(1985) 02 GUJ CK 0001

In the Gujarat High Court

New India Assurance Co. Ltd. APPELLANT

Vs

Shakuben and Others RESPONDENT

Date of Decision : 12-02-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 96

Citation : (1985) 2 ACC 141 : (1986) ACJ 778 : (1987) 62 CompCas 876

Hon'ble Judges : R.A. Mehta, J;A.P. Ravani, J

Bench : Division Bench

Advocate : B.R. Shah, for the Appellant; Viresh C. Desai, P.V. Nanavati and M.R. Barot, for the Respondent

Judgement

Ravani, J.—All these appeals arise out of a common award passed in different motor accident claim petitions by the Motor Accident Claims Tribunal, Nadiad, on January 20, 1976. First Appeals Nos. 965, 967, 968and 969 of 1978 have been filed by New India Insurance Co. Ltd. and the cross- objections have been filed by the United India fire and General Insurance Co. while First Appeals Nos. 244 and 245 of 1978 have been filed by M/s. Jaipur Golden Transport Co. Ltd.

2. Two trucks bearing Nos. GTG 2463 and RSM 6887 were proceeding in opposite directions. Truck GTG 2463 was proceedings from Demai to Kapadwanj side while truck RSM 6887 was proceeding from Kapadwanj to Demai side. Truck GTG 2463 had been insured with the United India Fire and General Insurance Co. while truck RSM 6887 had been insured with the New India Assurance Co. On account of collision which took place between the two trucks, six persons died including the driver of truck RSM 6887. Four persons received injuries on account of this accident.

3. On behalf of the injured as well as on behalf of th dependants of the deceased, different claim petitions were filed before the Motor Accident Claims Tribunal, Kaira at Nadiad, and different amounts were claimed as compensation. As far as Motor Accidents Claims Petitions Nos. 83, 87 and 141 of 1976 are concerned, First Appeals Nos. 963, 964 and 966 of 1978 filed against the award have been

dismissed by the court summarily at the admission stage on the ground of smallness of the amount of compensation awarded. Therefore, we are not concerned with the details thereof. The Tribunal held that both the drivers of the respective vehicles were equally negligent in driving the vehicles and, therefore, both the insurance companies were held liable to pay the amount of compensation awarded. It is against this award that these appeals have been filed. The relevant factual data pertaining to these appeals are as follows :

-- Sr. First M A C Amount Amount Remarks No Appeal Petition claimed awarded Rs. Rs. -- 1. No.965/78 No. 90/76 25,000 21,000 No cross-objection by 2. No.967/78 No.190/76 25,000 16,000 claimant. 3. No.968/78 No.215/76 25,000 9,800 However, cross-objection 4. No.969/78 No.287/76 27,000 21,000 by United India 5. No.244/78 No. 88/76 1,67,280 66,000 Fire and General 6. No.245/78 No.136/76 50,000 13,156 Insurance Co --

4. As stated earlier, First Appeals Nos. 965 and 967 to 969 of 1978 have been filed by the New India Insurance Company and First Appeals Nos. 244 and 245 of 1978 have been filed by the Jaipur Golden Transport Co Ltd. , i.e., the owner of truck RSM 6887.

5. It is contended on behalf of the appellant-insurance company in the first four appeals that the liability of the insurance company was restricted to the total amount of Rs 50,000 irrespective of the number of injured persons or the number of fatal cases. This point does not survive in view of the decision of the Supreme Court in the Motor Owners Insurance Co Ltd. v Jadavji Keshavji Modi [1982] 52 Comp Cas 454. As laid down therein, the expression "any one accident" would mean, "as many accidents as number of persons injured in an accident". Therefore, the contention that the entire liability of the insurance company would be only to the extent of Rs 50,000 cannot be accepted.

6. It is contended that the injured and/or who received fatal injuries were gratuitous passengers and, therefore, the insurance company would not be liable. This contention also cannot be accepted in view of the fact that the passengers who were travelling in truck GTG 2463 would be third parties as far as the appellant-insurance company is concerned. Moreover, as laid down by the Full Bench of this High Court in the case of New India Assurance Co Ltd. v Smt Nathiben Chatrabhuj [1985] 55 Comp Cas 568, in order to successfully disclaim its liability, the insurance company should establish the following (at page 586) :

"1. that on the date of the contract of insurance, the insured vehicle was expressly or implicitly not covered by a permit to play for hire or reward, that is, by a permit to carry any passenger for hire or reward.

2. that there was a specified condition in the policy which excluded the use of the insured vehicle for the carriage of passengers for hire or reward, and

3. that the vehicle was, in fact, used in breach of such specified condition on the occasion giving rise to the claim by reason of the carriage of the passenger therein for hire or reward."

7. In the instant case, the necessary permit is not on record. Therefore, the appellant-insurance company cannot avoid the liability.

8. It was sought to be argued that the amount awarded is excessive. However, this contention is not available to the insurance company. In view of the provisions of section 96 of the Motor Vehicles Act, the insurance company has very limited defence. Therefore, it is not necessary to go into the merits of this contention. Similarly, it was sought to be argued that there was no negligence on the part of the driver of the truck RSM 6887. This defence is also not available to the appellant-insurance company in view of the provisions of section 96 of the Motor Vehicles Act. Therefore, it is not necessary to discuss this contention also on merits.

9. As far as the cross-objections filed by the United India Fire and General Insurance Co are concerned, a contention has been raised that the cross-objections at the instance of a co-repondent are are not maintainable. But this contention is not required to be decided in this case in view of the fact that on merits we do not find any substance in the contention raised by this insurance company, similar contentions have been raised as raised by the appellant-insurance company. For the same reasons all these contentions are also negatived. Therefore, all these four appeals and the cross-objections are required to be dismissed.

10. As far as First Appeals Nos. 244 and 245 of 1978 are concerned, the contention of the appellant-Jaipur Golden Transport Co Ltd. is that the insurance company, i.e., New India Assurance Company Ltd., should also have been held fully liable to make the compensation awarded. In support of this contention, the insurance policy, exhibit 91, is sought to be relied upon. But it is very clear that the policy covers the risk to the extent of Rs 10,000 only as far as the non-fare paying passengers are concerned. The relevant clause reads as follows :

"Legal liability to non-fare paying passengers other than statutory liability except the Indian Fatal Accidents Act, 1855 (commercial vehicles only) -

In consideration of the payment of an additional premium of Rs 18.75 and notwithstanding anything to the contrary contained in section III(b) and (c) it is hereby understood and agreed that the company will indemnify the insured against his legal liability other than liability under statute (except the Indian Fatal Accidents Act, 1855) in respect of death of or bodily injury to : ....

(2) Any other person not being carried for hire or reward being carried in or upon or entering or mounting or alighting from any motor vehicle described in the schedule to this policy but such indemnity is limited to the sum of Rs 10,000 in respect of any one such person and subject to the aforesaid limit in respect of

any one person to Rs 50,000 in respect of any number of claims in connection with any one such vehicle arising out of one cause."

11. In view of this position, the New India Assurance Co would be liable to indemnify the owner to the extent of Rs 10,000 with costs and interest as far as First Appeal No 244 of 1978 is concerned in which an award of Rs 66,000 has been made. As far as First Appeal No 245 of 1978 is concerned, the total amount awarded is Rs 13,156. Therefore, the New India Assurance Co would be liable to the extent of 50% of the amount awarded by the Tribunal as this would be within the range of liability covered under the policy.

12. No other contention is raised.

13. In the result, First Appeals Nos. 965, 967, 968 and 969 of 1978 and the cross-objections filed by the United India Fire and General Insurance Co are dismissed. There shall be no order as to costs as far as these appeals are concerned.

14. As far as First Appeal No 244 of 1978 is concerned, the award passed by the Tribunal stands modified to the extent that the New India Assurance Co will be liable to indemnify the insured, i.e., the appellant-Jaipur Golden Transport Co Ltd. (the owner of vehicle RSM 6887), to the extent of Rs 10,000 together with interest at the rate of 6% per annum and proportionate costs. As far as First Appeal No 245 of 1978 is concerned, the award passed by the Tribunal is modified to the extent that the New India Assurance Co would be liable to indemnify the insured, Jaipur Golden Transport Co Ltd. , to the extent of Rs 6,578 together with interest at the rate of 6% per annum and proportionate costs. There shall be no order as to costs as far as these two appeals are concerned. The appeals are allowed to the aforesaid extent.

