
(2000) 09 GUJ CK 0121
In the Gujarat High Court
Case No : First Appeal No. 7157 of 1999

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Aayeshaben		RESPONDENT

Date of Decision : 04-09-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2000) 09 GUJ CK 0121

Hon'ble Judges : K.M. Mehta, J;J.N. Bhatt, J

Bench : Division Bench

Advocate : K.K. Nair, for the Appellant; M.T.M. Hakim, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellant original opponent No. 3 in MACP No. 233 of 1990 in which an amount of Rs. 5 lakhs by way of compensation came to be awarded for the premature demise of a bread-winner in a vehicular accident in which scooter No. GBD -1970 was involved and deceased Suleman Yusufbhai Patel was the pillion rider against original opponent Nos. 1, 2 and 3, driver, owner and the insurance Company (the appellant herein) by invoking the aids of the provisions of Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the new Act').

2. The claim petition was filed before the Motor Accident Claims Tribunal (Auxi.) Bharuch by the respondents original claimants, heirs and legal representatives of the deceased on the premise that deceased who was sitting as a pillion rider on the scooter driven by opponent No. 1 rashly and negligently and the driver was responsible for the accident. The tyre of the scooter got burst and the pillion rider was thrown off the scooter on the road and sustained serious injuries and succumbed to the injuries, instantaneously. Apart from the rashness and negligence on the part of the driver of the scooter, the owner failed to check it up and keep the scooter in roadworthy condition.

3. The respondents are the original petitioners who have contended that the net

income of the deceased was Rs. 1710/- at the time of accident. The deceased was aged 45 years and he was the bread winner of the family and therefore, the original claimants have claimed an amount of Rs. 5 lakhs by way of compensation.

4. Opponent Nos. 1 and 2 appeared and resisted the claim by filing written statements whereas opponent No. 3 appellant before us, appeared and filed separate written statement Exh. 11 and denied the responsibility for the payment of compensation. All the opponents denied that the accident was the outcome of rash and negligent driving on the part of the driver of the scooter.

5. Upon consideration of facts and circumstances and the pleading, the Tribunal raised issues at Exh. 8 and upon assessment and evaluation of the evidence and after hearing the parties, the Tribunal awarded the original claimants an amount of Rs. 5 lakhs by way of compensation with interest at the rate of 12 per cent per annum from the date of petition till its realisation by judgement and award dated 28.6.1999.

6. Being aggrieved by the said judgement and award, the original opponent No. 3, the Insurance Company has now come up before this court by filing this appeal u/s 173 of the Act challenging its legality and validity. The learned advocate appearing for the appellant original opponent No. 3 has raised the following contentions:

(i) That the Tribunal has not properly appreciated the fact that under the policy Exh. 47, 'accident benefit to the owner and the pillion rider' was not covered and that no additional premium for such benefit was paid. It was therefore contended that the Insurance Company cannot be held liable to indemnify the insured in the present case.

(ii) That the Tribunal has misappreciated the amount of premium paid to the extent of Rs. 48/- and the policy as a whole which only covers risk of third party.

(iii) The Tribunal has failed to appreciate that in view of the fact that no additional premium to cover the risk of the pillion rider was paid, the liability for the pillion rider cannot be fastened on the Insurance Company.

(iv) It was also submitted that the Tribunal failed to appreciate that the liability of the Insurance Company flows from the contract and that the policy represents a contract between the parties and that as of necessity, the liability which again relates back to the payment of premium cannot be widened merely on the ground of sympathy and hardship.

7. The aforesaid four contentions raised on behalf of the appellant Insurance Company have been countenanced by the learned advocate for the original applicants respondents herein.

8. Since all the contentions raised by the learned advocate for the appellant are interconnected and virtually, raising identical issues, they are being considered

and disposed of, simultaneously.

9. In course of submissions and hearing before us, copies of the testimonial and documentary evidence were placed for our consideration and that is why even at the admission stage, we have not called for record and proceedings. Insurance policy is produced at Exh. 47. Undoubtedly, provisions of Motor Vehicles Act, 1988 (hereinafter referred to as 'the new Act') are attracted since the accident occurred on 20.4.1989. It would be, therefore, material to refer to Section 147 of the new Act. Section 147 of the new Act prescribes requirements of policies and limits of liability. In Section 147 of the new Act which corresponds to Section 95 of the old Act, there is no limit in certain cases as contained in clause (2) of the old Act. The corresponding proviso in old Act contained three clauses whereas there are, only, two clauses. It is, therefore, clear that in view of the provisions of Section 147 of the new Act, a clause is dropped which excluded coverage of death or bodily injury of the persons carried in or upon the vehicle. In other words, such liability cannot, now, be excluded from the policy. When a policy of insurance is an act policy, it, obviously, does not mean that the Insurance Company shall stand absolved from the liability in respect of pillion rider of a motor cycle like that two wheelers. The proposition and the provision developed and decided in the light of the provisions of Section 95 having three clauses under the old Act are not to be considered at present when the new Act is introduced and in Section 147 of the new Act unlike Section 95 of the old Act, no limit in certain cases as in clause (ii) of the old Act is prescribed. It becomes obvious and implicit that after the introduction of the new Act, in Section 147 of the new Act prescribing requirements of policies and limits of liability, the Insurance Company cannot stand absolved from payment of compensation or from the liability to indemnify the insured in respect of pillion rider of a motorcycle or any two wheelers.

10. Any person includes pillion rider also. Again the pillion rider is covered under the Act policy in view of the provisions of Section 147 of the new Act. In Section 147 of the new Act corresponding to Section 95 of the old Act there is no limit in certain cases as contained in clause (2) of the old Act. Needless to reiterate that in Section 95 of the old Act there were three clauses whereas only there are two clauses in the new Act. What has been given a go by in the new Act is which excluded coverage of death or bodily injury to persons being carried in or upon the vehicle. The net result, therefore, would be that even in the Act policy the risk of the pillion rider would be covered as he should not be characterised or branded as a third party.

11. The view which we are inclined to take at this stage is very much reinforced by our two decisions recently rendered in F.A. No. 1400 of 2000 and F.A. No. 1706 of 2000 both decided on 30.8.2000 wherein both of us are parties.

12. The learned advocate for the respondent original claimants has also placed reliance on a decision of the Kerala High Court in the case of United India Insurance Company Ltd. Vs. Appukuttan and Another, wherein same principle

has been laid down. Two decisions of this court are fully reinforcing our view and version and view to fasten the liability on the Insurance Company to indemnify the insured in case of death or bodily injury to a pillion rider. No doubt, it fully supports the version of the claimants. We have, therefore, no hesitation in holding that the contentions raised in support of the liability of the Insurance Company to indemnify the insured in case of death or bodily injury sustained by the pillion rider travelling on two wheelers under the new Act cannot be sustained and meritless and they are rejected.

13. In so far as the quantum of damages aspect is concerned, there is hardly any substance in the contention against the amount awarded by the Tribunal. Needless to mention that when the compensation is required to be assessed and awarded on the basis of tortious liability, ordinarily, it is to be assessed and examined under two heads, pecuniary and non-pecuniary loss. The Tribunal considering the evidence on record in both the heads has in all awarded an amount of Rs. 5 lakhs by way of compensation minus the amount already paid u/s 140 of the Motor Vehicles Act. Directions are also issued for the disbursement and deposits. The Tribunal has considered the issues of quantification of damages in para 15. The deceased was aged 45 years at the relevant time. He was earning total emoluments at the time of demise on account of road accident to the extent of Rs. 4500/- as per the certificate issued by the Taluka Development Officer. The Tribunal has taken monthly dependency of the deceased to the common family fund to the extent of Rs. 3000/i.e. Rs. 36,000/- per year and adopting 14 multiplier it has been considered at Rs. 5,04,000/-. Therefore, the amount of compensation under both the heads could not be said to be excessive or exorbitant requiring our interference.

14. In our opinion, the present appeal at the admission stage deserves only the fate of dismissal and accordingly, it is dismissed.

15. The amount of Rs. 25,000/- deposited before the Registry shall be transmitted to the Tribunal concerned by the Registry. The other part of the amount of compensation deposited before the Tribunal shall be disbursed by the Tribunal.

16. The Tribunal will be at liberty to disburse 20% of the amount of award by way of account payee cheque and the remaining 80% of the amount of award shall be deposited in nationalised bank, initially, for a period of not less than five years and thereafter upon the discretion of the Tribunal. The interest which shall accrue, due and payable therefrom, periodically, shall be paid to the claimants.

With the above observations, the appeal is dismissed at the admission stage. No order as to costs.

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