(2016) 03 GUJ CK 0148

In the Gujarat High Court

Case No : First Appeal Nos. 668 to 673 of 2005

Nishankumar Jayantibhai Patel APPELLANT

Vs

Gemabhai Jashkaranbhai Patel and Others RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 168 (2)

Citation : (2016) 03 GUJ CK 0148

Hon'ble Judges : K.J. Thaker, J.

Bench : Single Bench

Advocate : Sandip C. Shah, Advocate, for the Appellant;

Final Decision : Partly Allowed

Judgement

K.J. Thaker, J.

1. By way of these appeals, the appellants have aggrieved only on one count in all these appeals. So far as these appeals are concerned, the learned tribunal at Kutch at Bhuj while disposing of the matters, has passed the following order.

In M.A.C.P. No. 265 of 1992:--

"M.A.C.P. No. 265/1992 filed by the applicant Nishantkumar Jayantibhai Patel is hereby partly allowed against Opponents No. 3, 4 and 5 only. The opponents No. 3, 4 and 5 are hereby jointly and severally ordered to deposit Rs. 37,000/- in this tribunal, with proportionate costs thereon.

The opponents No. 3 and 4 are hereby ordered to pay 9% interest to the applicant from the date of filing claim petition i.e. dated 13.07.1992 till its realisation and deposit. But, the National Insurance Company Limited (Opponent No. 5) is hereby ordered to pay 9% interest on the above referred amount from the date of its joining in claim petition i.e. dated 23.02.2000 till realisation and deposit.

The claim petition filed against opponents No. 1 and 2 is hereby dismissed.

When the above referred amount is deposited in this Tribunal first of all necessary amount of Court fees be deducted first thereafter, if the interim amount paid to the applicant be adjusted in the Main Award. From rest of the amount 60% of the amount be invested in the name of applicant Nishantkumar Jayantibhai Patel, in the F.D.R.s for a six years in any Scheduled Bank, with a condition that the applicant will not be allowed to encash the F.D.R.s before the date of its maturity or to raise loan against these F.D.R.s without the prior permission of the Tribunal. But, he will receive periodical interest from the bank concerned on these F.D.R.s regularly. The rest of the amount be paid over to the applicant by Account Payee Cheque only.

Award be drawn up accordingly.

In M.A.C.P. No. 266 of 1992:--

M.A.C.P. No. 266/1992 filed by the applicant Kapilaben Jayantibhai Patel is hereby partly allowed against Opponents No. 3, 4 and 5 only. The opponents No. 3, 4 and 5 are hereby jointly and severally ordered to deposit Rs. 56,000/- in this tribunal, with proportionate costs thereon.

The opponents No. 3 and 4 are hereby ordered to pay 9% interest to the applicant from the date of filing claim petition i.e. dated 13.07.1992 till its realisation and deposit. But, the National Insurance Company Limited (Opponent No. 5) is hereby ordered to pay 9% interest on the above referred amount from the date of its joining in claim petition i.e. dated 23.02.2000 till realisation and deposit.

The claim petition filed against opponents No. 1 and 2 is hereby dismissed.

When the above referred amount is deposited in this Tribunal first of all necessary amount of Court fees be deducted first thereafter, if the interim amount paid to the applicant be adjusted in the Main Award. From rest of the amount 60% of the amount be invested in the name of applicant Kapilaben Jayantibhai Patel, in the F.D.R.s for a six years in any Scheduled Bank, with a condition that the applicant will not be allowed to encash the F.D.R.s before the date of its maturity or to raise loan against these F.D.R.s without the prior permission of the Tribunal. But, she will receive periodical interest from the bank concerned on these F.D.R.s regularly. The rest of the amount be paid over to the applicant by Account Payee Cheque only.

Award be drawn up accordingly.

In M.A.C.P. No. 267 of 1992:--

M.A.C.P. No. 267/1992 filed by the applicant Rekhaben Becharbhai Patel is hereby partly allowed against Opponents No. 3, 4 and 5 only. The opponents No. 3, 4 and 5 are hereby jointly and severally ordered to deposit Rs. 50,000/- in this tribunal, with proportionate costs thereon.

The opponents No. 3 and 4 are hereby ordered to pay 9% interest to the applicant from the date of filing claim petition i.e. dated 13.07.1992 till its realisation and deposit. But, the National Insurance Company Limited (Opponent No. 5) is hereby ordered to pay 9% interest on the above referred amount from the date of its joining in claim petition i.e. dated 23.02.2000 till realisation and deposit.

The claim petition filed against opponents No. 1 and 2 is hereby dismissed.

When the above referred amount is deposited in this Tribunal first of all necessary amount of Court fees be deducted first thereafter, if the interim amount paid to the applicant be adjusted in the Main Award. From rest of the amount 60% of the amount be invested in the name of applicant Rekhaben Becharbhai Patel, in the F.D.R.s for a six years in any Scheduled Bank, with a condition that the applicant will not be allowed to encash the F.D.R.s before the date of its maturity or to raise loan against these F.D.R.s without the prior permission of the Tribunal. But, she will receive periodical interest from the bank concerned on these F.D.R.s regularly. The rest of the amount be paid over to the applicant by Account Payee Cheque only.

Award be drawn up accordingly.

In M.A.C.P. No. 268 of 1992:--

M.A.C.P. No. 268/1992 filed by the applicant Jankhanaben Jayantibhai Patel is hereby partly allowed against Opponents No. 3, 4 and 5 only. The opponents No. 3, 4 and 5 are hereby jointly and severally ordered to deposit Rs. 47,500/- in this tribunal, with proportionate costs thereon.

The opponents No. 3 and 4 are hereby ordered to pay 9% interest to the applicant from the date of filing claim petition i.e. dated 13.07.1992 till its realisation and deposit. But, the National Insurance Company Limited (Opponent No. 5) is hereby ordered to pay 9% interest on the above referred amount from the date of its joining in claim petition i.e. dated 23.02.2000 till realisation and deposit.

The claim petition filed against opponents No. 1 and 2 is hereby dismissed.

When the above referred amount is deposited in this Tribunal first of all necessary amount of Court fees be deducted first thereafter, if the interim amount paid to the applicant be adjusted in the Main Award. From rest of the amount 60% of the amount be invested in the name of applicant Jankhanaben Jayantibhai Patel, in the F.D.R.s for a six years in any Scheduled Bank, with a condition that the applicant will not be allowed to encash the F.D.R.s before the date of its maturity or to raise loan against these F.D.R.s without the prior permission of the Tribunal. But, she will receive periodical interest from the bank concerned on these F.D.R.s regularly. The rest of the amount be paid over to the applicant by Account Payee Cheque only.

Award be drawn up accordingly.

In M.A.C.P. No. 269 of 1992:--

M.A.C.P. No. 269/1992 filed by the applicant Jignaben Jayantibhai Patel is hereby partly allowed against Opponents No. 3, 4 and 5 only. The opponents No. 3, 4 and 5 are hereby jointly and severally ordered to deposit Rs. 1,17,200/- in this tribunal, with proportionate costs thereon.

The opponents No. 3 and 4 are hereby ordered to pay 9% interest to the applicant from the date of filing claim petition i.e. dated 13.07.1992 till its realisation and deposit. But, the National Insurance Company Limited (Opponent No. 5) is hereby ordered to pay 9% interest on the above referred amount from the date of its joining in claim petition i.e. dated 23.02.2000 till realisation and deposit.

The claim petition filed against opponents No. 1 and 2 is hereby dismissed.

When the above referred amount is deposited in this Tribunal first of all necessary amount of Court fees be deducted first thereafter, if the interim amount paid to the applicant be adjusted in the Main Award. From rest of the amount 60% of the amount be invested in the name of applicant Jignaben Jayantibhai Patel, in the F.D.R.s for a six years in any Scheduled Bank, with a condition that the applicant will not be allowed to encash the F.D.R.s before the date of its maturity or to raise loan against these F.D.R.s without the prior permission of the Tribunal. But, she will receive periodical interest from the bank concerned on these F.D.R.s regularly. The rest of the amount be paid over to the applicant by Account Payee Cheque only.

Award be drawn up accordingly.

In M.A.C.P. No. 424 of 1992:--

M.A.C.P. No. 424/1992 filed by the applicant Shankarlal Gangaram Patel is hereby partly allowed against Opponents No. 3, 4 and 5 only. The opponents No. 3, 4 and 5 are hereby jointly and severally ordered to deposit Rs. 66,000/- in this tribunal, with proportionate costs thereon.

The opponents No. 3 and 4 are hereby ordered to pay 9% interest to the applicant from the date of filing claim petition i.e. dated 13.07.1992 till its realisation and deposit. But, the National Insurance Company Limited (Opponent No. 5) is hereby ordered to pay 9% interest on the above referred amount from the date of its joining in claim petition i.e. dated 23.02.2000 till realisation and deposit.

The claim petition filed against opponents No. 1 and 2 is hereby dismissed.

When the above referred amount is deposited in this Tribunal first of all necessary amount of Court fees be deducted first thereafter, if the interim amount paid to the applicant be adjusted in the Main Award. From rest of the amount 60% of the amount be invested in the name of applicant Shankarlal Gangaram Patel, in the F.D.R.s for a six years in any Scheduled Bank, with a condition that the applicant will not be allowed to encash the F.D.R.s before the date of its maturity or to raise loan against these F.D.R.s without the prior permission of the Tribunal. But, he will receive periodical interest from the bank concerned on these F.D.R.s regularly. The rest of the amount be paid over to the applicant by

Account Payee Cheque only.

Award be drawn up accordingly.

As provided under Section 168 (2) of M.V. Act (Amended), 1988, the office is directed to arrange to deliver the copies of this Award to the concerned parties within 15 days from this Award.

Award be drawn up accordingly.

Original Judgment be kept in M.A.C.P. No. 484/1991 and copy of this judgment be kept in M.A.C.P. No. 416/1993, 111/1992, 424/1992, 266/1992, 267/1992, 265/1992, 268/1992 and 269/1992."

2. The claimants have aggrieved as the opponent Nos. 3 and 4 have been held liable to pay interest @ 9% p.a. The question is of indemnification. The liability of the insurance company has been accepted by the insurance company as they have not raised or filed any appeal. It is an admitted position, which emerges from the record that opponent No. 5''s name was never given by opponent Nos. 3 and 4, as belatedly also they chose not to appear. It was much later that it came to be known to the claimants that the vehicle driven and owned by opponent Nos. 3 and 4 was insured by National Insurance Company Ltd. This High Court in case of Oriental Insurance Co. Ltd., V/s. Aminaben Rahimbhai Kadiwala & Ors. Reported in 2001 (2) G.L.R. 1108 has held that it is a question of indemnification and therefore, the insurer cannot deny its liability to pay interest.

3. It is vehemently submitted by Mr. Mehta, learned advocate for respondent No. 5, that these appeals are filed only for the interest and therefore, after 2003, there cannot be any order for interest. The said submission is accepted. It is further submitted that the decision of Oriental Insurance Co. Ltd., V/s. Aminaben Rahimbhai Kadiwala & Ors. Reported in 2001 (2) G.L.R. 1108 would not apply to the facts of these cases. However, I am unable to accept the submission of Mr. Mehta, learned advocate for the respondent No. 5.

4. In these cases, the insurance company has not denied its liability. On the contrary it is the judicial pronouncement which has caused the injustice. Had the learned Judge referred to the case of Oriental Insurance Co. Ltd., V/s. Aminaben Rahimbhai Kadiwala & Ors. Reported in , 2001 (2) G.L.R. 1108 then in that case, the learned Judge might not gave such finding. Hence, the said finding is quashed and set aside. The respondent No. 5 insurance company herein is directed to deposit the amount of interest from the date of claim petition filed till 2003 as it has accrued on it and not beyond that.

5. The appeals are partly allowed. The decree shall modify to the aforesaid extent. The amount of interest, which has accrued from 1992 till they were joined will be worked-out and deposited within 12 weeks from today. R. & P., if lying here, be sent back forthwith.

Office is directed to place copy of this judgment in each matter.