

(2022) 05 GUJ CK 0082
In the Gujarat High Court
Case No : R/First Appeal No. 2168 Of 2014

New India Assurance Co Ltd	Vs	APPELLANT
Urmilaben Jamnabhai Gamit & 4 Other(S)		RESPONDENT

Date of Decision : 20-05-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 173, 177, 184
Indian Penal Code, 1860 — Section 168, 147, 149, 149(1), 149(2), 279, 304A, 337

Citation : (2022) 05 GUJ CK 0082

Hon'ble Judges : Sandeep N. Bhatt, J

Bench : Single Bench

Advocate : GC Mazmudar, HG Mazmudar, Hiren M Modi

Final Decision : ?Dismissed

Judgement

Sandeep N. Bhatt, J

1. The present first appeal under Section 173 of the Motor Vehicles Act is preferred by the Insurance Company – original opponent No. 2 being aggrieved and dissatisfied with the judgment and award passed in Motor Accident Claim Petition No. 6 of 2007 by the Motor Accident Claim Tribunal (Auxi.) Vyara dated 10.02.2014, by which the Tribunal has awarded Rs.2,56,200/- with 8% interest to the claimant holding the opponents No.1 and 2 liable, jointly and severally. The Tribunal has further directed that opponent No.2 shall pay the entire awarded amount to the claimant first and then recover the proportionate amount from opponent No. 1.

2. The brief facts of the case are as under :

2.1 That on 21.05.2006 at about 7:00 p.m., the deceased – Jamnabhai Bhikhabhai Gamit was going on his motorcycle bearing registration No.GJ-19-C-8714. When he reached near Moti Kherva Bus Stand, another motorcycle bearing registration No.GJ-19-H-6341 driven by opponent No. 1, coming from the opposite direction in a rash and negligent manner, dashed with the

motorcycle of the deceased. Due to that, the deceased received serious injuries and ultimately, he succumbed to the injuries.

2.2 The FIR is lodged against the opponent No. 1 before the Ukai Police Station being I-C.R.- No.8 of 2006 for the offences punishable under Sections 279, 304A and 337 of the Indian Penal Code and under Sections 177, 184 of the Motor Vehicles Act.

2.3 Thereafter, the claimants have filed a claim petition by stating that at the time of accident, the deceased was aged about 35 years and he was doing business of milk as well as also doing agricultural activities, from which he was earning Rs.6000/- per month and therefore, the claim petition to get compensation of Rs.8,00,000/-with interest was filed.

2.4 The Tribunal has issued notices in the claim petition. The opponent No. 1 has appeared through an advocate and has filed written statement at Exh. 15 in the claim petition, by which he has denied the averments made in the claim petition. The opponent No. 2 has also filed the written statement at Exh. 43 and has disputed the averments made in the claim petition. Thereafter, considering the pleadings of the parties, the Tribunal has framed the issues at Exh.16 for its determination. Thereafter, the Tribunal has proceeded further and has recorded the deposition by way of affidavit of Claimant No. 1 – Urmilaben Jamnabhai at Exh. 40, whose cross examination is also done by the other side. The Claimants have also produced the documentary evidence like FIR at Exh. 24, Panchnama of the place of accident at Exh. 25, Postmortem report at Exh. 26, Inquest Panchnama at Exh. 31. Charge-sheet filed against accused No. 1 at Exh. 29, the bills of the medical treatment at Exh. 34 and the documents showing the income of the deceased at Exh. 27, 28 and 41 and after hearing the arguments of the parties, the Tribunal has decided the claim petition by awarding the compensation as noted above.

2.5 Therefore, present first appeal is preferred by the Insurance – Company before this Court.

3. Mr. H.G. Mazmudar, learned advocate for the Insurance Company has submitted that the Tribunal has committed gross error by not considering the factual aspect, more particularly, the examination-in-chief of the opponent No. 1 that, at the time of accident, he was not holding any licence. He has further submitted that the Insurance company has examined its witness at Exh.59. Further, licence of the opponent No. 1 was produced at Exh.61, where it indicates that the licence is valid for a period from 13.10.2006 to 12.10.2026 and accident is occurred on 21.05.2006. Therefore, he has submitted that on the date of accident, the driver of offending vehicle was not holding licence and therefore, he has submitted that the Tribunal has committed gross error in passing order of pay and recover, when it is the case of no licence at all and therefore, he relied upon the judgment of this Court passed in First Appeal No. 3599 of 2013 and has submitted that the issue is squarely covered, as in that case also, the driver has

admitted that he has no licence and he has never had any licence and therefore, the Tribunal has committed error by holding the Insurance- company liable jointly and severally. He has further submitted that there is a breach of conditions and in view of Sections 147 and 149 of the Motor Vehicles Act, the Insurance company cannot be held liable. He has submitted that the present appeal deserves to be allowed on that count only. He has submitted that on the aspect of quantum, he is not pressing anything . He has submitted that this appeal may be allowed.

4. Per contra, Mr. Hiren Modi, learned advocate for the claimants – respondent Nos. 1 to 5 has submitted that the Tribunal has not committed any error in holding the Insurance company liable to pay the amount of the compensation in view of the judgment of the Hon'ble Apex Court in the case of National Insurance Company Limited versus Swarnasingh reported in 2004 ACJ 1, wherein, the Hon'ble Apex Court has established that in the case of third party, Insurance company should firstly pay the amount of compensation to the claimant(s) in view of Section 149(1) and 149(2) of the Motor Vehicles Act and thereafter, such amount can be recovered from the owner of the vehicle / other tortfeasor(s), which is paid by the Insurance Company. He has further submitted that it is erroneous submission by the learned advocate for the appellant that the judgment dated 11.03.2022, referred in the First Appeal No. 3599 of 2013, is arising from the identical facts. He has submitted that in that case, the driver of the vehicle has admitted in his deposition that he has no licence and he has specifically accepted that he has never had any licence to drive any vehicle. Whereas, in the present case, the copy of licence is produced on record by the witness of the Insurance company at Exh. 61, who is an officer of the Insurance Company, which indicates the period of the licence i.e. 13.10.2006 to 12.10.2026 and the accident is occurred on 21.5.2006. Therefore, it is submitted that normally if the driving licence is issued prior to the person, who wants to have driving licence, must apply for the learning licence, the learning licence is normally valid for a period of six months as per the rules of the RTO and therefore, in the present case, it can be presumed that since the driving licence which is issued on 13.10.2006 and the accident occurred on 21.05.2006, period between this would be hardly about 4 months and 20 days and therefore, it can be presumed that at the time of accident, the driver might have holding learner driving licence. Moreover, he has relied upon the judgment of the Swarnasingh (Supra) as well as the judgment in the case of Francisca Luiza Rocha Vs. K. Valarmathi reported in 2018 ACJ 1430. In that case also, the Insurance Company or claimant could have established that the driver did not have valid driving licence and therefore, the Court has directed the Insurance Company to satisfy the award. He has submitted that the Tribunal has not committed any error. He has submitted that the present appeal preferred by the Insurance Company deserves to be dismissed.

5. It is noteworthy to mention that the provisions of the Motor Vehicles Act, 1988 which gives paramount importance to the concept of 'just and fair'

compensation. It is a beneficial legislation which has been framed with the object of providing relief to the victims or their families. Section 168 of the Motor Vehicles Act deals with the concept of 'just compensation' which ought to be determined on the foundation of fairness, reasonableness and equability. Although such determination can never be arithmetically exact or perfect, an endeavor should be made by the Court to award just and fair compensation irrespective of the amount claimed by the claimants.

6.1 I have considered the rival submissions made by the respective counsels of the parties and also perused the record and proceedings of the learned Trial Court and perused the impugned judgment and award passed by the Tribunal. The only contention which requires consideration is that, in the facts and circumstances of the case, as to whether the dispute regarding the driver of the vehicle is holding driving licence or not and therefore, whether the direction issued by the Tribunal regarding pay and recover would be proper or not.

6.2 With regard to the reliance placed by learned advocate for the appellant – insurance company on the judgment of this Court referred above - First Appeal No. 3599 of 2013 is concerned, it is noted that, in that case, the driver of the vehicle has categorically admitted in his deposition that he was not holding driving licence but at the same point time, he clarified that he had never holding driving licence. Therefore, the facts of that appeal are different than the facts of the present case. In the present case, driving licence is there but it is subsequent to the accident occurred, but within six months period from the date of accident. I found substance in the arguments advanced by the learned advocate Mr. Modi for the claimants that it can be presumed that normally the learning licence is issued for a period valid upto six months and during the period of the learning driving licence, after the completion of one month and before the completion of six months, the person who is holding the learning driving licence must apply for the final driving licence for driving the vehicle in the respective category. In the present case, the period from the date of the accident and period from the issuance of the driving licence is about 4 months and 20 days and therefore, presumption can be made that opponent No. 1 might have holding learning driving licence at the time of the accident. Though there is no material available on record as to whether he was holding such learner licence or not. At the same time, the Insurance Company has not examined any person from the RTO to establish this aspect that at the time of accident, driver was holding even learner licence or not. Therefore, in my opinion, the judgment of this Court in First Appeal No. 3599 of 2013 dated 11.3.2022 does not apply in this case, but the judgments relied upon by the learned advocate Mr. Modi in the case of Swarnasingh (supra), and in the case of Francisca Luiza Rocha (supra) have full force in the present case. The Tribunal has not committed any error in passing the order of pay and recover. Accordingly, I found that there is no merit in the present appeal as Tribunal has rightly held that the opponent Nos. 1 and 2 are liable to pay the amount of compensation of Rs.2,56,200/- with 8% interest per annum from the date of claim petition, jointly and severally and therefore,

further directed that the present appellant who is original opponent No. 2 can recover the amount of compensation from original opponent No. 1. Therefore, this appeal is required to be dismissed.

7. For the reasons recorded above, the following order is passed. 7.1 The present appeal is dismissed, with no order as to costs.

7.2 The Tribunal shall disburse the entire awarded amount lying in the FDR and/or with the Tribunal, with accrued interest thereon if any, to the claimants, by account payee cheque, after due verification and after following due procedure.

7.3 Record and Proceedings be sent back to the concerned Tribunal, forthwith.