
(2014) 08 GUJ CK 0052
In the Gujarat High Court
Case No : First Appeal No. 149 of 2005

New India Ass. Co. Ltd.

APPELLANT

Vs

Mohanbhai Galabhai Makwana Decd.

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Motor Vehicles Act, 1988 — Section 140, 166, 173

Citation : (2015) 3 ALLMR 28

Hon'ble Judges : Bhaskar Bhattacharya, C.J

Bench : Single Bench

Advocate : Sandip C. Shah, Advocate for the Appellant; A.B. Gateshaniya, Advocate for the Respondent

Judgement

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Bhaskar Bhattacharya, C.J.—This appeal under section 173 of the Motor Vehicles Act is at the instance of the Insurance Company and is directed against the award dated 19th July 2004 passed by the Motor Accident Claims Tribunal [Main], Surendranagar, in MACP No. 100 of 2000 thereby awarding a sum of Rs. 2,29,000/- to the claimants with interest at the rate of 9% per annum from the date of filing the claim petition till realization. The appellant-Insurance Company was held jointly and severally liable to pay the amount.

2. Being dissatisfied, the Insurance Company has come up with the present appeal.

3. Mr. Shah, the learned advocate appearing on behalf of the appellant-Insurance Company has strenuously contended before this Court that the Tribunal below committed substantial error of law in holding the appellant liable to pay the awarded amount notwithstanding the fact that the victim was a gratuitous passenger on the Tractor. According to Mr. Shah, although the Tractor was covered by the Insurance of the appellant, it appears from the R.C. book of the

said tractor that the said vehicle had the seating capacity of only one including the driver, and thus, the victim having travelled as a gratuitous passenger, the Insurance Company was not liable to pay the amount even though the third-party risk of the vehicle was covered by the appellant-Insurance Company.

4. It further appears from the record that in the past, the claimant filed an application under section 140 of the M.V. Act, and in that proceedings, on a contested hearing, the learned Tribunal below awarded a sum of Rs. 50,000/- after holding that the Insurance Company was liable to pay the said amount, vide order dated 6th February 2001 passed below Exh. 5.

5. From the aforesaid fact, it is clear that the question as to whether there has been a breach of condition of the Insurance policy at the instance of the owner of the vehicle cannot be reopened in this proceedings under section 166 of the M.V. Act once it is found that in an earlier proceeding under section 140 of the Act arising out of the selfsame accident, the liability of the Insurance Company to pay the amount payable by the insured has been upheld. The question whether there has been breach of condition of the existing policy is basically a question of fact, and such plea was available to the Insurance Company at the time of hearing of the application under section 140 of the M.V. Act. The Insurance Company not having raised such question, and after suffering the order, and having made payment of that amount, in my opinion, it is now precluded from raising the above question regarding breach of condition of the policy at the stage of the proceedings under Section 166 of the Act.

6. The aforesaid question is hit by the doctrine of constructive res judicata.

7. It is now settled by the Apex Court that an award under section 140 of the Act is an appealable one (See Smt. Yallwwa and Others Vs. National Insurance Co. Ltd. and Another, and therefore, the parties, by not preferring any appeal, has accepted the position that the vehicle was involved in the accident, that there was no breach of any condition of insurance in respect of the vehicle involved in the accident and that the same was insured by the concerned Insurance Company. Those three facts cannot be reopened in the proceedings under Section 166 of the Act either at the instance of the owner of the vehicle or the Insurance Company. At this stage it will be profitable to refer to the following observations of the Apex Court in the case of Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another, where a Bench consisting of three Judges specifically held that even if Section 11 of the Code of Civil Procedure is not applicable in a judicial proceeding, the principles of res judicata is nevertheless applicable:

"The principle of res judicata is based on the need of giving finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation, When a matter-whether on a question of fact or a question of law-has been decided between two parties in one suit or proceeding and the decision is final, either

because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in S. 11 of the Code of Civil Procedure; but even where S. 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct."

(Emphasis supplied).

8. I, thus, find that the only question raised by Mr. Shah, the learned advocate appearing on behalf of the Insurance Company, is devoid of any merit, and consequently, this appeal is dismissed. In the facts and circumstances, there will be, however, no order as to costs. The Tribunal is directed to forthwith disburse the amount to the claimants, after proper verification, in the proportion indicated in its impugned award, by accounts payee cheque.