

(1985) 03 GUJ CK 0022
In the Gujarat High Court

National Insurance Company

APPELLANT

Vs

Punabhai Zerabhai Koli

RESPONDENT

Date of Decision : 12-03-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 95

Citation : (1985) 2 ACC 238

Hon'ble Judges : R.A. Mehta, J;A.P. Ravani, J

Bench : Division Bench

Judgement

A.P. Ravani, J.—These eight appeals and three others arise out of a common judgment and award passed by the Motor Accident Claims, namely, Tribunal (Main), Panchmahals at Godhra. Three other appeals, First Appeals Nos. 1908, 1909 and 1910 of 1984, have been dismissed by our order dated March 6, 1985, on the ground that the amount awarded therein were small and it was not necessary to go into the merits of the contentions.

2. The cleaner and other employees employed for the purpose of loading and unloading of goods, who were travelling in the vehicle in question, met with the accident. They themselves or their dependents as the case may be, filed the claim petitions before the Motor accident claims tribunal, Godhra,. The claim petitions have been allowed to the extent indicated in the award. The Insurance Company has also been held liable in view of Clause I.M.T. 16 of the Insurance Policy. We are happy to note that the tribunal has adopted just and reasonable approach in construing this clause.

3. Counsel for the appellant-Insurance Company contends that the liability under Clause I.M.T. 16 is restricted to six persons only and the Insurance Company would not be liable to indemnify in respect of the persons exceeding six in number including the driver and cleaner. In this case in all eleven persons are injured. Some of them have died. In short, there are eleven claim petitions.

4. The relevant clause relied upon by the counsel for the appellant-Insurance

Company reads as follows:

In consideration of the payment of an additional premium it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the company shall indemnify the Insured against his legal liability under:

The Workmen's Compensation Act 1923 and subsequent amendments of that act prior to the date of this endorsement the fatal accidents act 1855 or common law in respect of personal injury to any paid driver (or cleaner or conductor) person employed in loading and of unloading whilst engaged in the service of the Insured in such occupation in connection with the Motor vehicle and will in addition be responsible for all costs and expenses with its written consent.

The premium having been calculated at the rate of Rs. 8/- per driver (and/or cleaner or conductor and/or person employed in loading and/or unloading) the Insured shall certify at the expiry of such period of Insurance the maximum number of drivers and/or cleaners and/or conductor and/or persons employed in loading and/or unloading employed at any one time during such period in connection with the motor vehicle belonging to him and the premium shall be adjusted accordingly provided always that:

(1) This endorsement does not indemnify the Insured in respect of any liability in case where the insured holds or subsequently, effects with and Insurance company or group of Underwriters a policy of Insurance company or group as herein defined for his general employees.

(2) The Insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations.

(3) The Insured shall keep a record of the name of each driver cleaner and conductor or person employed in loading and/or unloading and the amount of wages salary and other earnings paid to such employees and shall at all times allow the company to inspect such record.

(4) In the event of policy being cancelled at the request of the insured to refund of the premium paid in respect of this endorsement will be allowed.

Subject otherwise to the terms exceptions conditions and limitations of the policy except so far as necessary to meet the requirements of Section 95 of the Motor Vehicles Act 1939.

5. The important words in the clause have been underlined by us. On the basis of the amount of Rs. 48/- charged by the Insurance company it is contended that the risk of driver, cleaner and other four persons, i.e. in all six persons, is covered and not more. This argument is sought to be further supported by resorting to the provisions of the Section 95 of the Motor Vehicle Act. Section 95 provides for the minimum compulsory insurance to be taken by the owner of the vehicle, It is an admitted position that by I.M.T. 16, the insured has undertaken to discharge the liability in addition to the compulsory liability as required under

the provisions of Section 95 of the motor vehicles act Therefore, the argument based on the provisions of Section 95 has no application and has got to be rejected.

6. It is further submitted that in view of the provisions of Rule 118 of the Bombay Motor Vehicles Rules, 1959, no one could have carried more than six bona fide employees in a goods vehicle. Therefore, the liability of the Insurance Company cannot be construed to extend beyond six persons. The aforesaid argument cannot be accepted in view of the provisions of Sub rule (2) of Rule 118. For the purpose of convenience, the relevant part of Rule 118 is reproduced herein below:

118. Carriage of persons in goods vehicles:

(1) Subject to the provisions of this rule, no person shall be carried in goods vehicle;

Provided that the owner or the hirer or a bona fide employee of the owner or the hirer of the vehicle carried free of charge or a police officer in uniform travelling on duty may be carried in a goods vehicle, the total number of persons so carried.

(i) in light transport goods vehicle having registered laden weight less than 900 kilogram not more than one;

(ii) in any other light transport goods vehicle, not more than three;

(iii) in any goods vehicle other than light transport vehicle, not more than seven.

(2) Notwithstanding anything contained in Sub rule (1), but subject to the provisions of Sub, rules (4) and (5), a Regional Transport Authority, may be an order in writing permit that a larger number of persons may be carried in the vehicle on condition that no goods at all are carried in addition to such persons and such persons are carried free of charge in connection with the work for which the vehicle is used, and that such other conditions as may be mentioned by the regional transport authority are observed and where the vehicle is required to be covered by a permit, the conditions of the permission aforesaid are also made conditions of the permit.

It would be clear that as per the provision of Rule 118 (1)(iii) maximum seven bona fide employees can be carried in a goods vehicle.

7. Moreover, as per the provisions of Sub-rules 3, 4 and 5, the appropriate authority may permit the owner of a goods vehicle to carry more than seven bona fide employees on certain conditions or occasions and on certain inescapable grounds of urgent nature in public interest. Therefore, in view of the provisions of Rule 118, it cannot be said that there is a total restriction on carrying of more than six or seven bona fide employees in a goods vehicle. Hence, the argument based on the provisions of Rule 118 also cannot be accepted. Moreover, in this case, no permit is got produced on record by the Insurance company or by the owner of the vehicle. Therefore, on facts also the

insurance company has no case.

8. This leaves us to interpret the Clause 16 as it is. For the purpose of interpreting the clause, we may omit certain words and reproduce the clause with the words which are relevant for our purpose.

...the Insured shall certify at the expiry of such period of Insurance the maximum number of drivers and/or cleaner and/or conductor and/or persons employed in loading and/or unloading employed at any one time during such period in connection with the motor vehicle belonging to him and the premium shall adjusted accordingly....

These words clearly indicate that the insured is required to certify at the end of the insurance period, the number of employees engaged by him and the premium is to be adjusted on the basis of the certificate given by the owner of the vehicle. There is no warrant whatsoever for reading the words "not exceeding six". Had it been the intention of the contracting parties to restrict the liability to six bona fide employees only, it is not understood why these words "not exceeding six" would not have been inserted in the clause.

9. The effect of the appellant-Insurer's contention is to render the above quoted sentence absolutely redundant. The earlier part of the sentence only should have been there so as to read The premium having been calculated at the rate of Rs. 8/-per driver and/or cleaner or conductor and/or person employed in loading or unloading)". Since this sentence and provision does not end here and makes further provision for the Insured certifying maximum number of persons employed in the vehicle during the period of insurance and for adjustment of premium and the right of the insurer to inspect the records of the insurer period for that purpose, show that the insurer is entitled to premium in respect of all such persons, and has covered the risk of all such persons. It may be noted that in case the Insured, owner of the vehicle certifies that at any one time during the period of insurance he employed more than six persons, there is nothing to indicate that he would not be liable to pay further premium in addition to Rs. 48/- paid by him. The phrase "adjusted accordingly" does not necessarily suggest the ceiling limit of six employee. In case it is certified that more than six employees were employed, or the basis of the clause as it reads, the insurance company will be entitled to charge additional premium at the rate of Rs. 8/- per person and the Insured owner of the vehicle will be liable to pay the additional premium. Adjustment, in the context, would mean, harmonization of discrepancies. Therefore, in case the insured-owner has employed less than six employees, he would be entitled to refund of the premium at the rate of Rs. 8/- per employee. Similarly, he would certainly be liable to pay more premium at the same rate if he has employed more than six persons. There is no warrant to construe the phrase "adjusted accordingly" to mean that harmonization can be only in one direction and not in upward direction also. To adopt such a construction would be unreasonable and absurd. In that case, we will be guilty of adding the phrase "not exceeding six" in the clause at appropriate place. This is

simply not permission. Hence the contention is rejected.

10. In above view of the matter, we are of the opinion that by virtue of Clause I.M.T. 16 in the policy, the insurer is liable to indemnify the Insured the owner of the vehicle in respect of all the employees who have met with the accident and who suffered injuries. There is no reason to restrict the coverage or insurance to six bona fide employees only.

11. No other contention is raised.

12. In the result all the appeals are dismissed summarily.