

(2011) 06 GUJ CK 0047
In the Gujarat High Court
Case No : F.A. No. 1247 of 1992

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Minor Ramesh through Guardian Ranchhodji D. Thakore and
Others

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Citation : (2011) 4 TAC 478

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : S.B. Parikh for Mr. Rajni H. Mehta, for the Appellant; Mohini Bhavsar for Shri Bharat Jani, Advocate for Defendant No. 1, K.B. Pujara, Advocate for Defendant No. 2 and None for Defendant No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Z.K. Saiyed, J.—By way of this appeal, the appellant-Insurance Company has challenged the judgment and award dated 16th November, 1991 passed by the Motor Accident Claims Tribunal (Aux.), Ahmedabad (Rural) at Mirzapur (hereinafter referred to as "the Tribunal"), in M.A.C. Petition No. 443 of 1987, whereby the Tribunal has partly allowed the petition and directed the appellant-original opponent No. 3 and original opponent Nos. 1 and 2 to jointly and severally pay an amount of Rs. 84,600/- to the original claimant with running interest of 15% per annum from the date of the application till its realisation. However, if the original opponents pay the said amount or deposit the said amount with the Tribunal within three months from the date of the award, they shall be liable to pay interest at the rate of 12% per annum from the date of the application.

2. It is the case of the appellant-Insurance Company that on 17th August, 1986, Ranchhodji Dhanji had gone to village Goraj, Taluka Sanand from his village Borij to see his sick relative alongwith his wife and children. On 18th August, 1986 they were returning from village Goraj on foot for going to Sanand bus stand. At

about 13.30 hours, when they came near Bharat Petrol Pump, near Sanand bus stand, one scooter bearing No. GUG-4969 dashed with his son Ramesh. As a result, Ramesh fell down and received injuries on his head, right eye and on other parts of body. The scooter was being driven negligently and carelessly by the original opponent No. 1. As a result of the said accident, Ramesh has lost his vision of right eye and suffered permanent disability. Hence, Ranchhodji Dhanji Thakor, as a guardian and next friend of minor Ramesh, filed Claim Case before the Tribunal, which ultimately came to be partly allowed as stated aforesaid. Hence, the present appeal.

3. Mr. Sunil B. Parikh, learned Counsel appearing on behalf of Mr. Rajni Mehta, learned Counsel for the appellant, has vehemently submitted that the Tribunal has misread and misconstrued the oral and documentary evidence available on record. He has further submitted that the accident had occurred on 18th August, 1986 at about 13.30 hours as is evident from the F.I.R., whereas the Proposal Form at Ext. 76 for taking insurance had been received by the appellant-Insurance Company at 15.00 hours on 18th August, 1986 as is evident from the Cover Note issued by the appellant-Company. Thus, there is material non-disclosure on the part of the original opponent Nos. 1 and 2. The original opponent Nos. 1 and 2 had taken the policy suppressing the fact of accident. Mr. Parikh therefore contended that the appellant-Company cannot be held liable to pay the amount. He has further contended that the Tribunal has made grave error in observing that the policy would become effective from midnight on the day of the accident because if such is the case, then no policy would be required to be taken and always after the occurrence of the accident, policy can be taken and the policy would be effective from midnight of the date of issuance of such policy.

4. Ms. Mohini Bhavsar, learned Counsel for Mr. Bharat Jani, learned Counsel appearing on behalf of the defendant No. 1-original claimant submitted that the policy was obtained by the insured before the accident had taken place. She has contended that the agent of the appellant-Insurance Company had accepted the premium amount on behalf of the appellant-Insurance Company and therefore, the appellant-Insurance Company is liable to pay the amount.

5. Heard both the parties and perused the papers produced before me. I have gone through cross-examination of Ashwinkumar Thakkar, Branch Manager of the appellant-Insurance Company, who has stated that the Proposal Form was given to him by his Development Officer and the Form was brought from Sanand. He has also admitted that they do not have any Branch Office in Sanand, but their Agent and Development Officer are stationed at Sanand and on behalf of the Insurance Company they received the Proposal Form and it is binding to the Insurance Company. Looking to the papers it transpires that the Proposal Form was received by the Branch Manager at 15.00 hours, which shows that the Proposal Form and money must have been given by the owner of the vehicle much earlier. Thus, there are no reasons to believe that the owner of the vehicle

had obtained policy suppressing the fact of accident. Even ink of the time and date written on Ext. 76 differs. This shows that time was added subsequently by the officers of the appellant-Insurance Company. The agent is acting on behalf of the appellant-Insurance Company and therefore, acceptance of Proposal Form by the agent, can be said to be accepted by the Insurance Company. The Supreme Court in case of New India Assurance Company Limited v. Ram Dayal and others reported in 1990 (2) C.C.C. 339 : 1990 (2) T.A.C. 41, has held that the policy came into effect on the day itself premium was paid. It also appears from the papers that the appellant-Insurance Company has not examined the agent. Without examining the agent, the appellant-Insurance Company cannot say that the owner of the vehicle had obtained the policy subsequently after the accident.

6. In view of aforesaid discussion and in light of the above cited decision, the contention of the learned Counsel for the appellant-Insurance Company that the policy was obtained suppressing the fact of accident by the owner of the vehicle and therefore, the insurer of the vehicle is not liable to pay compensation to original claimants, is not accepted. Thus, the Tribunal has passed absolutely just and proper award. Hence, the impugned judgment and award is required to be confirmed.

7. For the foregoing reasons, present appeal is hereby dismissed. The impugned judgment and award dated 16th November, 1991 passed by the Motor Accident Claims Tribunal (Aux.), Ahmedabad (Rural) at Mirzapur, in M.A.C. Petition No. 443 of 1987, is hereby confirmed.