(2015) 10 GUJ CK 0038

In the Gujarat High Court

Case No : First Appeal No. 3456 of 2005

Oriental Insurance Co. Ltd. APPELLANT

Vs

Aminaben and Others RESPONDENT

Date of Decision : 12-10-2015

Acts Referred:

Citation : (2015) 4 ACC 895

Hon'ble Judges : Akil Abdul Hamid Kureshi, J.

Bench : Single Bench

Advocate : Rajni H. Mehta, Advocate, for the Appellant

Final Decision : Disposed Off

Judgement

Akil Abdul Hamid Kureshi, J.—This appeal is filed by the Oriental Insurance Company Limited to challenge the judgement and award dated 14.6.2005 passed HC by the Motor Accident Claims Tribunal, Nadiyad, in MACP No. 954 of 1994. Deceased Abdul Shaikh along with other persons was travelling in a tempo, insured by the Oriental Insurance Company on 19.1.1994. At that time, there was a collusion between a truck, insured by respondent No. 6 United Insurance Company. In the collusion, the tempo overturned causing serious fatal injuries to said Abdul Shaikh. Several other persons also received injuries. The driver of the tempo also died. The dependents and legal heirs of deceased Abdul Shaikh, therefore, filed said claim petition claiming compensation of Rs. 4,55,000 from drivers, owners and insurers of both the vehicles involved in the accident. The Claims Tribunal held that, the accident occurred on account of negligence of both drivers in equal measures. With respect to the present case, the Tribunal awarded compensation of Rs. 2,30,000 to be recovered from the insurance companies of both the vehicles. In the present appeal, neither the involvement in the accident nor the quantum of compensation is in dispute. The appellant-Insurance Company only disputes its liability to cover the risk on the ground that the deceased was travelling in the tempo as a paid passenger with goods. According to the Insurance Company, risk of such a travel was not covered.

2. The Claims Tribunal, however, came to the conclusion that as per the insurance policy, the Insurance Company was liable. Cleaner of the tempo was examined. He had stated that the deceased was a non-paying passenger. I may also notice that the insurance policy Exh. 90 showed that additional premium of Rs. 50 was paid for covering the risk of non fare paying passenger. That being the situation, the Tribunal, in my opinion, committed no error in fastening the liability of the appellant-Insurance Company.

3. Learned Counsel Mr. Rajni Mehta of the appellant, however, submitted that, the appellant has deposited the entire amount of compensation with interest and proportionate costs. Whereas, under the judgment its liability is only 50% being a case of composite liability. The claimants would receive this entire amount. However, respondent No. 16, rival Insurance Company, would pay 50% of its share, if not borne by it, out of the amount deposited by the appellant-Insurance Company, with simple, interest @ 896 per annum from the date when such amount was deposited before the Claims Tribunal till the date, opponent No. 16 Insurance Company pays the amount directly to the appellant-Insurance Company. It appears that, part of the amount was ordered to be released in favour of the claimants. The remaining amount with accrued interest may also be released after due verification. Appeal is disposed of accordingly. R & P to be transmitted back to the Trial Court.