
(2007) 04 GUJ CK 0039
In the Gujarat High Court
Case No : First Appeal No. 611 of 1991

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Abdul Karim Ismail Mistry and Others		RESPONDENT

Date of Decision : 02-04-2007

Acts Referred:

Citation : (2007) 3 GLR 2584

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : Rajni H. Mehta, for the Appellant; Divyesh A. Joshi, for Defendant 1, for the Respondent

Judgement

Jayant Patel, J.—The short facts of the case are that as per the claimant, on 24.9.1984 at about 8.30 a.m., while going for his job, he was standing opposite shop of Krishna Gramophone Company in Nichwas Bazaar, Godhra, and at that time one jeep bearing No. GAF 9766 being driven with speed and in rash and negligent manner, dashed with the claimant and due to the same, the claimant sustained injury of fracture on his left leg. The claim petition was filed being No. 66 of 1985 in the Tribunal. The Tribunal ultimately passed the judgement and award on 18.8.1990, whereby the amount of compensation was fixed of Rs. 31,000/- plus interest and cost and it is under these circumstances, the present appeal is preferred by the appellant Insurance Company.

2. Heard Mr. Parikh, learned Counsel for Mr. Mehta for the appellant and Mr. Joshi, learned Counsel for the original claimant - respondent No. 1 herein. Respondents No. 2 and 3 are served, but nobody has appeared on their behalf.

3. Considered the record and proceeding.

4. The principal contention appears to be on the part of the appellant that the accident had occurred on 24th September, 1984 at 8 a.m., whereas the owner of the vehicle, by suppressing the material fact of the accident, got the vehicle insured on 24.9.1984 at 10 a.m. It has been, therefore, contended on behalf of

the appellant that the Tribunal could not have held the appellant Insurance Company as liable for payment of the compensation.

5. Whereas on behalf of the original claimant, it has been submitted by Mr.Joshi that the policy began from midnight of 23rd September, 1984 and, therefore, the vehicle is insured by the Insurance Company and he further submitted that the cheque was dated 22.9.1984 and, therefore, the liability of the Insurance Company can be said as began from 22.9.1984. He submitted that the accident is of 24.9.1984 and, therefore, the Tribunal has rightly found that the vehicle was insured by the Insurance Company and the liability is of the Insurance Company with the owner of the vehicle.

6. The perusal of the record and proceedings of the Tribunal shows that the cover note was issued on 24.9.1984 at 10.30 a.m., and expressly the time has been provided. Further, though the cheque was dated 22.9.1984, which was accepted by the Insurance Company on 24.9.1984. The said aspect is apparent from the cover note Ex.45. The proposal for insurance is also there on record being Ex.47 dated 24.9.1984. Not only that, but in Column No. 9 for declaration of the particulars of all accidents or losses during the past three years in connection with all motor vehicles owned, no details are mentioned. If the aforesaid documents are considered with the deposition of Kiritkumar Shankarlal, the Insurance Agent on Ex.44, it appears that without disclosing the aforesaid aspects that the accident had already occurred at 8 a.m., on the very day i.e. on 24.9.1984, the owner of the vehicle got his vehicle insured by tendering the proposal and it was accepted on 24.9.1984 at 10.30 a.m. It is not a case where the vehicle was insured without mentioning specific time and had it been such a position, the case would be different, but when the vehicle is insured on a particular day with specific time, the only conclusion would be that the insurance begins from that time on that date and cannot be read as having commenced prior thereto. The reference may be made to the decision of the Apex Court in case of New India Assurance Co. Ltd Vs. Smt. Sita Bai and Ors, and more particularly the observations made at paragraphs 6 and 7 in the said decision.

7. Mr. Joshi, learned Counsel appearing for the original claimant respondent herein contended that if the cheque is of an earlier period, the liability of the Insurance Company would start from that date and not on the date when the policy is issued and in support of his contention, he relied upon the decision of this Court in case of National Insurance Company Limited v. Abhesing Pratapsing Waghela and Ors. reported in 2006(3) GLH, 173. If the facts of the said case are considered, it appears that in the said case, the cheque was dated 20.1.1995 and the advice-cum-receipt was dated 23.1.1995 and, therefore, the Court has taken the view that the liability would start after 23.1.1995 i.e. from the date on which cheque was accepted and not when the policy is issued on 30.1.1995. Such is not the fact situation of the present case. In the present case, the cheque was dated 22.9.1984, but it was accepted only on 24.9.1984 after 10 a.m. and, therefore, the said decision is of no help to the claimant.

8. Mr. Joshi, learned Counsel appearing for the claimant also contended that as per the decision of the Apex Court in case of New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., if there is any violation of the terms of the insurance policy, the Insurance Company can recover the amount from the owner of the vehicle and it cannot avoid its statutory liability and, therefore, he submitted that the Insurance Company can recover the premium from the owner of the vehicle, but the claimant may not be made to suffer, who is an innocent person.

9. It is not a case where the policy was in operation and the condition is breached, nor is it a case where the insurance was to be renewed, but the present case is a case where the insurance is taken for the first time. Therefore, the contract, which has commenced for the first time of insurance cannot be read as to give effect prior to the life of the insurance itself. Hence, the said decision is of no help to the claimant.

10. In view of the above, it appears that the Tribunal has committed error in holding the liability of the Insurance Company - appellant herein, for the accident in question.

11. Under the circumstances, the impugned judgement and award passed by the Tribunal so far as it relates to the appellant Insurance Company deserves to be quashed and set aside. Hence, ordered accordingly. Appeal is allowed to the aforesaid extent. Considering the facts and circumstances, no order as to costs.

12. It appears that pending the appeal, the amount is deposited by the appellant and 50% of the decretal amount is deposited with the nationalized bank and the interest was being paid to the claimant pursuant to the interim order passed in the proceedings of the First Appeal. Considering the facts and circumstances that since the amount involved is a very small amount and the applicant, as reported, is staying in the tribal area, the appellant would be entitled to get the amount, which is invested and lying in the Tribunal, but the amount, if already paid to the claimant, may not be recovered. Record and proceeding be returned to the Tribunal.