
(2011) 05 GUJ CK 0130
In the Gujarat High Court

Case No : First Appeal No. 1598 of 2011 and Civil Application No. 5769 of 2011

New India Assurance Co. Ltd.

APPELLANT

Vs

Jayeshbhai Nanchanda Thakkar and Others

RESPONDENT

Date of Decision : 11-05-2011

Acts Referred:

Citation : (2011) 05 GUJ CK 0130

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : Rajni H. Mehta, for the Appellant; Hiren M. Modi, for Defendant 1, for the Respondent

Judgement

M.R. Shah, J.—ADMIT. Shri Hiren Modi, learned advocate waives service of notice of Admission on behalf of Respondent No. 1 who can be said to be the main contesting party. In view of the broad consensus between the learned advocates appearing on behalf of the Appellant as well as Respondent No. 1 - original claimant, present Appeal is taken up for final hearing today with the consent of learned advocates appearing on behalf of the respective parties under the instructions from the respective clients.

2. Present Appeal has been preferred by the Appellant - original opponent No. 3 - New India Assurance Company Ltd. to quash and set aside the impugned judgment and award dated 08.06.2010 passed by the learned Motor Accident Claims Tribunal (Auxi.), Fast Track Court No. 1, Vadodara in M.A.C.P. No. 77/2003 to the extent of Rs. 79,000/-.

3. It appears that the present Appeal is restricted to the amount of Rs. 79,000/- only as according to the learned advocate appearing on behalf of the Appellant the original claimant has already received Rs. 79,000/- by medi-claim for the very accident in question and therefore, the claimant is not entitled to the said amount of Rs. 79,000/- twice under two different policies. Shri Parikh, learned advocate appearing on behalf of the Appellant has relied upon the decision of the

Hon"ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Sebastian K. Jacob,

4. Shri Hiren Modi, learned advocate appearing on behalf of Respondent No. 1 - original claimant has as such disputed the aforesaid and has relied upon the decision of the Bombay High Court in the case of Vrajesh Navnitlal Desai Vs. K. Bagyam and Another, However, he has submitted that he has received instruction from the original claimant that he has no objection if the amount of compensation awarded by the learned Tribunal at Rs. 4,04,209/- is reduced by a further amount of Rs. 79,000/-. He has submitted to that extent the present First Appeal be allowed and he does not invite any further reasoned order.

5. In view of the above and for the reasons stated above and the stand taken by the learned advocates appearing on behalf of the respective parties, more particularly, the learned advocate appearing on behalf of Respondent No. 1 - original claimant, which is recorded herein above, present Appeal is partly allowed and the impugned judgment and award dated 08.06.2010 passed by the learned Tribunal in M.A.C.P. No. 77/2003 is hereby modified to the extent that the original claimant shall be entitled to get a total sum of Rs. 3,75,000/- alongwith proportionate costs and interest as awarded by the learned Tribunal (instead of Rs. 4,04,209/- as awarded by the Tribunal). Rest of the judgment and award passed by the learned Tribunal is hereby confirmed. However, it is made clear that the question of law with respect to whether the claimant shall be entitled to the amount of medi-claim as well as the compensation are kept open and the present Appeal is disposed of by the consent of the learned advocates appearing on behalf of the respective parties. No costs.

6. In view of disposal of First Appeal, no order in Civil Application.