

(2008) 03 GUJ CK 0058
In the Gujarat High Court

Case No : First Appeal No's. 4836 to 4849 of 2007 and Civil Application No's. 12740 to 12753 of 2007

New India Assurance Co. Ltd.

APPELLANT

Vs

Piyushkumar Jayantilal Shah and Others

RESPONDENT

Date of Decision : 07-03-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (2008) 03 GUJ CK 0058

Hon'ble Judges : Sharad D. Dave, J;A.L. Dave, J

Bench : Division Bench

Advocate : Hasmukh Thakker, for the Appellant; Vasavdatta Bhatt, for G.S.R.T.C. and R.C. Jani, for the Respondent

Final Decision : Dismissed

Judgement

A.L. Dave, J.—Appeals Admitted.

In view of the fact that the appellant challenges the finding of the Tribunal only on negligence aspect, upon joint request, the appeals are taken-up for final hearing, after calling for the record and proceedings, which is before us.

2. The appellant is the insurer of Truck No. DIG-5595 that met with an accident on 14.1.1996, which occurred at about 7.30 A.M. in the morning, on the bridge over river Mahisagar near village Degmada on Malpur - Lunawada Road in Panchmahals District. The accident occurred when the said truck dashed with the hind portion of S.T.Bus No. GJ-1-Z-3194. Because of the impact, the bus fell into the river, which resulted in the death of and injuries to the occupants of the bus. According to the claimants, while the bus was proceeding on the bridge, the said truck came from behind at an excessive speed and dashed with the hind portion of the S.T.bus, resulting in the accident. The heirs of the victims, who died in the mishap, and those victims, who sustained injuries in the mishap, preferred claim-petitions before the Motor Accident Claims Tribunal (Main), Panchmahals at

Godhra, joining the driver of the bus and the S.T. Corporation as well as owner and the insurer of the truck.

2.1 The petitions were opposed to by the Gujarat State Road Transport Corporation ["Corporation", for short] by filing a written-statement contending, inter alia, that there was no negligence on the part of the driver of the bus, the truck came from behind and dashed against the hind portion of the bus, and as a result of the impact, the bus fell into the river.

2.2 The driver of the truck was initially joined as a party-opponent, but, then was deleted. The owner of the truck chose not to contest the claim and the insurer of the truck, who is the present appellant, contested the claim by filing a written-statement, which is more or less in the form of denial, but, with a specific plea that the driver of the bus stopped the bus on the bridge at the request of passengers of the bus to enable them to perform religious ceremony and offer coconuts to the holy river Mahisagar.

2.3 The application Exh.36 made by the appellant -Insurance Company u/s 170 of the M.V. Act, was granted by the Tribunal and, therefore, this group of appeals is maintainable.

2.4 The Tribunal, after considering the evidence led by the parties, came to the conclusion that the accident occurred solely because of the negligence on the part of the truck driver and considering the merits of each claim petition, passed awards for compensation in respect of each claim-petition. The details of such Awards are not gone into, since they are irrelevant for the purpose of these appeals, as the appeals are pressed only on the question of negligence.

3. Aggrieved by the judgment and awards, the insurer of the truck has preferred these appeals mainly on the ground that the driver of the bus ought to have been attributed, if not whole, some negligence and responsibility for the mishap. The main contention that is raised by the learned advocate for the appellant is that if the evidence led by the appellant before the Tribunal is considered, the evidence of one of the claimants i.e. Shankerbhai Nanubhai Dodiya, recorded at Exh.40, is significant. In his claim-petition, he has averred that while the bus was going on the bridge, the truck came from behind and dashed with the hind portion of the bus, resulting into fall of the bus in the river; whereas in his deposition recorded at Exh.40, he has stated in his examination-in-chief itself that the bus was stopped on the bridge by the driver at the request of the passengers for offering prayer to river Mahisagar and while the bus was thus stationary, the truck came from behind and dashed with the bus. Learned advocate Mr.Thakker submitted that there is patent contradiction between the pleadings and the proof. He submitted that there is no proof supporting the pleadings and the proof is not supported by pleadings. The evidence, therefore, cannot be given any weightage in light of the decision in the case of Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another,

3.1 According to Mr.Thakker, the Tribunal, therefore, committed an error in

concluding that the driver of the truck was solely responsible for causing the accident. According to him, some negligence ought to have been attributed to the driver of the bus, who had either stopped the bus on the bridge or proceeded on the bridge in a manner, resulting in the occurrence of the accident.

4. On the other hand, learned advocate Ms.Vasavdatta Bhatt, appearing for the Corporation, submitted that the accident had occurred at 7.30 in the morning when the bus was dashed from behind by the truck. According to her, whether the bus was stationary or was moving, is not so important for deciding the question of negligence because the bus was hit from behind by the truck, and the Tribunal was justified in holding that the accident occurred because of the sole negligence on the part of the truck driver. Mrs. Bhatt submitted further that Shankerbhai Narubhai Dodiya is not the sole eye witness to the accident, who is examined before the Tribunal at Exh.40. She has drawn the attention of this Court to the deposition of Rupalbhai Lambabhai Harijan, who is examined at Exh.89. She has also drawn our attention to the F.I.R. and the panchnama produced at Exhs. 143 & 144 respectively. She submitted that the Tribunal's finding on negligence aspect is well-founded and does not merit any interference.

5. Learned advocate Mr.Thakker, in rejoinder, submitted that the Tribunal, in its judgment, has not even referred to the deposition of Rupalbhai. The judgment is founded mainly on the FIR, panchnama and deposition of Shankerbhai Narubhai Dodiya recorded at Exh.40 and, therefore, since the finding of the Tribunal on the question of negligence is erroneous, the same may be interfered with by this Court in exercise of the appellate jurisdiction.

6. We have considered the rival side submissions.

7. The only question that arises for determination by this Court is whether the finding of the Tribunal that the truck-driver was solely responsible for the accident and that the accident occurred because of his sole negligence, can be said to be erroneous in any manner.

8. At the outset, it may be noted that the claimants before the Tribunal in their claim petitions, have averred that the accident occurred while the bus was proceeding on the bridge over river Mahisagar when the truck came from behind and dashed with the hind portion of the bus, as a result of which, the bus fell into the river resulting into death of and injuries to the passengers.

8.1 F.I.R. at Exh.153, if perused, states that when the bus came on the bridge over river Mahisagar at about 7.30 A.M., the truck came from behind which was driven by its driver at an excessive speed and dashed with the hind portion of the bus. As a result of the impact, S.T.bus fell into the river by running over the parapet. The said F.I.R. is lodged by one Jayantilal Ambalal Shah, who was a passenger in the bus, who suffered injuries and ultimately succumbed to the same.

8.2 The panchnama is produced at Exh.154. It only speaks of absence of any

marks, except that the railing of the bridge was broken (damaged) and the bus was found lying on the river-bed. The panchnama then gives the further description, but, so far as the position over the bridge is concerned, the panchnama only indicates that there was nothing remarkable on the bridge.

8.3 Now, if the evidence of Shankerbhai Narubhai Dodiya (Exh.40) is seen, he has stated, in his examination-in-chief, that he was travelling in the bus and when the bus was proceeding on the bridge, it was stopped for the purpose of darshan and the truck came from behind and dashed with the hind portion of the S.T.bus, and the bus went off the bridge and fell into river-bed.

8.4 The witness is cross-examined and he has stuck to his version. During his cross-examination, he has stated that the bus was stopped at the request of the passengers of the bus. The passengers had offered coconuts and money to the river. Accepting the suggestion that the bus was stopped near the bridge, he says that the driver of the bus was on the driver's seat when the accident occurred. He admits that he did not see the truck coming, nor does he say anything about the speed of the truck. He denies the suggestion that he was standing on the road at the time of the accident.

8.5 There is evidence of Rumbhai Lambabhai recorded at Exh.89. In his examination-in-chief, he says that he was travelling in the bus, and that the bus was being driven by the driver at a moderate speed and in a careful manner. When the bus was passing on the bridge over river Mahisagar, truck No. DIG-5595, driven by opponent No. 1 at an excessive speed in rash and negligent manner, came from behind and dashed with the hind portion of the bus, as a result of which, the bus fell into the river. He has been cross-examined and he has denied the suggestion that there was a crowd on the bridge. Rest of the cross-examination is on quantum aspect.

9. The above stated are the pieces of evidence, which form part of the record, which would be helpful in examining the question that arises before this Court for consideration. But, before we proceed to discuss that aspect, it is worth to note that neither the driver of the bus, nor the driver of the truck was examined before the Tribunal as a witness. They would have been the best persons, who could have thrown some light on the question as to how the accident occurred, or how the accident could have been averted and by whom, or on the question as to why the accident could not be averted. But, unfortunately, no such evidence is emerging from the record.

10. There cannot be any dispute on the principle that "a pleading without proof and proof without pleading" will be of no virtue to the party concerned. They must go hand-in-hand. While accepting this proposition, if the evidence before the Tribunal is examined, we have to record, at the outset, that the involvement of the said truck and the bus in the accident is not in dispute. It is also not in dispute that the drivers of the vehicles are not examined before the Tribunal and we, therefore, do not have the best of the evidence on the question as to how

the accident occurred, why it could not be avoided or how it could have been avoided. We, however, have documentary evidence in the form of F.I.R., which was lodged soon after the accident by an eye witness, who was a passenger of the bus, who suffered injuries and succumbed to death later on. In the F.I.R. Exh.153, the story is that the bus was proceeding on the bridge when it was hit from behind by the truck. There is not a whisper about stopping of the bus on the bridge, This is an immediate version of the incident and would deserve due weightage.

10.1 It is true that witness Shankerbhai Narubhai Dodiya (Exh.40) in his petition has stated that the bus was moving when the accident occurred, but, said Shankerbhai, in his examination-in-chief as well as cross-examination, has stated that the bus was stopped on the bridge at the request of the passengers. There is, therefore, conflict between his pleadings and the evidence. His pleading is consistent with the F.I.R. and the pleadings of other claimants. At the best, his evidence on condition of the bus; stationary or moving; at the time of the accident, runs a little contrary to his pleading, and other evidence on condition of bus; stationary or moving, may not be given any weightage on that aspect. But, about the occurrence, he is consistent that the truck came from behind and dashed with the hind portion of the bus, as a result of which the bus fell into the river.

10.1.1 Additionally, there is evidence of Rimalbhai, recorded at Exh.89, who states that the accident occurred while the bus was going on the bridge. This evidence of Rimalbhai is consistent with his pleading, is consistent with the pleadings of other claimants and is consistent with the FIR, which was lodged soon after the accident. It is worth a note that though the appellant came with a specific theory that the bus was stopped by the driver of the bus at the behest of the passengers, no such suggestion is put to witness Rimalbhai that the accident occurred because the bus was stopped on the bridge at the request of the passengers. The evidence of Rimalbhai, therefore, has to be accepted even if the evidence of Shankerbhai Dodiya on the question of condition of the bus at the time of the accident is ignored.

10.2 It was contended by learned advocate Mr.Thakker for the appellant that the Tribunal has not discussed anything about the evidence of Rimalbhai or the F.I.R. and, therefore, the Tribunal's finding is erroneous. It is not possible to accept this contention for the reason that absence of discussion by the Tribunal in its judgment about any piece of evidence, which is otherwise found to be reliable, would not abrogate the effect of presence of such evidence on record.

10.3 It is also worth a note that according to the appellant, in its written statement, the bus was stopped on the bridge across the river at the request of passengers and that the bus, as per safety norms, ought to have been parked before or after the bridge. The appellant did not lead any evidence before the Tribunal in support of the pleading that the bus was stopped on the bridge at the request of the passengers. So far as the pleading that the bus was stopped on

the bridge is concerned, we may examine the evidence of witness Shankerbhai. In cross-examination to the learned advocate for the appellant, the witness has stated thus, "it is true that the bus was parked near the bridge". This would necessarily mean that even if the bus was stopped, it was not stopped on the bridge. The pleading and evidence adduced by the appellant before the Tribunal, therefore, do not go hand-in-hand, and the decision in the case of Shankar Chakravarti (Supra) would come in the way of the appellant.

11. Apart from the above aspect, it has to be borne in mind that the accident occurred at about 7.30 in the morning. The truck dashed with the hind portion of the bus. The impact was so great that the bus fell into the river after breaking parapet of the bridge, which would indicate the speed at which the truck must have been driven at the time of impact. The driver of the bus, even if he saw the truck coming from behind in the rear-view-mirror, could not have taken any steps, except watching it helplessly. There was no probable way available to the driver of the bus to avert the accident, whereas the driver of the truck did have that last opportunity to avoid the mishap.

12. In the light of the foregoing discussion, this Court is of the view that the finding of the Tribunal that the accident occurred because of the sole negligence on the part of the driver of the truck is just, legal and proper and calls for no interference.

13. Since the appeals are founded only on the question of negligence, other aspects are neither pressed for by the learned advocate for the appellant, nor are gone into by this Court in these appeals. The appeals, therefore, must fail and are dismissed. No orders as to costs.

Civil Application Nos. 12740 to 12753 of 2007

In view of the fact that the main appeals are finally disposed of, these civil applications stand disposed of without any orders.