(2013) 12 GUJ CK 0200

In the Gujarat High Court

Case No : First Appeal No. 491 of 2009 with Civil Application No. 12288 of 2013 in First Appeal No. 491 of 2009

Oriental Insurance Co. Ltd. APPELLANT

Vs

Punjabhai Chikabhai Solanki and Others RESPONDENT

Date of Decision : 20-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0200

Hon'ble Judges : M.D. Shah, J

Bench : Single Bench

Advocate : Maulik J. Shelat, for the Appellant; H.L. Patel, Advocates Advocate for the Respondent(s) No. 1-2, for the Respondent

Final Decision : Disposed Off

Judgement

M.D. Shah, J.—This appeal is filed by the Insurance Company against the judgment and award dated 17-5-2008 passed by the learned Motor Accident Claims Tribunal(Aux.), Fast Track Court No. 4, Ahmedabad (Rural) in Motor Accident Claim Petition No. 441 of 1993 whereby all the opponents including the Insurance Company were jointly and severally liable to pay compensation to the claimants. Heard learned advocate for the appellant-Insurance Company, Mr. Maulik Shelat, learned advocate, Mr. Vijay Patel for M/s. H.L. Patel Advocates for the original claimants.

2. Learned advocate, Mr. Shelat submitted that the deceased was travelling as unauthorised passenger in the goods vehicle (truck) which is a breach of condition of policy and risk of such passenger was not covered under Sec. 147 of the Motor Vehicles Act and hence, insurance company is not liable to pay any compensation. It is further submitted that accident took place prior to amendment in Section 147 of the Motor Vehicles Act which came into effect from 14-11-1994 and, therefore also, since risk of owner of goods or his authorized representative is not covered, insurance company is not liable to pay any compensation. In this connection, he has relied on a judgment of Hon''ble

Supreme Court in the case of New India Assurance Co. Ltd. Vs. Asha Rani and Others, It is further submitted that though insurance company is not liable to pay any compensation, it is held by the Tribunal that insurance company is also liable to pay compensation and thereby the Tribunal has committed error.

3. It is however submitted by learned advocate Mr. Vijay Patel for the claimants that as per the decision of the Hon''ble Supreme Court in the case of Manager, National Insurance Company Ltd. Vs. Saju P. Paul and Another, , insurance company is liable to pay compensation but insurance company is at liberty to recover from the owner of the vehicle. It is therefore submitted that the Tribunal has not committed any error as, after considering the evidence on record, legal and proper order is passed by the Tribunal. It is therefore urged that the appeal deserves to be dismissed.

4. This Court has gone through the impugned judgment and award together with the judgment delivered by the Hon''ble Apex Court.

5. It is to be noted that considering the oral as well as documentary evidence on record, just and adequate compensation has been awarded by the Tribunal. Since finding on the aspect of quantum is just and proper, it is not required to be interfered with.

6. It is an admitted fact that accident took place on 15-1-1993 i.e. before amendment in Section 147 of the Motor Vehicles Act effective from 14-11-1994 and, therefore, risk of owner of goods or his authorized representative is not covered and hence, insurance company is not liable to pay any compensation as held in Asha Rani (supra).

7. It has been held by this Court (Coram: Hon''ble The Chief Justice Mr. Bhaskar Bhattacharya) in First Appeal No. 2121 of 2008 that insurance company is not liable to pay any compensation and direction to pay the amount and to recover amount can only be given in exercise of power conferred under Article 142 of the Constitution of India. It has been held by this Court in paragraphs 12.2, 13 and 14 as under:

12.2 The above observations make it clear that the direction to pay the amount first and then to recover such amount can only be given in exercise of power conferred under Article 142 of the Constitution and the Supreme Court in the peculiar facts of the above case, exercised such power notwithstanding the pendency of reference to the larger bench.

13. Be that as it may, there is no scope of passing such a direction either at the instance of the Tribunal below or of this court in this appeal u/s 173 of the Act.

14. On consideration of the entire materials on record, I, therefore, hold that the learned Tribunal below erred in law in passing the direction upon the Insurance Company to pay the amount and then recover such amount notwithstanding its finding that the Insurance Company has no liability to pay the amount as the victims are not the third parties within the meaning of law.

8. In view of the above observations of this Court, order to pay the amount and then to recover such amount from the owner can only be passed in exercise of power conferred under Article 142 of the Constitution of India and the Hon''ble Supreme Court in the peculiar facts of the above case, exercised such power notwithstanding the pendency of reference to the larger bench. In view of the above, claim petition against the appellant-insurance company is required to be dismissed and appeal is required to be allowed.

9. In view of the above, appeal is allowed. Claim petition is dismissed qua insurance company. The impugned judgment and award qua original opponent No. 1 stand unchanged. It is clarified that if any amount is paid by the insurance company in pursuance of the directions of this Court, same will not be recovered from the claimants but insurance company will be at liberty to recover it from the owner of the vehicle. Excess amount, if any, lying deposited shall be refunded to the insurance company. Amount, if any, lying deposited in the Registry of this Court shall be transmitted to the Tribunal. There shall be no order as to costs.

10. Records and proceedings are ordered to be sent back forthwith. In view of the above order passed in main appeal, Civil Application No. 12288 of 2013 does not survive and is disposed of accordingly.

Further Order

After pronouncement of the aforesaid order, learned advocate, Mr. Vijay Patel sought stay of the order for a period of six weeks. Considering the facts and circumstances, aforesaid order is stayed for a period of six weeks.