

(2001) 10 GUJ CK 0035

In the Gujarat High Court

Case No : First Appeal No's. 5911 and 5912 of 1999

New India Assurance Co. Ltd.

APPELLANT

Vs

Kiritbhai Lalchand Shah

RESPONDENT

Date of Decision : 04-10-2001

Acts Referred:

Citation : (2003) 1 ACC 597 : (2002) ACJ 1835 : (2002) 22 GLH 115 : (2002) 1 GLR 288

Hon'ble Judges : Y.B. Bhatt, J;H.H. Mehta, J

Bench : Division Bench

Advocate : Lilu K. Bhaya, for the Appellant; V.M. Pancholi, for Respondents No. 1-2, M.T.M. Hakim, for Respondents No. 2, 3 and N.K. Majmudar, for Respondent Nos. 4 and 5 in First Appeal Nos. 5911 and 5912 of 1999, for the Respondent

Final Decision : Dismissed

Judgement

Y.B. Bhatt, J.—Heard the learned Counsel for the respective parties.

2. Appeals are admitted. Mr. V.M. Pancholi, Mr. MTM Hakim and Shri N.K. Majmudar waive service of notice on behalf of the respondents in both the appeals.

3. On the joint request of learned Counsel for the respective parties, these appeals are taken up for hearing today.

4. These are appeals under Sec. 173 of the Motor Vehicles Act, 1988, at the instance of the Insurance Company challenging the common judgment and awards passed by the Motor Accident Claims Tribunal (Main) at Vadodara in Motor Accident Claim Petition Nos. 415 of 1992 and 497 of 1992.

5. Learned Counsel for the appellant Insurance Company first sought to challenge the impugned judgment and awards on quantum and merits. It is a well settled proposition of law which does not require any discussion that the Insurance Company can only raise specific statutory defences available to the

Insurance Company under Sec. 149(2) of the said Act. Further more, in an appeal, only grounds arising from such statutory defences can be urged and considered. The only exception to this proposition would be where a legally sustainable order has been passed by the Tribunal under Sec. 170 of the said Act, and the said order passes the test of validity as laid down by the Supreme Court in Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, . On the facts of the present case, learned Counsel for the appellant was able to point out only that an application under Sec. 170 had been made before the Tribunal. However, the learned Counsel for the appellant is unable to point out as to whether any order on the application has been obtained at all let alone an order containing reasons as set out in Shankarayya's case (supra). It is required to be noted here that ample opportunity had been granted to the learned Counsel for the appellant (before these matters were heard today) to obtain a copy of the said order, if any. In the premises aforesaid, in the absence of a legally sustainable order under Sec. 170, we have not permitted the learned Counsel for the appellant to address us on the aspect of quantum and merits of the impugned awards.

6. This takes us to other grounds raised by the learned Counsel for the appellant, based on statutory defences available to the Insurance Company.

7. Before we discuss the grounds raised by the learned Counsel for the appellant, we take note of the following facts of the case which are either undisputed or indisputable :-

(i) The policy issued by the appellant -Insurance Company in favor of the owner of the vehicle has not been produced or proved on the record of the case. However a Cover Note in respect of such a policy is on record at Ex. 24, on the basis of which submissions have been made by the learned Counsel for the appellant, and which Cover Note we have examined for the purposes of appreciating such contentions.

(ii) The vehicle insured was a Contessa Car, was a private vehicle, and the passengers travelling therein (in respect of whom the claim petitions were filed) were gratuitous passengers.

8. The substance of the submission made by the learned Counsel for the appellant is that the policy in question was an Act Only Policy. Looking to the Cover Note at Ex. 24, as also from other material on record, it appears that there is no dispute on this fact. It is nobody's case that the vehicle was covered by any comprehensive policy.

9. It also requires to be noted that amongst various details noted in the Cover Note Ex. 24, there is a specific endorsement "any person" below Item No. 5, which Item No. 5 is not clearly legible on the copy shown to us. However, the crux of the contention on the part of the learned Counsel for the appellant is that passengers travelling in a private vehicle would not be such persons whose risk is required to be covered by a an Act Only Policy.

10. While examining this contention, we must take note of the fact that there is no dispute that the accident took place after the Act of 1988 came into force, and that the Cover Note was issued on 6th December, 1990. It may, therefore, be safely presumed that the policy would be governed by the Motor Vehicles Act, 1988. This is the stand taken by the learned Counsel for the appellant.

11. Sec. 147(1) sets out what risks the policy must cover which is commonly called as an Act Only Policy. Sec. 147(1)(b)(i) contains the phrase "injury to any person". It is pertinent to note that this phrase has been incorporated into this provision by the Act of 1988 which came into force on 1st July, 1989, and that this phrase was part of the Section even prior to the phrase added thereafter by a Act No. 54 of 1994 which came into effect from 14th November, 1994.

11.1 Thus, the crux of the matter is whether gratuitous passengers travelling in a private car (which is not a Goods Vehicle) is required to be covered by an Act Only Policy, and whether such a person would be covered by the phrase "any person" as found in the said provision.

12. The learned Counsel for the appellant sought to contend that such persons would not be covered by the phrase "any person" under an Act Only Policy under the Motor Vehicles Act, 1988, prior to its amendment in the year 1994.

12.1 In this context, the learned Counsel for the appellant sought to rely upon a decision of the Supreme Court in the case of Noorjahan (Tmt) Vs. Sultan Rajia Tmt alias Thaju and Others, . In our opinion, this decision is of no relevance in the light of the facts on the record. The said decision deals with passengers being carried for hire or reward in a public service vehicle, pursuant to a contract of employment. It was in this context that the Supreme Court held that a person who was a passenger in such vehicle, and sustained injury while alighting from the vehicle in a public place, should be treated as "a passenger", and not " a third party ". As noted above, the crux of the present matter is not whether the death of the party which gave rise to the claim petition was in the capacity of "a passenger" or in the capacity of " a third party". As observed hereinabove, the insurer is obliged to cover the risk to "any person" in respect of an Act Only Policy, particularly where such person is travelling as gratuitous passenger in a private car which is not a Goods Vehicle.

13. Learned Counsel for the appellant also sought to rely upon the decision of the Supreme Court in the case of New India Assurance Co. Ltd. Vs. Shantibai (SMT) and Others, reported in (1995) 2 SCC P 539. In our opinion, the said decision would be of no assistance to the Insurance Company, inasmuch as the same deals with the liability of the Insurance Company in respect of third party risk in the context of comprehensive policy issued on the basis of the estimated value of the vehicle. It was in this context that the Supreme Court held that the limit of liability with regard to third party risk does not become unlimited or higher than the statutory liability, and that for this purpose, specific agreement and payment of separate premium is necessary.

13.1 On behalf of the respondents (original claimants), it was sought to be urged that the decision of the Supreme Court in the case of New India Assurance Company Vs. Shri Satpal Singh and Others, would completely cover the facts of the case. On the basis of the said decision, it was urged on behalf of the claimants that under the Act of 1988, even an Act Only policy cannot exclude "gratuitous passengers".

14. It is true that Satpalsinh's case does lay down a broad principle that an Act Only Policy issued under the Motor Vehicles Act, 1988 is bound to cover the risk of gratuitous passengers. However, it also requires to be noted that this principle has been laid down in the context of a Goods Vehicle, and the passengers considered, whether gratuitous or otherwise, whether travelling with goods or without goods, were travelling in a goods vehicle.

14.1 As against this, the learned Counsel for the appellant has drawn our attention to the decision of the Supreme Court in a group of cases reported in Judgments Today, 2001 (4) SC P 477, and another decision of the Supreme Court in another group of matters reported in 2001 SOL Case. 482. In our opinion, neither of these two decisions directly covers the controversy in the present case. The substance of the two decisions is only that the decision of the Supreme Court in the case of Satpalsingh (supra) requires to be reconsidered by a Larger Bench. We, however, note that the reference to a Larger Bench was thought necessary (in these decisions) only on the aspect of gratuitous and non-gratuitous passengers travelling in a Goods Vehicle. In our opinion, these decisions do not indicate that Satpalsinh's case requires reconsideration as regards the coverage which must be offered by the Insurance Company under an Act Only Policy to gratuitous passengers travelling in a private vehicle.

15. Learned Counsel for the appellant then sought to contend that the interest awarded by the Tribunal at the rate of 12% p.a. was excessive and requires interference in the present appeal. While examining this contention, we are required to note that the claim petition was filed in March, 1992, and the award was passed on 21st May, 1999. We are also conscious of the fact that the rate of interest in the general economy of the country has been falling gradually. However, we are also conscious of the fact that the period from the year 1992 upto the year 1994 was a peak period for the Indian economy and the interest rates were at the highest at that juncture. So far as interest awarded by the Tribunal at 12% p.a. is concerned, this rate would be somewhat lower than what would be justified for this specific period. On the other hand, the interest rate was gradually dropping from the period from 1994, and went below the rate of 12% only after the end of 1998. Thus, taking an over all view of the matter and giving due weightage to the fact that interest at a uniform rate has been awarded from March, 1992 upto realisation, it appears to us that the uniform rate of 12% p.a. is not so excessive so as to justify any interference.

16. In the premises aforesaid, we find that there is no substance in the present appeals, and the same are, therefore, dismissed, with costs.