
(1998) 03 GUJ CK 0034
In the Gujarat High Court
Case No : First Appeal No. 2489 of 1995

Savitaben S. Valand and Another	Vs	APPELLANT
Dhirajlal C. Kotak and Others		RESPONDENT

Date of Decision : 30-03-1998

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1998) 2 ACC 695 : AIR 1998 Guj 266

Hon'ble Judges : J.N. Bhatt, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : D.F. Amin, for the Appellant; Lilu K. Bhaya, for the Respondent

Final Decision : Partly Allowed

Judgement

J.N. Bhatt, J.—Admit. Service of the notice is waived by learned advocate Ms. Lilu K. Bhaya., for the appellants.

2. The appellants challenge the impugned judgment and award of the Motor Accident Claims Tribunal (Main), Jamnagar, in Motor Accident Claim

Petition No. 109 of 1985, whereby the appellants, who are original claimants Nos. 1 and 4 and heirs and legal representatives of the deceased

Rameshbhai Setabhai Patel, came to be awarded an amount Rs. 1,11,000/- with running interest of 15 per cent per annum from the date of

application till payment against respondent No. 1, while rejecting the entire claim against respondent No. 2 original opponent No. 2, New India

Insurance Company, by filing this Appeal u/s 173 of the Motor Vehicles Act, 1988.

3. The only contention advanced before us in this appeal is that the Tribunal has committed serious error in refusing to award the claim against

respondent No. 2, New India Insurance Company on behalf of the appellants original claimants, which came to be countenanced on behalf of the

Insurance Company.

4. In order to appreciate and examine the merits of the aforesaid sole contention which came to be adjudicated before us the following aspects

which have remained unassailable may be narrated at this juncture.

4.1. The accident in question was occurred on 14-11-1980, in which a truck bearing No. GTY 3026 was involved. It occurred near Makanpura,

village on Mithapur-- Dwarka highway in which the deceased Rameshbhai Patel, who was travelling as a passenger in the said truck along with his

goods, lost his life.

4.2. The deceased had paid an amount of Rs. 3-00 for himself and Re. 1-00 for the goods, which the driver had accepted.

4.3. The driver of the truck lost control over the vehicle, as a result of which it went off the road and fell into a ditch in turtle condition culminating

into loss of life of a young man of 28 years, Shri Rameshbhai Patel.

4.4. Appellants Nos. 1 and 2 are mother and widow respectively of the deceased. Respondents Nos. 3 and 4 are the brothers of the deceased,

who were the original claimants dependent on the income of the deceased, who was the earning member of the family, who was engaged in

miscellaneous business of selling pan, bidi and cutlery items and also seasonal articles during festivals like, Diwali and Makar Sankranti, etc.

4.5. The deceased was doing such business since the age of 18 years and he himself was engaged in business for more than 10 years prior to the

date of his life which came to be cut short by the cruel hands of destiny in the road mishap.

4.6. The deceased was travelling in the truck along with his goods as held by the Tribunal.

4.7. The contention of the Insurance Company qua the appellants before us is that in view of the fact that the insurer committed breach of the terms

and conditions of the insurance policy as the deceased was travelling in a goods vehicle as a passenger on payment of fare to the driver of the

goods vehicle, which came to be accepted by the Tribunal absolving the insurer of the motortruck involved in the accident.

4.8. It was also alternately contended that in any event the liability of the insurer alternately would not exceed an amount of Rs. 50,000/- in view of

the statutory provisions of Section 95 of the Motor Vehicles Act, 1939. Since the

Tribunal concurred with the first part of the contention of the insurer, it was not thought expedient to go into the second part of alternative contention, the limited liability of the insurer.

4.9. The insurance policy produced at exhibit 35 is an Act policy. The liability, therefore, at the relevant point of time by the Insurance Company was limited under the provisions of the Act to the extent of Rs. 50,000/- (Rupees fifty thousands only).

5. In view of the aforesaid aspects which have remained unassailed and more in case of any evidence including the evidence of the driver of the motor truck involved in the accident, the only question which comes to the surface for our appreciation, interpretation and adjudication is as to

whether the insurer is rightly absolved from the liability for payment of compensation even to the extent of Rs. 50,000/-? In our opinion, the answer

is positively negative. It is settled proposition of law that even in case of a person travelling in a goods vehicle sustains bodily injury or damage to

the goods, the liability of Insurance Company to indemnify the insurer ipso-facto invariably in all cases is not absolved. In view of the provisions of

Section 95 (2) (a), it appears that the Tribunal had not enjoyed the benefit of the latest proposition of law propounded by the Full Bench of this

Court in *New India Assurance Co. Ltd. Vs. Kamlaben Sultansinh Jadav and Others*, . Precisely the same question came to be answered by this

Court in the aforesaid decision, popularly known as "*Kamlaben's case*".

6. Could the Insurer evade the liability to indemnify the insurer in a case where the passenger is travelling by goods vehicle by paying fare and

without the knowledge of the insurer?

This question is also answered by this Court in above judgment against the insurer.

7. This Court in *Kamlaben's* (supra) case had to consider and examine the provisions of Sections 94, 95 and 96 of the Motor Vehicles Act, 1939

(IV of 1939), wherein the following four conclusions came to be made by the Full Bench in *Kamlaben's* case affirming and amplifying the scope

and ambit of the decision of the Full Bench of this Court in the case of *New India Assurance Co. Ltd. and Another Vs. Nathiben Chatrabhuj and*

Others, , and it is further held that the insurer in order to successfully disown or disclaim his liability on the ground mentioned in Section 96 (2) (b)

is obliged to establish;

(i) that on the date of the contract of insurance, the insured vehicle was expressly or implicitly not covered by a permit to carry any passenger for

hire or reward,

(ii) that there was a specified condition in the policy which excluded the use of the insured vehicle for the carriage of any passenger for hire or

reward,

(iii) that the vehicle was, in fact, used in breach of such specified condition on the occasion giving rise to the claim by reason of the carriage of the

passenger therein for hire or reward, and

(iv) that the vehicle was used by the insured or at his instance in breach of specific conditions including a condition that in the goods vehicle

passengers for hire or reward were not to be carried. If it is done without knowledge of the insured by the driver's acts or omission, the insurer

would be liable to indemnify the insured.

8. It appears that attention of the Tribunal was not drawn to the Full Bench decision of this Court in *New India Assurance Co. Ltd. and Another*

Vs. Nathiben Chatrabhuj and Others, , as it had also elucidated and interpreted the proposition of law and as enshrined in Sections 95 (2) (b) and

95 (2) (c).

9. Since the proposition, which is advanced before us is extensively, exhaustively, elaborately propounded and enunciated by this Court in the Full

Bench decision in *Kamlaben's case (supra)* it would not detain us any, longer to divulge upon further minute and meticulous aspects on facts since

most of the facts are no longer in controversy.

10. However, the observations and the cry raised by this Court in *Kamlaben's (supra)* case in Para II. 2. are (at page 173 of AIR);

Repeatedly, Insurance Companies are attempting to avoid their liability to pay compensation arising because of the benevolent provisions under

the Motor Vehicles Act. The reason is the helpless victims of the accident mainly being poor were compelled to travel by a goods vehicle (truck) -

- a reality of life -- as at the relevant time no "public service vehicle" was available and were not in a position to afford any other luxurious vehicle.

They or their dependents are kept in dark for years; whether they are entitled to

get some amount from the Society for their survival depends upon long drawn legal submissions. The question for decision is whether such sufferers of vehicular accidents are entitled under law to get something for their survival or should be left without redress. Today, vehicular accidents are increasing manifoldly. In this background, it would be worthwhile to refer to the observations of Lord Denning, M. R. in the case of *Launchbury v. Morgans*, 1971 (2) QB 245, as under :

A Motor vehicle is a powerful engine of death and destruction. It is capable of doing much damage to persons and to property unless it is driven with due care and attention. As the number of cars increase and as their speeds get faster and faster, so the danger grows. More and more people are killed. More and more are injured. More and more property is damaged. The sufferers ought not to be left without redress. So Parliament and Judges have done their best to see that they are compensated to their loss.

11. In a similar set of facts, the liability of the Insurance Company came to be decided in the aforesaid decision. This Court held that the provisions of Section 95 (2) (a) will be attracted and the liability of the Insurance Company or insurance coverage by the Act policy vehicles are classified as;

(i) goods vehicle, (ii) passenger vehicle, and (iii) other than goods or passenger vehicle.

12. The four questions which were raised in *Kamlaben's* case (*supra*) and the following four conclusions came to be recorded by this Court in the said case :

Conclusions

40. in the result :

A.I. The contention that risk of the passenger who is travelling by a goods vehicle by paying fare is covered by Section 95 (2) (b) (ii) (4) is rejected on the ground that, the said Section deals with "passenger vehicle" only having a specified registered capacity to carry passengers.

II. The decision of the Full Bench of this Court in the case of *Nathiben* (*supra*) is reaffirmed and it is further held that the insurer, in order to successfully disclaim his liability on the ground mentioned in Section 96 (2) (b), has to establish :

(i) that on the date of contract of insurance, the insured vehicle was expressly or implicitly not covered by a permit to carry any passenger for hire

or reward,

(ii) that there was a specified condition in the policy which excluded the use of the insured vehicle for the carriage of any passenger for hire or

reward,

(iii) that the vehicle was, in fact, used in breach of such specified condition on the occasion giving rise to the claim by reason of the carriage of the

passenger therein for hire or reward, and

(iv) that the vehicle was used by the insured or at his instance in breach of specific conditions including a condition that in the goods vehicle

passengers for hire or reward were not to be carried. If it is done without knowledge of the insured by the driver's acts or omission, the insurer

would be liable to indemnify the insured.

13. Since the claim of the claimants/appellants herein is reduced to the extent of Rs. 50,000/- in this appeal and the appeal is restricted to the

extent of Rs. 50,000/- to the insured, obviously, therefore, the second incidental question about the extent of liability of the Insurance Company

will not, in any case, detain us any longer. However, the mention that in a case like one on hand when the insurance policy is an act policy under

Motor Vehicles Act, 1939, like that the old act the liability of the Insurance Company would be limited to the extent of statutory limit of Rs.

50,000/-. The accident occurred on 14-11-1980 and upto 1-10-1982, the statutory limit was prescribed u/s 95 (2) (a) upto Rs. 50,000/-. After

amendment in Clause (a), Sub-section (2) of Section 95 from 1st October 1982 the limit of liability of Insurance Company came to be enhanced

from Rs. 50,000/- to Rs. 1,50,000/-. The present case is covered by the then provisions of Section 91(1) (a) before 1st October 1982. In other

words, the claimants shall be entitled to the grant of Rs. 50,000/- and the Insurance Company shall be liable to indemnify the insured to the extent

of an amount of Rs. 50,000/- plus cost and: interest, to which the claim is reduced insofar as the First Appeal is concerned.

14. As the claimants shall be entitled to recover full amount as awarded by the Tribunal against the original opponents and the liability of the insurer

would be limited to the extent of Rs. 50,000/-, with proportionate cost and interest thereon.

15. After having examined the facts and circumstances emerging from the record

of the present case, copies supplied in the course of submissions and relevant proposition of law decision of this Court culminated into Full Bench judgment in Kamlaben's case and we have no hesitation in holding that the Appeal on merits warrant our interference and the Appeal is required, to be allowed fully and the claim against the insurer is restricted to Rs. 50,000/- with proportionate cost and interest thereon.

16. Insofar as the question of apportionment of the amount of compensation is concerned, we are tempted to modify and substitute the following directions in place of the directions contained in the amount awarded in view of the age of the widowed mother and widow of the deceased and the extent of their dependency and the utility of the income of the deceased as under :

- (i) 1/3rd of the amount of compensation with proportionate cost and interest shall be apportioned to the appellant No. 1-original claimant No. 1.
- (ii) Remaining amount of 2/3rd be apportioned to appellant No. 2- original claimant No. 2, the widow of the deceased.

As an abundant precaution we clarify and reiterate that the apportionment of the amount of award as assessed and determined by the Tribunal shall stand modified to the extent aforesaid.

17. In the result, while affirming the impugned judgment and decree recorded by the Tribunal in part and reversing the direction of the Tribunal in absolving the liability of the Insurance Company, we allow this Appeal in part and we hereby direct respondent No. 2 herein, Insurance Company to indemnify the insured or to pay an amount of Rs. 50,000/- (Rupees fifty thousands only) with proportionate cost and interest to the claimants within the period of four weeks from today. When same rate of interest is awarded by the Tribunal, rest of the impugned judgment and award are unaffected. Consequently, the Appeal is allowed partly with costs.