

(1985) 03 GUJ CK 0004
In the Gujarat High Court

Oriental Fire and General Insurance Co. Ltd.	APPELLANT
Vs	
Yusuf Musa Chandki and Others	RESPONDENT

Date of Decision : 26-03-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1986) ACJ 500 : (1987) 62 CompCas 837 : (1985) 2 GLR 272

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

Bench : Division Bench

Advocate : S.B. Vakil, for the Appellant; J.C. Sheth, for the Respondent

Judgement

Ravani, J.—All these appeals arise out of a common judgment and award passed by the motor Accidents Claims Tribunal, Panchmahals at Godhra, decided on September 9, 1981. It is not in dispute that an automobile accident took place on October 29, 1980, while the truck in question was proceeding towards Dohad from Godhra. Five of the injured persons died and 11 other persons who were injured survived. The dependants of the deceased and the injured who survived preferred claim petitions and prayed for compensation. The Tribunal, after hearing the parties and recording evidence, decided in favour of the claimants and directed the respondents, the owner of the vehicle the driver and the insurance company to pay the compensation as mentioned in the award. It may be noted that no one on behalf of the respondents entered the witness box and the evidence led on behalf of the claimants remained practically uncontroverted. The insurance company alone has preferred these appeals. On behalf of the insurance company, it was sought to be contended that, in the facts and circumstances of the case, the Tribunal ought not to have believed that the persons who were injured were travelling in the truck and had paid the fare and were passengers travelling in the vehicle for hire and reward. The contention of the insurance company cannot be believed in view of the fact that there is no controverting evidence led by the respondents. The Tribunal was perfectly justified in accepting the evidence led by the claimants. We see no reason to interfere with the findings arrived at by the Tribunal in this behalf.

2. It was next contended by counsel for the appellants that, in the facts and circumstances of the case, the Tribunal ought not to have believed that the persons who met with the accident and who were travelling in the truck were carrying goods with them. For the same reasons which have been given while rejecting the first contention, this contention also has got to be rejected. On this point also, no controverting evidence has been led by the respondents. We see no reason why the conclusion arrived at by the Tribunal should be interfered with. The Tribunal has arrived at the conclusion on the basis of the evidence led by the claimants. The claimants' evidence is trustworthy and the claimants or their relatives alone could have said in what capacity and in what manner the injured were travelling in the truck. In this view of the matter, this contention has also got to be rejected.

3. Learned counsel for the insurance company has submitted that the insurance company is not at all liable because the insurance company is not required to cover the liability of the passengers travelling in a goods vehicle. This contention has also got to be rejected in view of the fact that the insurance company has failed to bring on record the necessary permit by which it could have been shown that the goods vehicle in question was not permitted to carry passengers in it. As a matter of fact, this question is concluded by a Full Bench decision of this court in the case of New India Assurance Co. Ltd. and Another Vs. Nathiben Chatrabhuj and Others, . As laid down therein, in order to see that the insurance company itself gets discharged from its liability, the insurance company must have got produced the necessary permit on record. In this case also, no such permit is produced. Therefore, the contention has got to be rejected.

4. Learned counsel for the insurance company has submitted that in view of the provisions of section 95 of the Motor Vehicles Act, the liability of the insurance company would in any case be limited to the extent of Rs. 5,000. Counsel for the insurance company contends that u/s 95(1) of the Act, the risk is not required to be covered in respect of passengers at all . The argument further proceeds and it is submitted that the case at the most may be covered by sub-section (2) of section 95. If the case is covered by sub-section (2), then the liability of the insurance company should be adjudged on the basis of the limits prescribed therein because in that case the vehicle should be considered to be a passenger vehicle only. The argument is based on the reading of sub-section (1) which is as follows :

"In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-... Provided that a policy shall not be required-... (ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of, or bodily injury to, persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises. "

5. In the second proviso, the words "except where the vehicle is a vehicle in

which passengers carried for hire or reward or by reason of or in pursuance of a contract of employment" are very much important. For the purpose of interpretation of the section, these words cannot be overlooked. The construction sought to be advanced by counsel for the appellant may have some merit if the word "vehicle" occurring a second time is prefixed by the phrase "is not a goods" vehicle. If this phrase is not there, then any vehicle in which passengers are carried for hire or reward would be required to be covered by a policy of insurance. Therefore, the argument that simply because this is a goods vehicle and, therefore, it is not required to be covered by a policy of insurance. which may be of unlimited liability, cannot be accepted. The applicability of sub-section (2) and consequently the question of limited liability of insurance company would arise only if the insurance company satisfied that it is covered by both the provisos to sub-section (1) of section 95. As stated hereinabove, it is not possible in view of the fact that there are no words such as "is not a goods vehicle". The interpretation sought to be advanced by counsel for the insurance company can be accepted only if the words "is not a goods vehicle" are added at the appropriate place in the second proviso. It is a well-settled principle of interpretation of legislation that it is not permissible for the court to add or subtract any word from the provisions of law and especially when the language of the statute is very clear. In the instant case, we see no ambiguity in the language of the statute. Therefore also, we are not inclined to accept the contention raised by counsel for the insurance company. For the aforesaid reasons and for the reasons stated by this court in the case of the Oriental Fire and General Insurance Co. Ltd. v. Husseinbhai Abdulbhai Shaikh, in First Appeals Nos. 851 to 858, 860, 863 to 867 of 1977 decided on July 26, 1983 (Coram : N.H.Bhatt and J.P.Desai JJ.) short note of which has been reported in [1984] GLH (UJ) 8, we hold that the insurance company is liable to satisfy the award.

6. In the above view of the matter, all these appeals fail and they are ordered to be dismissed with no order as to costs.

7. As this stage, counsel for the appellant draws our attention that a direction with regard to the investment given by the Tribunal is required to be given inasmuch as it is directed that the investment of certain portion of the amount awarded be made by the applicants. In order that the interest of the applicants as well as the dependants of the deceased victims are adequately safeguarded, it is necessary to modify the direction given in all the awards by the Tribunal. The Tribunal has directed that the applicants shall deposit certain portion of the amount awarded. Instead of the applicants, the Tribunal itself shall invest and deposit the amount as per the directions given in the award. Subject to the aforesaid modification, all the appeals are dismissed with no order as to costs.