one carried in a goods vehicle carrying goods. On this plain understanding

of Section 147, we find it difficult to hold that the insurance company, in the case on hand, was liable to indemnify the owner, the employer

Company, the insured, in respect of the death of one of its employees, who according to the claim, was not the driver. Be it noted that the liability

is not one arising under the Workmen's Compensation Act, 1923 and it is doubtful, on the case put forward by the claimant, whether the deceased

could be understood as a workman coming within the Workmen's Compensation Act, 1923. Therefore, on a plain reading of Section 147 of the

Act, it appears to be clear that the insurance company is not liable to indemnify the insured in the case on hand. 15. In view of the above

conclusive pronouncement of the Apex Court on the very issue which we are considering in the present appeal, we have no hesitation in reversing

the award of the Claims Tribunal to the limited extent so far as it fastened liability on the appellant Insurance Company to satisfy the award. To this

limited extent, the impugned award of the Tribunal is required to be and is hereby set aside. 16. It is clarified that in so far as the amount awarded

to the claimants and the liability of the driver and the owner of the vehicle are concerned, we have made no changes. 17. It is stated that during the

pendency of this appeal, the appellant Insurance Company had deposited the entire amount awarded by the Claims Tribunal with cost and interest.

This Court by order dated 16.9.99 while requiring the Insurance Company to deposit the amount also directed the Claims Tribunal to invest and

disburse the amount in terms of the award. Subsequently, by order dated 27.10.99, Civil Application for stay was disposed of confirming the

interim arrangement made under the interim order dated 16.9.99. From the operative portion of the award, we notice that part of the amount

awarded was to be disbursed in favour of the claimants whereas rest was to be invested in fixed deposits for a period of five years. We are not

aware whether after the completion of the said period, the entire amount was allowed to be withdrawn by the claimants or whether the same still

stands invested in some nationalized bank. Under the circumstances, let the claimants withdraw the entire amount, if not already done by now. The

Insurance Company, however, shall receive the amount deposited by it from the State Government with simple interest at the rate of 9 per cent

from the date of deposit till the same is returned by the State Government, which shall be done within a period of four months from the date of

receipt of this order. For such purpose, appellant shall not have to institute fresh proceedings. The appeal stands disposed of accordingly.