
(2019) 01 GUJ CK 0086
In the Gujarat High Court
Case No : R/First Appeal No. 1970 Of 2011

Oriental Insurance Co Ltd

APPELLANT

Vs

Parmar Kalubhai Mahadevbhai

RESPONDENT

Date of Decision : 18-01-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2019) 01 GUJ CK 0086

Hon'ble Judges : B.N. Karia, J

Bench : Single Bench

Advocate : Vibhuti Nanavat, Raxit J Dholakia

Final Decision : Dismissed

Judgement

1. The present appellant-Insurance Company, being aggrieved and dissatisfied with the judgment and award passed by the learned Motor Accident Claim Tribunal (Aux.), Dhrangadhra, in M.A.C.P. No.5 of 2000 dated 16.12.2010, has challenged the impugned judgment and award in this appeal under Section 173 of the Motor Vehicles Act.

2. The short facts of the case may be referred as under:

2.1 That on 15.08.1999, when the original claimant-respondent No.1 herein was returning to his home from service in D.C.W. Company at about 9:00 P.M. and was walking on the correct side of the road, one driver of the Scooter bearing Registration No.GJ-13-D-1281 drove his scooter in rash and negligent manner and dashed with the claimant, and therefore, the claimant sustained grievous injuries and suffered great pain shock and suffering. Therefore, the claimant filed a claim petition before the Tribunal, requesting to pass an award for the amount of Rs.1,25,000/- towards compensation.

2.2 In response to the notice issued by the Tribunal, nobody appeared for the respondent Nos.1 and 2, and therefore, the Tribunal was pleased to pass an order to proceed with the matter against the respondent Nos.1 and 2 ex-parte.

Respondent No.3-Insurance Company appeared through its advocate and filed written statement vide Exh.15 denying the allegations made by the claimant against the respondent No.3. It was contended that there was no negligence on the part of the driver of the scooter bearing Registration No.GJ-13-D-1281, as alleged by the claimant. The averments made in the claim petition in respect of the age, income and compensation as prayed for by the claimant were denied by the respondent No.3-Insurance Company submitting that no cause of action arose against the respondent No.3-Insurance Company. Therefore, it was requested to dismiss the petition against the respondent No.3-Insurance Company.

2.3 Learned Tribunal Judge, for determination of the petition, framed issues vide Exh.23. After recording the evidence of the respective parties, by an order dated 16.12.2010, the learned Tribunal was pleased to award the amount of Rs.61,953/- towards compensation along with the interest at the rate of 9% per annum from the date of petition till realization of the amount.

3. Heard learned counsel Mr.Vibhuti Nanavati for the appellant-Insurance Company and learned counsel Mr.Raxit Dholakia for the respondent No.1-original claimant. Though notice has been served upon the respondent Nos.2 and 3, nobody appeared on their behalf to defend this appeal.

4. It was argued by the learned counsel for the appellant that the judgment and award passed by the learned Tribunal is contrary to law and evidence on the record. That, involvement of the offending vehicle was clearly doubtful and negligence on the part of the driver of the offending vehicle was not proved by the respondent No.1-original claimant, however, the learned Tribunal has committed error that the vehicle Scooter bearing Registration No.GJ-13-D-1281 was involved in the accident. It was further submitted that the injured claimant was immediately admitted in the hospital and remained there as an indoor patient for 15 days. The accident was occurred on 15.08.1999, however, the FIR in respect of the alleged accident was lodged on 22.11.1999, and therefore, there was a gross delay in lodging complaint of the alleged accident. It was further submitted that the accident took place at night on account of fallen down by the claimant himself. The claimant himself had no knowledge as to through which vehicle the accident was occurred and what was the registration number of the vehicle. Therefore, it was requested by the learned counsel for the appellant-Insurance Company to quash and set aside the impugned judgment and award passed by the learned Tribunal dated 16.12.2010.

5. Learned counsel Mr.Raxit Dholakia for the respondent No.1-original claimant submitted that the learned Tribunal has rightly arrived at findings in holding the liability of respondent No.3-Insurance Company for payment of compensation. It was further submitted that the charge-sheet was filed against the driver of the motor vehicle Scooter bearing Registration No.GJ-13-D-1281 after completing the investigation by the Police authority. That, the claimant has supported his case as averred in the claim petition by producing the charge-sheet at Exh.33.

That, before the Tribunal, the driver as well as the owner of the vehicle have never defended the petition preferred by the claimant. That, no witness was examined by the respondent No.3-Insurance Company before the Tribunal. That, considering the oral as well as documentary evidence produced on record by the claimant before the Tribunal, the negligency of the driver of the offending vehicle was clearly proved by the claimant, and therefore, the Tribunal has rightly awarded the amount of compensation in favour of the claimant. That, involvement of the offending vehicle was clearly proved by the claimant as the charge-sheet was filed against the driver of the offending vehicle after completing the investigation. It is further submitted that no error was committed by the Tribunal in calculating the compensation amount awarded to the claimant. Hence, it was requested by the learned counsel for the respondent No.1-original claimant to dismiss the present appeal. In support of his arguments, learned counsel for the respondent No.1-original claimant has relied upon the judgment delivered by this Court in First Appeal No.529 of 2011, dated 15.12.2016.

6. Having considered the facts of the case and submissions made by learned counsels for the respective parties, the accident was undisputedly occurred on 15.08.1999. Of course, the complaint was lodged after a lapse of certain period i.e. on 21.11.1999. The claimant was examined before the Tribunal, wherein he has supported the allegations made by him in the complaint as well as the Panchnama produced on record. There was a delay of three months and six days in lodging the complaint by the claimant after the accident, but it cannot be said that it was a false or fabricated complaint lodged by the claimant before the Police. In his deposition at Exh.44, the claimant has clearly stated that the accident was occurred due to sole negligency on the part of the driver of the Scooter bearing Registration No.GJ-13-D-1281 on 15.08.1999, as he drove the scooter in rash and negligent manner without taking any care. It also appears from the record that the police had investigated the offence and after completing the investigation, the charge-sheet was filed against the driver of the scooter involved in the accident. From the record, this Court is of the opinion that the income part, age of the claimant, injuries sustained by the claimant in the accident as well as 8% disability body as a whole were rightly considered by the Tribunal and the very small amount of Rs.61,953/- was awarded towards the compensation.

7. In the case of *Bimla Devi and Others v. Himachal Road Transport Corporation and Others*, reported in 2009(13) SCC 530 wherein considering the fact of the case, it was held as under :

"While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a tribunal *stricto sensu* is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a *sine qua non* for entertaining a claim

petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a postmortem report vis-a-vis the averments made in a claim petition. On fact, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

8. Considering the facts of the case, the claimant has clearly proved the involvement of the offending vehicle, occurrence of accident due to negligence on the part of driver of the scooter involved in the accident, injuries sustained by him, medical treatment taken by him in hospital as indoor patient, his income as earning Rs.2000/- per month by serving in the D.C.W. Company and suffering pain and shock etc. Hence, this Court is of the view that the Tribunal has committed no error in holding the liability of the appellant-Insurance Company for making payment of the compensation amount to the claimant. Hence, this appeal deserves to be dismissed and accordingly this appeal is hereby dismissed.