
(2008) 03 GUJ CK 0071
In the Gujarat High Court
Case No : First Appeal No. 4328 of 1997

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Bhanuben and Others

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Motor Vehicles Act, 1939 — Section 110C
Motor Vehicles Act, 1988 — Section 149, 170, 173, 177

Citation : (2008) 03 GUJ CK 0071

Hon'ble Judges : Sharad D. Dave, J;A.L. Dave, J

Bench : Division Bench

Advocate : Rajni H. Mehta, for the Appellant; B.N. Raval, for Defendant 1-5, D.K. Desai, for Defendant 8 and P.V. Nanavati, Vibhuti Nanavati and Lilu K. Bhaya for Defendant 9, for the Respondent

Final Decision : Dismissed

Judgement

A.L. Dave, J.—This appeal is preferred by the Insurance Company to challenge the judgment and award rendered by the M.A.C.T.(Main) Ahmedabad (Rural) in M.A.C.P. No. 174 of 1987 on 30.4.1997.

2. The claim petition was preferred by the heirs and legal representatives of deceased Baldevbhai Rajibhai who met with a vehicular accident on 28.1.1987 at about 1.30 p.m., on Sarkhej-Gandhinagar highway while he was proceeding on his scooter. At the time of the accident, his age was 30 years. He had no vices and was hale and hearty. According to the claimants, the deceased was an agriculturist cultivating the agricultural lands of his own as well as that of his relatives. The deceased was going towards Gandhinagar on his scooter bearing registration No. GBE 6969. He was driving the scooter on correct side of the road at a moderate speed in a careful manner. When he reached near the place of incident, a Matador bearing registration No. GRR 3544 came from opposite direction and dashed with the scooter. As a result of the impact, deceased Baldevbhai fell on the road and sustained serious injuries. According to the

claimants, the accident occurred because the Matador came on wrong side of the road at an excessive speed and dashed against the scooter. The deceased was taken to V.S.Hospital after the accident by one Kantilal Ishwarbhai Patel but the deceased succumbed to the injuries at 7.10 p.m., on the same day. The claimants initially claimed a compensation of Rs. 3,14,000/-. Later on, however, the claim was enhanced to Rs. 15 lacs. The compensation was claimed under various heads available. According to the claimants, the deceased was earning Rs. 33000/- p.a., out of agricultural work. The appellant was opponent No. 3 before the Tribunal. The opponent Nos. 1 and 2 before the Tribunal are respondent Nos. 1 and 2 namely driver and owner of the Matador. Though served with the summons by the Tribunal, they chose not to contest the claim application. Original opponent No. 4 - present appellant filed written statement at Exh.56. Opponent No. 4 is the insurer of the Matador involved in the accident.

3. The Tribunal, after considering the evidence on record, found that there was negligence on the part of both the deceased and Matador driver and apportioned negligence in the ratio of 20% and 80% respectively. The Tribunal awarded a compensation of Rs. 7 lacs under various heads.

4. The appeal is preferred to challenge or assail the decision of the Tribunal on aspect of negligence as well as quantum.

5. We have heard learned advocate Mr. Mehta for the appellant and learned advocate Mr.D.K.Desai for the parties.

6. A preliminary objection is raised by learned advocate for the respondent that this appeal is not maintainable as an application; as envisaged by Section 170 of M.V. Act, 1988, seeking permission to cross-examine the witnesses on all counts has not been preferred by the appellant before the Tribunal. The appeal u/s 173 on counts other than stated in Section 149 of the M.V. Act cannot be entertained by this Court as the appeal is preferred by the Insurance Company.

7. Learned advocate for the appellant submitted that the provision as it stands in the M.V. Act i.e., Section 170 of M.V. Act, would not apply to the facts of the case because when the accident occurred, M.V. Act, 1988 was not operative.

8. There is no dispute that application seeking permission to cross-examine the witnesses on all counts making available the wider defences to the Insurance Company was not before the Tribunal. We do not find from the Record & Proceedings any such application pending in the record and, therefore, necessarily there is lack of such application and considering the view taken by the Apex Court in United India Insurance Co. Ltd. Vs. Hetalbhai C. Bagadia and Others, such an application was required to be given. Unless such an application is given and the Court has granted such an application, the Insurance Company cannot enjoy wider defences than the available under law.

9. The objection is opposed to by the other side. It was urged by learned advocate for the appellant that the appeal may not be thrown over board on this

technical ground and merits may be considered. Reliance was placed on Narendra Kumar and Another Vs. Yarenissa and Others,

10. We have taken into consideration rival side submissions. It is true that the accident occurred prior to M.V. Act, 1988 coming into force but in the M.V. Act, 1939 as it was then applicable, provision contained in Section 110(C) 2(A) cannot be overlooked.

11. We find that the provisions contained in Section 110(C) 2(A) of the Old Act and Section 170 of the New Act are similarly worded and there is no dispute on the aspect that the application for cross-examination on wider issues was not preferred and not granted to the insurance company though the company was permitted to cross-examine the witnesses on all counts. In this regard, we may refer to a decision in the case of United India Insurance Co. Ltd. Vs. Hetalbhai C. Bagadia and Others, where in a similar situation, the Court took a view that in absence of such an application, an appeal by the insurance company on grounds other than permissible under law would not be maintainable.

12. In the instant case on our hand, we find that there is no such application nor any permission to cross-examine the witnesses on all counts granted by the Tribunal on being satisfied about the existence of collusion between tort feorsors and claimants. Such an inference cannot be drawn. This Court in a very similar situation in First Appeal No. 1159 of 1994 has taken a view that in absence of any material on record of the proceeding to show that the Tribunal had applied its mind for reaching at a satisfaction that grounds stated in Section 170 of the M.V. Act, 1988 [= 110-C(2-A) of the M.V. Act, 1939, as applicable in the instant case] were present and that the Tribunal had made an order much less a reasoned order which would enable the Insurance Company to avail of a larger defence on merits, an inference of such satisfaction cannot be drawn simply because witnesses were permitted to be cross-examined on all counts and that an appeal u/s 173 of the M.V. Act would not be maintainable.

13. Since in the instant case also, there is absence of such application, the appeal by the insurer pressed on all counts would not be competent and cannot be maintained.

14. We have, however, examined the merits also on request of learned advocate for the appellant and find that the Tribunal has considered all relevant aspects while computing compensation and there is hardly any scope for interference in exercise of appellate powers by this Court in the judgment and award impugned.

14.1 The Tribunal has taken into consideration the fact that the applicant had relatively vast field and would have earned the income as is pressed for. The age of the deceased was 33 and the Tribunal had adopted the multiplier of 15. The Tribunal has also deducted 1/3rd from the income of the deceased to arrive at dependency benefits and there is corresponding evidence.

14.2. We also notice that the Tribunal has taken into consideration relevant

pieces of evidence including the panchanama of place of offence and has come to a specific conclusion that the deceased was negligent to the extent of 20% and the driver of the Matador was responsible for the accident to the extent of 80%. In this finding also, we find justification and no interference is called for.

15. Under the circumstances, we are of the view that there are no merits in the appeal. The appeal, therefore, must fail and stands dismissed. No order as to costs.