(2012) 03 GUJ CK 0093

In the Gujarat High Court

Case No : First Appeal No. 2369 of 2006

Oriental Insurance Co. Ltd. — APPELLANT

Vs

Mumtajben and Others — RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 147(2), 163A

Citation : (2012) 03 GUJ CK 0093

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

Bench : Single Bench

Advocate : Maulik J. Shelat, for the Appellant; Divyesh Sejpal for Defendant : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6 -3.-for Defendant : 0 0.0, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice K.S. Jhaveri

1. This appeal is directed against the judgment and award dated 26.04.2006 passed by the Motor Accident Claims Tribunal (Aux.), [F.T.C.-.1], Bhavnagar in Motor Accident Claim Petition No. 751 of 2001 whereby claim petition was partly allowed and the original claimants were awarded total compensation of Rs. 4,56,000/- along with proportionate costs and interest at the rate of 9% from the date of the application till its realization. The facts in brief are that on 25.07.2001, at around 1100 hours, while Maheboobbhai, who was serving as a driver with respondent No. 9 herein, was driving bus bearing registration No. GJ-4U-4504 towards Rajkot at that time his health started to deteriorate and he suffered heart attack and died. The legal heirs of the deceased, therefore, filed the aforesaid claim petition, which came to be partly allowed, by way of the impugned award. Being aggrieved by the said award, the appellant - Insurance Company has preferred the present appeal.

2. The learned counsel for the appellant contended that deceased Maheboobbhai

expired on account of heart attack which is natural death and not on account of an accident arising out of the use of a motor vehicle. Therefore, the claim petition u/s 163-A of the Motor Vehicles Act is not maintainable. Therefore, the Tribunal has committed error in awarding the compensation under the provisions of the Motor Vehicles Act.

3. The learned counsel for the respondent claimants submitted that from the evidence on record it was clear that the deceased died during the course of his employment. From the evidence of F.I.R, and in view of the decision of the Hon''ble Apex Court, the claimants are entitled to an award under the Workmen''s Compensation Act.

4. Mr. Sejpal, learned counsel for the respondents claimants further contended that assuming without admitting that death is not because of the use of the vehicle, the claimants are entitled compensation under the Workman Compensation Act. He therefore, submitted that instead of remanding the matter to the Tribunal in view of decision of National Insurance Company Ltd. Vs. Sinitha and Others, , this Court may award the amount of compensation in view of the provisions of Workmen''s Compensation Act.

5. The accident has taken place on 25.07.2001 and the fact remains that deceased died while he was discharging his duties. In that view of the matter, without entering into the question whether it was accidental death or natural death, the contention of the respondents claimants is accepted that it was natural death. The fact remains that the deceased had during the course of employment. The Tribunal has therefore, committed error in awarding the amount under the provisions of Motor Vehicles Act. In view of the provisions of Section 147(2)(b), I am of opinion that the Insurance Company will be liable under the provisions of Workmen''s Compensation Act and it is not in the interest of justice to remand the matter after a long lapse of time.

6. The salary of the deceased assessed by the Tribunal was Rs. 3000/- and therefore the loss can be taken at Rs. 1500/-. The deceased was 40 years old and therefore the factor of 207.98 can be applied. Hence, the claimants are entitled total compensation of Rs. 3,11,970/- (Rs 1500 x 207.98) under the Workmen''s Compensation Act. Thus, the appellant Insurance Company is liable to make the said amount by way of compensation. In view of the above, it is held that the Insurance Company is liable to make payment of Rs. 3,11,970/- as compensation to the laimants at the rate of 9% from 12.04.2006 till the amount is deposited application of the Tribunal. The balance amount shall be refunded to the Insurance Company. If the claimants had already withdrawn the amount, it will be open for the Insurance Company to recover the balance from the owner of the vehicle at. The appeal is allowed to the aforesaid extent with no order as to costs. It is made clear that this order shall not be treated as precedent.