(2012) 03 GUJ CK 0126

In the Gujarat High Court

Case No : First Appeal No. 2508 of 2005 with Cross Objection No. 11 of 2012 in First Appeal No. 2508 of 2005

New India Assurance Co. Ltd. APPELLANT

Vs

Vaishaliben Sripalkumar @ Prashantkumar Shah and 4 RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Citation : (2012) 03 GUJ CK 0126

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

Bench : Single Bench

Advocate : Hasmukh Thakkers, for the Appellant; Kirtidev R. Dave and Mrs. Vasavdatta Bhatt for Defendant(s) : 3, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K.S. Jhaveri

1. This appeal has been preferred against the judgment and award dated 29.10.2004 passed by the Motor Accident Claims Tribunal [Aux.], Surendranagar in M.A.C.P. No. 44 of 1996, whereby the claim petition was partly allowed and the original claimants were awarded total compensation of Rs. 4,27,200/- along with interest @ 12% per annum from the date of the application till its realization. The facts in brief are that on 05.09.1995, while the original claimants were travelling in a Ambassador Car bearing no. GJ-13-T-1451, owned by respondent no. 5 and driven by respondent no. 3, at around 0700 hours, when they reached near Rajkot Chotila Highway, at that time, the driver of the S.T. bus bearing No. GJ-1-Z-3640, on account of rash and negligent driving dashed with the Ambassador Car, as a result of which, the claimants sustained severe bodily injuries. Later on, they preferred claim petition, 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. So far as First Appeal No. 2508 of 2005 is concerned, the main contention raised on behalf of the appellant-Insurance Company is that the Tribunal concerned ought not to have held the driver of the Car solely negligent for the accident and that contributory negligence ought to have been held on the driver of the S.T. bus as well.

3. After appreciating the evidence on record, more particularly, the Panchnama(Exh.42), the FIR, the sketch of the place of accident, the Tribunal has recorded the finding that at the relevant point of time, the driver of the Car had gone totally on the wrong side of the road, and that in that process, he had dashed with the S.T. Bus. The driver of the S.T. bus was found to be driving his vehicle on the correct side of the road. Considering the aforesaid aspects, the Tribunal held the driver of the Car solely negligent for the accident.

4. Looking to the evidence on record, the aforesaid finding recorded by the Tribunal is just and proper and I do not find any illegality to have been committed by the Tribunal while recording the said finding. I am in complete agreement with the reasonings given by and the findings recorded in the impugned award and hence, find no reasons to interfere in this appeal.

5. No other contention has been raised on behalf of the appellant.

6. So far as Cross Objections are concerned, the learned counsel for the appellants-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.

7. 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, the appeal as well as cross objections stand dismissed. No order as to costs.