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(2012) 03 GUJ CK 0056

In the Gujarat High Court

Case No : First Appeal No. 1387 of 2000 with First Appeal No. 1388 of 2000 with First Appeal No. 2453 of 2001

New India Assurance Co Ltd. APPELLANT

Vs

Narangar Bechargar Gusai and Others RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Citation : (2012) 03 GUJ CK 0056

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : Lilu K. Bhayas, for the Appellant; Mehul S. Shah for Defendant(s) : 2 -3, Mr. Suresh M. Shah for Defendant(s) : 2 -3, for the Respondent

Judgement

Honourable Mr. Justice K.S. Jhaveri

1. These appeals have been preferred against the common judgment and award dated 08.03.2000 passed by the Motor Accident Claims Tribunal [Main] Kachchh at Bhuj in M.A.C.P. No. 626 of 1993 and in M.A.C.P. No. 557 of 1993, whereby the claim petitions were partly allowed and the original claimants were awarded total compensation of Rs. 3,39,000/- and Rs. 75,000/- respectively along with proportionate costs and interest @ 12% per annum from the date of the application till its realization. The facts in brief are that on 01.04.1993, while Pareshgar Narangar Gusai and Rajeshpuri Jethapuri Gusai were travelling in a Truck bearing No. GRW-U-2706, on account of rash and negligent driving, the truck turned turtle, as a result of which Pareshgar Narangar Gusai and Rajeshpuri Jethapur Gusai sustained severe bodily injuries and Pareshgar Narangar Gusai succumbed to the injuries. The injured person and legal heirs of deceased preferred claim petitions, which came to be partly allowed, by way of the impugned award. Being aggrieved by the said award, the appellant -Insurance Company and the original claimants have preferred the cross-appeals.

2. Heard learned counsel for the respective parties and perused the documents on record. The main contention raised on behalf of the appellant-Insurance

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Company is that the deceased and injured persons were travelling as a gratuitous passengers in a ''goods vehicle'' and therefore, no liability of making payment of compensation could be saddled upon the Insurance Company. In support of the above submission, reliance has been placed on the decision of the Apex Court in the case of New India Assurance Co. Ltd. Vs. Asha Rani and Others, .

3. The learned counsel for the respondents - original claimants contended that if the issue regarding gratuitous passengers in a goods vehicle is not mentioned in the judgment, then the presumption is that that point was never pressed before the Tribunal. In support of his submission he had placed reliance on the decision of the Hon''ble Apex Court in the case of Mohd. Akram Ansari v. Chief Election Officer & Ors. 2007 (14) SCALE 30.

4. It appears from the record that the vehicle in which the deceased and injured person were travelling at the time of accident was a ''goods vehicle''. Under the provisions of the M.V. Act. the Insurance Company of a ''goods vehicle'' cannot be fastened with the liability of making payment of compensation, if any injury is caused or death takes place while travelling in such vehicle. The said contention regarding goods vehicle was raised in the written statement and therefore, the decision relied upon by the original claimant will not be applicable in the present case. Considering the facts of the case and the principle rendered in Asha Rani''s case (supra), the Insurance Company cannot be held liable to make payment of compensation.

5. So far as First Appeal No. 2453 of 2001 is concerned, the learned counsel for the original claimants has submitted that while calculating the income, the Tribunal has not appreciated the evidence on record in its proper perspective. It has been submitted that the Tribunal has not properly considered the oral and documentary evidence produced on record with regard to the income of the claimants. Hence, the impugned award passed by the Tribunal deserves to be modified by enhancing the amount of compensation.

6. However, having gone through the impugned award, I find that the compensation awarded under the respective heads are just and appropriate and in consonance with the evidence on record and the law on the subject. I am in complete agreement with the reasonings given by and the conclusion arrived at by the Tribunal and hence, I find no reasons to interfere with the same. For the foregoing reasons, First Appeal No. 2453 of 2001 is dismissed. First Appeals Nos. 1387 of 2000 and 1388 of 2000 are allowed. The impugned common judgment and award passed by the Tribunal is quashed and set aside only qua the extent of imposition of liability upon the appellant-Insurance Company to make payment of compensation. It is, however, observed that if the amount deposited before the Tribunal is already withdrawn by the original claimants, the same shall not be recovered from the original claimants but, the appellant-Insurance Company shall be at liberty to recover the same from the owner of the offending vehicle. If the amount has not been withdrawn by the original claimants, the same shall be

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refunded to the Insurance Company and the claimants shall be at liberty to recover the balance amount from the owner of the offending vehicle. The appeals stand disposed of accordingly. No order as to costs.

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