
(2016) 03 GUJ CK 0053

In the Gujarat High Court

Case No : First Appeal No. 3529 to 3533 of 2010.

Oriental Insurance Company Limited - Appellant @HASH Aminabai Sidhik and 6 Others - Defendants

Date of Decision : 08-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2016) AAC 2232

Hon'ble Judges : R.P. Dholaria, J.

Bench : Single Bench

Advocate : Mr. Maulik J Shelat, Advocate, for the Appellant No. 1; Ms. Niyati K Shah, Advocate, for the Defendant Nos. 1- 6; Rule Served, for the Defendant No. 7

Final Decision : Allowed

Judgement

Mr. R.P. Dholaria, J.(Oral) - This group of appeals have arisen out of common judgment and award dated 17.07.2009 passed by Motor Accident Claims Tribunal (Auxiliary), Gandhidham-Kutch, in Motor Accident Claim Petition No.1949/99 and allied petitions.

2. The appellant-insurance company has preferred the present appeals, inter alia, contending that the Tribunal failed to appreciate the evidence on record and wrongfully fastened the liability upon the insurance company as the deceased as well as the injured/survivors were traveling in Truck No.GJ-3-U-6228 as the authorised passengers and ultimately it is prayed to exonerate the insurance company from payment of liability awarded by the Tribunal.

3. The facts of the case are that on 07.10.1999 the claimants/survivors of FA Nos.3532-3533/10 and others were traveling as labourers for bringing cotton goods (sakala) from Village Thoriyari towards Vandhiya in Truck No.GJ-3-U-6228, who was driven by one Navubha Shivubha Zala. That the driver was driving the said truck in rash, negligent and in a full speed. That around 5:30 a.m. when they reached Lakadia, 4 Kms. of away Chitrod, at that the driver lost his control over steering wheel of the vehicle and the accident took place. Due to

which the truck collided with the bridge and turned turtled down over the road. Because of the said accident the claimants/survivors of FA Nos.3532-3533/10 received injuries, whereas three persons died and therefore the heirs and legal representatives of said deceased two persons moved MACP Nos.1963-1964/99, who are the respondents in FA Nos.3532-3533/10.

4. Heard Mr. Maulik J. Shelat, learned counsel for the appellant-insurance company, and Ms.Niyati K. Shah for the original claimants (in FA Nos.3529-3530/10). Though served, none appears for the rest of the respondents.

5. Learned counsel for the appellant-insurance company has argued that though the deceased as well as the injured survivors were traveling in the aforesaid goods vehicle as unauthorized passengers, the Tribunal has wrongly recorded the finding that they were traveling as labourers and the owner of the goods loaded in the said truck.

6. On the other hand, Ms. Niyati K. Shah learned counsel for the respondents (appearing in FA Nos.3529-3530/10) has argued that the deceased as well as the injured were traveling as owner of the goods as well as the labourers in the said truck and, therefore, the Tribunal has rightly recorded the findings, which does not call for interference of this Court.

7. Having heard the learned counsel for the respective parties, the only question arises for the determination of this Court is that whether the deceased as well as the injured/survivors were traveling in the said truck as the labourers/owner of the goods or as the unauthorized passengers on the said offending truck.

8. FA No.3529/10 arising out of MACP No.1949/99 the claimants therein are the heirs and legal representatives of deceased, Siddik Gabhu Ghanchi, who have averred in the claim petition itself that on 07.10.1999 the deceased was traveling in truck No.GJ-3-U-6228 as a labourer and he was on duty for loading cotton goods (sakala). Same fact has been narrated in the deposition of one of the claimants, Shri. Akbar Siddikbhai Ghanchi (Exh.32). He has also been cross-examined by the learned counsel for the insurance company. Nothing worth has come out, on the contrary he was traveling in the said offending vehicle as a labourer is got established. In view of the aforesaid factual position, when the evidence on record is amply clear that the deceased was traveling in the said truck as a labourer is established, the contention raised by the learned counsel for the insurance company that the deceased was traveling as the unauthorized passenger cannot be accepted and the said contention is devoid of merits and the appeal deserves dismissal.

9. FA No.3530/10 arising out of MACP No.1950/99 the claimants therein are the heirs and legal representatives of deceased Meghji @ Megha Bhura Desai (Patel), who have averred in the claim petition itself that on 07.10.1999 the deceased was traveling in truck No.GJ-3-U-6228 as a labourer and he was on duty for loading cotton goods (sakala). Same fact has been narrated in the deposition by

of one of the claimants, Shri. Babu Meghji @ Megha Bhura Desai (Patel) (Exh.39). He has also been cross-examined by the learned counsel for the insurance company. Nothing worth has come out, on the contrary he was traveling in the said offending vehicle as a labourer is got established. In view of the aforesaid factual position, when the evidence on record is amply clear that the deceased was traveling in the said truck as a labourer is established, the contention raised by the learned counsel for the insurance company that the deceased was traveling as the unauthorized passenger cannot be accepted and the said contention is devoid of merits and the appeal deserves dismissal.

10. FA No.3532/10 arising out of MACP No.1963/99 the injured claimant survivor, Shri. Damji Vasta Devda, has preferred the said claim petition claiming the compensation for the injuries sustained by him in the vehicular accident wherein he has pleaded that on 07.10.1999 he was engaged by one Jayantibhai, resident of his own village as labourer and he was traveling on truck No.GJ-3-U-6288 as the labourer, as he was engaged by the said Jayantibhai for bringing cotton goods (sakala) from Dhoryali to Vandhiya, Dist. Kachchh, whereas in affidavit (Exh.61) he has reiterated the same fact.

11. In that view of the matter learned counsel for the appellant has argued that the risk of the labourer, who has been engaged by the owner of the truck or who was working as labourer of the owner of the truck, is covered by virtue of Section 147 of the Motor Vehicle Act, 1988 (the Act) but as far as the risk of the person, who was traveling as the labourer of the owner of the goods, who is admittedly not the owner of the truck in question, his risk is not covered under the said Act. Reliance is placed upon the decision in the case of Sanjeev Kumar Samrat v. National Insurance Company Limited & Ors., AIR 2013 SC 1125, more particularly in Paragraph No.24 thereof, which is reproduced hereinbelow.

"24. It is worthy to note that sub-clause (i)(c) refers to an employee who is being carried in the vehicle covered by the policy. Such vehicle being a goods carriage, an employee has to be covered by the statutory policy. On an apposite reading of Sections 147 and 167 the intendment of the Legislature, as it appears to us, is to cover the injury to any person including the owner of the goods or his authorised representative carried in a vehicle and an employee who is carried in the said vehicle. It is apt to state here that the proviso commences in a different way. A policy is not required to cover the liability of the employee except an employee covered under the 1923 Act and that too in respect of an employee carried in a vehicle. To put it differently, it does not cover all kinds of employees. Thus, on a contextual reading of the provision, schematic analysis of the Act and the 1923 Act, it is quite limpid that the statutory policy only covers the employees of the insured, either employed or engaged by him in a goods carriage. It does not cover any other kind of employee and therefore, someone who travels not being an authorised agent in place of the owner of goods, and claims to be an employee of the owner of goods, cannot be covered by the statutory policy and to hold otherwise would tantamount to causing violence to

the language employed in the Statute. Therefore, we conclude that the insurer would not be liable to indemnify the insured."

12. In view of the aforesaid position, a contention is raised by the learned counsel for the insurance company in light of the pleading as well as the proof tendered by the injured claimant/survivor as he was undisputedly working on behalf of Jayantibhai, who is not the owner of the truck and, therefore, the risk of the injured claimant/survivor is neither covered in the terms of the policy nor in the statutory provisions as contained under Section 147 of the Act.

13. FA No.3533/10 arising out of MACP No.1964/99 the injured claimant survivor, Shri. Govind Mavji Dubadia, has preferred the said claim petition claiming the compensation for the injuries sustained by him in the vehicular accident wherein he has pleaded that on 07.10.1999 he was engaged by one Jayantibhai, resident of his own village as labourer and he was traveling on truck No.GJ-3-U-6288 as the labourer, as he was engaged by the said Jayantibhai for bringing cotton goods (sakala) from Dhoryali to Vandhiya, Dist. Kachchh, whereas in affidavit (Exh.68) he has reiterated the same fact.

14. As the risk of the persons-injured claimants/survivors are neither covered in the insurance policy of the vehicle in question nor in the statutory provisions under Section 147 of the Act, in view of the aforesaid discussion, the liability fastened upon the insurance company by the Tribunal is required to be set aside and the insurance company is required to be exonerated from payment of any compensation. However, the claimants are belonging to poor strata of the society, they were working as labourers upon instructions of the said Jayantibhai, considering the award passed by the Tribunal as well as the interim order passed by this Court, the amount as per the award of the Tribunal which has been disbursed and which has been withdrawn by the claimants shall not be recovered from them but whatsoever the amount is lying in the nature of FDR or lying with the Tribunal or before this Court shall be refunded to the insurance company. However, the claimants shall be at liberty to recover the amount from the driver and the owner of the offending truck bearing No.GJ-3-U- 6228.

15. For the reasons recorded hereinabove, First Appeal Nos.3529-3530/10 deserve dismissal and the same are hereby dismissed and First Appeal Nos.3532-3533/10 deserve to be allowed and the same are hereby allowed. Accordingly, the responsibility fastened upon the insurance company by the aforesaid judgment and award passed by the Tribunal is set aside and rest of the judgment passed against the respondents shall remain unaltered and as observed hereinabove, the amount of compensation disbursed and withdrawn by the claimants/survivors shall not be recovered from them. The insurance company shall be at liberty to recover such amount from the owner of the truck. As far as the amount of FDR is concerned, the same shall be refunded to the insurance company. If any amount is lying before this Court in the aforesaid appeals the same shall be forthwith remitted to the Tribunal and the Tribunal shall disburse the said amount to the original claimants in terms of the award in

the cases the appeals are dismissed and in the cases where the appeals are allowed the Tribunal shall act in accordance with the aforesaid directions.

16. Registry is directed to forthwith return the record and proceedings, if available, to the Tribunal. No costs.

17. Registry to place a copy of this order in connected matters.