
(2010) 12 GUJ CK 0253
In the Gujarat High Court
Case No : First Appeal No. 1246 of 1992

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Alarkumar Indubhai Desai and Others

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Citation : (2010) 12 GUJ CK 0253

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

Bench : Single Bench

Advocate : Rajni H. Mehta, for the Appellant; Mahesh T. Parikh, for Defendant 1 and P.J. Vyas, for Defendants 2-3, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—By way of this Appeal the original claimant has challenged the judgment and order dated 23.12.1991, of the Motor Accident Claims Tribunal(Auxi.), Kheda at Nadiad passed in M.A.C. Petition No. 1238 of 1985, whereby the tribunal awarded Rs. 5,70,000/- to the Appellant with running interest at the rate of 12% per annum from the date of the claim petition till the realization.

2. The short facts of this case are that on 25.6.1985 at about 10.30 A.M. On Nadiad- Dakor road on State High Way one Alarkumar Indubhai Desai was travelling in a Truck bearing Registration No. G.T.G.- 2969 as a passenger with goods. The Truck was driven by Opponent No. 1 at excessive speed and in rash manner. The Appellant had two bags of mangoes and was taking them to Nadiad. He boarded the truck with his goods and paid Rs. 5/- for the same. When the truck reached Salun, the driver tried to overtake a camel-cart and the opponent No. 1 lost control of the truck and dashed against one tree. The Appellant was sand-wiched between the engine and the body and he was pulled out from the cabin of the truck after sometime. He received injuries and had multiple fractures. He was taken to Gayatri Hospital at Nadiad and from there, he was taken to L.G. Hospital at Ahmedabad. His left leg has been amputated and there

are many fractures. Therefore, the Appellant has claimed Rs. 7,00,000/- as compensation before the Tribunal. The Tribunal after hearing learned advocate for both the parties, partly allowed the claim petition of the Appellant against which the present Appeal is being preferred by the Appellant.

3. The issue raised in the appeal is already settled in the case of Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, wherein it is held that in case of death or injuries sustained by persons carried in a goods vehicle either along with their goods or after paying fare or gratuitously the Insurance Company is not liable to make the compensation.

4. In the premises aforesaid, the appeal is allowed. The impugned judgment and award qua Insurance Company is quashed and set aside. If the amount is lying in F.D.R., the same will be paid to the Insurance Company.