
(2014) 12 GUJ CK 0015
In the Gujarat High Court
Case No : First Appeal No. 4626 of 2009

National Insurance Company Limited	APPELLANT
Vs	
Jyotikaben	RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Citation : (2014) 12 GUJ CK 0015

Hon'ble Judges : V.M. Pancholi, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Vibhuti Nanavati, Advocate for the Appellant; Paresh M. Darji and Yogen N. Pandya, Advocate for the Respondent

Judgement

Akil Abdul Hamid Kureshi, J.—This appeal is filed by the insurance company calling in question a judgment and award dated 7.2.2009 passed by the Motor Accident Claims Tribunal, Nadiad, in MACP No. 1592/2002.

2. Brief facts are as under. The deceased Satishkumar Kantilal Jani, aged about 40 years was riding his motorcycle at about 12 O" clock in the afternoon on 9.5.2002 going from Nadiad towards Anand. His motorcycle was insured by the appellant insurance company. At that time, from the opposite direction, a truck was advancing from Anand towards Nadiad. These two vehicles met with an accident near ITI college, Uttarsanda. The motorcyclist died on the spot. The truck was also insured by the appellant insurance company. It appears that one Alkaben, a pedestrian, studying in ITI college, Uttarsanda, was after the college walking back towards Nadiad. She also received injuries in the accident.

3. The claimants i.e. the widow and the two minor children of the deceased filed the above-mentioned claim petition seeking compensation of Rs. 75 lakhs from the driver, owner and insurer of the truck as well as from the owner and insurer of the motorcycle. The Claims Tribunal held the truck driver negligent to the extent of 80% and the motorcyclist to the extent of 20% in causing the accident. The deceased was employed as a librarian in the South Gujarat University. The

Tribunal believed his current income at Rs. 16,353/- per month, granted 50% for prospective income, adopted multiplier of 15 looking to the age of deceased at 40 and worked out the loss of dependency benefit at Rs. 29,43,540/-. The Tribunal added Rs. 10,000/- each for loss of estate and consortium and Rs. 5000/- towards post death ceremony and arrived at a total compensation of Rs. 29,68,540/-. The Tribunal directed the insurance company of the truck to pay 80% thereof or Rs. 23,74,832/- whereas directed the owner and the insurance company of the motorcycle to pay 20% or Rs. 5,93,708/-.

4. The insurance company has filed this appeal on the short ground that the motorcyclist himself having been found negligent to the extent of 20%, the Claims Tribunal could not have directed the insurer of the motorcycle to pay such compensation. In other words, the insurance company has not seriously disputed before us the computation of loss of income worked out by the Tribunal on the basis of documentary evidence of the income of the deceased and his age.

5. Learned advocate Shri Nanavaty for the appellant insurance company vehemently contended that the Tribunal having held that the motorcyclist was negligent to the extent of 20% in causing the accident, could not have saddled the insurance company of the motorcycle to satisfy such award. He submitted that the claimants who were the heirs of the deceased, cannot receive any compensation to the extent the deceased himself was found negligent.

6. With respect to the legal contention raised by the counsel for the insurance company, we can have no dispute whatsoever. If the deceased himself had contributed to causing the accident, to the extent of his own negligence, the claimants who would be his heirs and dependents, cannot seek any compensation from the owner or insurer of the vehicle. If a person receives bodily injuries or fatal injuries, due to combined negligence of drivers of two different vehicles, it would be a case of composite negligence of such drivers qua the injured. However, when the injured himself contributes to the negligence, the compensation payable must be reduced to the extent of such contributory negligence.

7. However, we need to examine whether the findings of the Claims Tribunal that the deceased himself was negligent to the extent of 20% was accurate. In other words, if it is found that the Tribunal committed an error in this respect and on the evidence on record, the only conclusion possible is that the truck driver was 100% negligent in causing the accident, the final judgment of the Claims Tribunal can still be sustained on that basis.

8. Learned counsel Shri Nanavaty however, contended that the claimants have not filed any appeal against these findings. The Court therefore, cannot go behind such findings and come to different conclusion. We are afraid such a defence is not legally sustainable. Firstly, it is well settled that a judgment creditor can support the judgment of the Court below in appeal on all grounds including the grounds which the Court below held against him. Secondly, the

award of the Claims Tribunal was in favour of the claimants, may be by apportionment of the liability of the insurance company to satisfy the award. Nevertheless, insofar as the claimants were concerned, the direction was for payment of full amount of compensation awarded. There was nothing for the claimants to appeal against such final direction unless the claimants were aggrieved by the quantum of compensation, which apparently they were not. Surely a person fully satisfied with a judgment and decree, cannot file appeal only on a ground which may have been decided against him and which may appear to him to be vulnerable.

9. We may peruse the evidence with respect to the negligence of the two drivers. There were no eyewitnesses to the accident examined by either side. Widow of the deceased, Jyotikaben, was not present and she therefore, obviously had no personal knowledge about the manner in which the accident took place. Her testimony would be confined to the direction which the deceased was travelling. We would therefore, have to fall back on the other available evidence which included the FIR Exh. 55, panchanama Exh. 56 and the claim petition Exh. 90 filed by the injured Alkaben. Here also, the first informant was not an eyewitness. The contents of this FIR therefore, would throw little light on the manner in which the accident took place. The panchnama would provide some important clues. It records that the accident took place on a State highway between Nadiad and Anand near Uttarsanda. The motorcycle was lying at a distance of 10 feet from the eastern edge of the road. It was badly damaged. A little ahead of the motorcycle, there was an open rain water drainage. The truck had gone off the road and a portion of it was lying on such drainage. The left and centre side of the truck was damaged. The truck had collided with a tree and was badly damaged. On the same side, the truck had also collided with telephone poles.

10. Alkaben, a pedestrian, had also received bodily injuries. She filed claim petition which was produced in the present proceedings at exh. 90. She joined the truck driver, owner and insurer of the vehicle. She claimed compensation of Rs. 1,50,000/-. In her claim petition, she had stated that on 9.5.2002, after completing the studies at ITI college, she was walking back towards her house at about 12 O" clock, at which time, the truck driven by the opponent No. 1 came in full speed which was being driven negligently and hit her as well as the motorcyclist. She received injuries for which she needed treatment at Sameep hospital, Nadiad, as an indoor patient for about nine days. We may record that such claim petition was compromised by the insurance company of the truck. The claimant was paid compensation of Rs. 74,000/-. The compromise purshis and the award passed by the Claims Tribunal on such compromise were produced at exh. 91 and 92 respectively.

11. From such evidence on record, it emerges that the motorcyclist was travelling from Nadiad to Anand i.e. from north to south. The truck was coming from opposite direction i.e. from Anand to Nadiad i.e. from south to north. The

eastern side of the road was thus correct side of the motorcyclist and the western side of the road was the correct side for the truck driver. The motorcycle was found 10 feet away from the eastern edge and was thus on its correct side. The truck was found off the road and in the trench on the left hand side. It had stopped after hitting a tree and telephone pole. The pedestrian was walking on the western side going northwards. If the motorcyclist was on his correct side and if the truck was found on the extreme left hand side of the road on his side, the question arises how did the two vehicles collide. If as suggested by Shri Nanavaty, the truck never left its half of the road and as the panchanama shows nor did the motorcyclist, the question would be how did the accident take place.

12. The answer is not difficult to imagine. The truck driver was in the process of overtaking the pedestrian Alkaben who was heading in the same direction but obviously at a much slower speed. While overtaking her, the truck driver not only knocked her down, would have travelled to the wrong side of the road and found the motorcyclist coming from that side. To avoid hitting the motorcyclist, the truck driver would swerve the vehicle to the left. It is the proof of his excessive speed that in the process, he went to the extreme left side of the road. The truck left the highway and stopped only after it landed it in a ditch after colliding with a tree and telephone pole. There is no explanation for this unfortunate and somewhat strange accident. The truck is found on the extreme left side of the road, had in fact skidded off the road and in the process it collided with two persons, a pedestrian going in the same direction as the truck and the motorcyclist coming from the opposite direction. These facts are full testimony of truck being driven at an excessive speed so much so that the truck driver could not control his vehicle. Even after colliding with the pedestrian and the motorcyclist, it went to the extreme left, landed in a ditch and stopped only after colliding with a tree and telephone pole. The fact that for a brief moment at the point of impact the truck was travelling on the wrong side of the road, is thus writ large on the face of the record. We have therefore, no hesitation in holding that the truck driver alone was negligent in causing the accident. Nothing prevented the insurance company either in the present claim petition or in the claim petition by the injured Alkaben to examine the driver of the truck to establish his innocence. He was the best person at-least insofar as this claim petition is concerned, to throw light on the manner in which the accident took place.

13. In the result, we hold that the truck driver was 100% negligent in causing the accident. Question of shifting the burden on the owner and insurer of the motorcycle to the extent of his own contributory negligence would no longer be relevant.

14. In the result, First Appeal is dismissed.

R & P be transmitted back to the concerned trial Court.