
(2016) 02 GUJ CK 0115
In the Gujarat High Court

Case No : First Appeal No. 1290 of 2015 With Civil Application No. 7353 of 2015

New India Assurance Co. Ltd.

APPELLANT

Vs

Savitaben Arvindbhai Rathod

RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 34

Citation : (2016) 2 CLR 209 : (2016) 149 FLR 262 : (2016) LabLR 619

Hon'ble Judges : S.G. Shah, J.

Bench : Single Bench

Advocate : K.V. Gadhia, Advocate, for the Appellant; Manish S. Shah, Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.G. Shah, J. (Oral) - Mr. Manish S. Shah, learned advocate for the defendant/respondent is pressing to frame a substantial question of law referring the provisions of Section 34 of the Employees Compensation Act, 1923. Considering the facts and circumstances emerging from the record and on perusal of appeal memo, it becomes clear that appellant has already raised substantial questions and issues of law in Paragraph 2 of the memo of the appeal, wherein, all the questions may not be relevant at this stage, however, at least question no.(d), viz.; whether the insurance company can be held liable for payment of compensation to the labourer when the insurance policy only covers one employee i.e. driver, would be an adequate substantial question of law for proceeding further in the matter.

Therefore, there is no question of framing separate questions of law as asked for by the respondent. It would be appropriate for both the sides to answer all the questions framed in Paragraph 2 of the memo of appeal which are considered as substantial questions of law.

2. After framing such questions of law, heard both the learned advocates at

length for final disposal of appeal considering the order dated 8.7.2015 of coordinate bench of this Court, while issuing notice, the Court has already stated that Notice is to be issued for final disposal.

3. The record shows that original owner of the vehicle being original opponent no.1 though duly served, remained absent before this Court and has failed to resist/oppose this appeal.

4. Irrespective of factual details emerging from the record, at present, we are concerned with the substantial questions of law as framed in Paragraph 2 (d) of the memo of appeal, whereby, this Court has to scrutinise and has to determine whether the insurance company can be held liable for the payment of compensation to the labourer when the insurance policy covers one employee i.e. driver only. It is not disputed fact that the accident has occurred in presence of a Mahindra tractor, however, though such tractor has been insured by the present appellant, the insurance policy does not cover the legal liability for labourers in any manner whatsoever. The copy of insurance policy produced before the Court discloses that the owner of vehicle has paid the premium for own damage so also compulsory premium to owner and driver and hence there is no liability of insurance company under the Employees Compensation Act so far as labourer is concerned. Policy does not disclose the fact as to whether any additional premium is paid by the owner of the vehicle and accepted by the insurance company so as to cover the legal liability of the insurance company for labourers working on the vehicle at the relevant time i.e. during the period of insurance policy. Therefore, when insurance policy is not covering the risk of labourers, the impugned order needs to be interfered with when it fixes the liability of insurance company also to pay the compensation awarded to the original claimant.

5. I have heard learned advocate for the original claimant. He has nothing to add except to submit that if at all there is an accidental injury to the claimants then there is absolute liability of the employer but, if employer is not insured then in that case claimant has nothing to add to fix the liability of the insurance company as done by the Commissioner in the impugned judgment and award 26.8.2013 in W.C. (NF) Application No.10 of 2004.

6. In view of above facts and circumstances, when it is crystal clear that owner of the vehicle has not paid any additional premium so as to cover the legal liability of labourers, the impugned order needs to be quashed and set aside so far as fixing the liability of present insurance company is concerned. However, when owner of the vehicle has remained away from this appeal, it is presumed that he has nothing to say so far as award about fixing of his liability.

7. Therefore, appeal is partly allowed. Thereby, insurance company is exonerated from paying the compensation as per impugned order. However, claimants are certainly entitled to claim compensation from original applicant opponent no.1 i.e. her employer and owner of vehicle in question.

8. Considering the above position, this Court has avoided to discuss and recollect

the minute details regarding nature of accident, vehicle number, details of claimants, her injuries etc. since the appeal is required to be disposed of on a limited ground that when insurance company is not liable to pay compensation and when owner - employer has not challenged the award by filing separate appeal or cross objection in the appeal, there is no reason to discuss all such facts.

9. In view of above, appeal is allowed in aforesaid terms.

Therefore, now Commissioner under Employees Compensation Act shall refund the amount of compensation already deposited by the insurance company before it.

10. In view of disposal of main matter i.e. First Appeal No.1290 of 2015, Civil Application No.7353 of 2015 does not survive and hence the same stands disposed of.