

(2019) 06 GUJ CK 0069
In the Gujarat High Court

Case No : R/First Appeal No. 564, 565, 631, 632 Of 2018

Shriram General Insurance Co. Ltd

APPELLANT

Vs

Nitaben Kishorbhai Thanki & 7 Other(s)

RESPONDENT

Date of Decision : 28-06-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 3, 3(1), 4, 5, 134, 173, 177, 181, 184
Indian Penal Code, 1860 — Section 279, 304, 304(4), 337, 338

Citation : (2019) 06 GUJ CK 0069

Hon'ble Judges : K.M.Thaker, J;V.P. Patel, J

Bench : Division Bench

Advocate : Rathin P Raval, Vibhuti Nanavat, Y J Patel

Final Decision : Allowed

Judgement

Â V.P. Patel, J

1. The appellant-original opponent No.6- Shriram General Insurance Co. Ltd. has preferred the First Appeal No. 564 of 2018 and the appellant â?

Opponent No.3- Reliance General Insurance Company Ltd. has preferred the First Appeal No. 631 of 2018 under Section 173 of the Motor Vehicle

Act, 1988 (for short â??the M.V.Actâ?), being aggrieved and dissatisfied by the judgement and award dated 17.11.2017 passed by Learned

M.A.C.Tribunal (Aux.) & 4th (Ad-hoc) Addl. District Judge, Gir-Somnath at Veraval in M.A.C.P. No. 74 of 2012.

2. Heard Mr.Rathin P.Raval, learned advocate for the Shriram General Insurance Co. Ltd.; Mr. Y.J.Patel, learned advocate for the original claimants;

Mr. Vibhuti Nanavati, learned advocate for the Reliance General Insurance Company.

Though served, driver and owner of truck have not entered appearance. Driver

and owner of Jeep are unserved as refused the process.

3. The facts are drawn from First Appeal No. 564 of 2018 which is as under :-

3.1 It is case of the appellant that on 28.5.2012, deceased Kishorbhai along with other persons was going towards Naliya by travelling in vehicle Jeep

(Tufun) No. GJ-12T-1862. When they reached near the accidental place at that time, the Opponent No.1 came from opposite direction by way of

driving vehicle Truck bearing No. GJ-12-Z-2338. His manner of driving was rash and negligent and ultimately both the vehicle collided with each other

and thereby the alleged accident has been occurred in which deceased Kishorbhai has been died.

3.2 The applicant No.1 -Nitaben wd/o. Kishorbhai Thanki, etc. have claimed compensation for Rs.50,00,000/- for the death of Kishorbhai Devjibhai

Thanki who was husband of No.1 and father of Nos. 2 and 3.

3.3 The learned Tribunal had partly allowed the claim petition and also held that the Opponent Nos. 1 to 3 are jointly and severally liable to pay

Rs.14,82,000/- (60% amount of Rs.24,70,000/-) and opponents Nos. 4,5 and 6 are jointly and severally liable to pay Rs. 9,88,000/-(40% amount of

Rs.24,70,000/-)to the present claimants.

3.4 The appellant has prayed for the following main relief :-

â??C. Be further pleased to consider that the judgement /award of the Ld. Motor Accident Claims Tribunal (Aux.), Gir-Somnath at Veraval in

MACP No. 74 of 2012 dated 17.11.2017 is illegal, wrong and be further be pleased to quash and set aside the impugned judgement/award and/or

modify the same considering merits of the case.â??

Submission of the parties

4. Mr. Rathin Raval, learned advocate for the appellant submits that the inferences drawn and conclusions arrived at by the learned Tribunal are

erroneous and against the provision of law. He further submits that the Id. Tribunal has not properly appreciated the legal defences as raised by the

appellant in its written statement.

4.1 He also submitted that the Id. Tribunal has not considered the fact that driver did not have any license to drive the vehicle on the date of accident

and therefore, as per various decisions of the Apex Court, the Insurance Company had no liability to pay any compensation.

4.2 He further submits that in order to prove its defence, the appellant had sent legal notice through RPAD to owner/driver and the charge-sheet has been exhibited at Exh.

37. He further submits that the charge-sheet itself shows that the driver of insured vehicle was not having any driving license to drive the vehicle.

Hence the appellant had conclusively proved its defence. He has also relied upon the decision of the Apex Court rendered in case of National

Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala reported in AIR 2009 SC 208 wherein, it is held that Section 173 of the M.V.Act - driver did not have

valid licence on the date of occurrence. It is also held that the insurer will have no liability in that case the claimant can recover the amount from

respondent No.2 and appeal was allowed.

4.3 He also submits that the owner of the vehicle was carrying more passengers than the capacity in the appellant's insured vehicle. Therefore,

the appellant is not liable to pay any compensation.

4.4 He also submits that the age of deceased Kishorbhai Thanki was 51 years as per the claimants. The learned Tribunal erroneously considered as

37 years and therefore, the appropriate multiplier would be 11 instead of 15 as adopted by the Ld. Tribunal.

4.5 He further submits that the prospective income as per Pranay Sethi would be 10 or 15% instead of 30% as considered by the Ld. Tribunal.

5. Mr. Vibhuti Nanavati, learned advocate for the Reliance General Insurance Co. Ltd. has while supporting the submission advanced by Mr. Rathin

Raval, learned advocate submitted that the learned Tribunal has not decided the issue of negligence amongst the drivers of truck and jeep and also not

considered the age of the deceased and income of the deceased properly.

6. Mr. Y.J.Patel, learned advocate for the original claimants. He vehemently submitted that the learned Tribunal has not committed any error and the

award is fair and proper. According to learned advocate for the original claimants, the appeals deserve to be rejected.

Merits of the case :-

7. We have considered the rival submissions, record and proceedings of MACP No. 74 of 2012 and other material available on record.

8. From the judgement and award, it emerges that :-

(a) The driver did not have any license (let alone an invalid license) as evidenced by the charge-sheet produced at Exh. 37.

(b) The driver was also charge-sheeted for Section 181 of the Motor Vehicle Act.

(c) The employee of the owner of the vehicle was specifically charge-sheeted for carrying large number of passengers in the vehicle which was not

permitted as per the seating capacity. Therefore, the risk of such passenger cannot be covered.

(d) Multiplier is calculated on higher side.

(e) The prospective income is not as per judgement of Pranay Sethi.

9. The appellant "Insurance Company has produced charge-sheet at Exh. 37 before the trial Court. The charge-sheet is filed against the Yograjsinh

Pravinsinh Parmar driver of the truck No. GJ-12-Z-2338, Ibhla Ibrahim Mokarashi -owner of Jeep and Ismilebhai Ramjubhai Node - driver of Jeep

bearing its registration No. GJ-12T-1862 for the offences punishable under Sections 304, 304(A), 279, 337, 338 of the Indian Penal Code and under

Sections 3, 4, 134, 177, 181 and 184 of the Motor Vehicle Act, 1988 .

10. It is beneficial to refer Section 3(1), Section 5 and Section 181 of the M.V.Act which reads as under :-

3. Necessity for driving licence.

1.No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the

vehicle; and no person shall so drive a transport vehicle [other than a motor cab hired for his own use or rented under any scheme made under sub-

section (2) of section 75] unless his drivin licence specifically entitles him so to do.

5. Responsibility of owners of motor vehicles for contravention of sections 3 and 4.

No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of to drive the vehicle.

181.Driving vehicles in contravention of section 3 or section 4. Whoever, drives a motor vehicle in contravention of section 3 or section 4 shall be

punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

11. The learned Tribunal has observed that Opponent No.6 has raised the defence as regard to driving licence which reads as under:-

â??The Opponent No. 6 has also filed itâ??s written argument (Exh. 67); wherein the Opponent No. 6 has raised the defence regarding driving

licence and contended that the driver was not hold valid and effective driving licence and therefore the Insurance Company would not be liable.â??

Learned tribunal has not made any attempt to discuss the effect of non valid driving licence on the point of liability of insurance company.

12. Section 177 and 184 of the M.V.Act reads as under :-

177. General provision for punishment of offences.

Whoever contravenes any provision of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence

is punishable for the first offence with fine which may extend to one hundred rupees, and for any second or subsequent offence with fine which may

extend to three hundred rupees.

184. Driving dangerously.

Whoever, drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of case including

the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably

be expected to be i the place shall b punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which

may extend to one thousand rupees, and for any second or subsequent offence if committed within three years of the commission of a previous similar

offence with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

13. The allegation in charge-sheet that Yograjsinh Pravinsinh Parmar has driving the truck bearing its registration No. GJ-12-Z-2338 in rash and

negligent manner and collided with Tempo Texy [Jeep (Tufan)] bearing registration No. GJ-12-T-1862. 13 persons have died and 4 persons have

been injured. Ismailebhai has driven the Jeep with overloaded and beyond capacity of passenger with rash and negligent manner. Ibhl Ibrahim

Mokarashi- owner of the Jeep also charge-sheeted.

14. Learned Tribunal has not consider the defence of the appellant in spite of it was specifically pleaded. The charge-sheet contains offence under

Sections 3, 4, 177, 181, 184 of M.V. Act. It appears that the learned Tribunal has not consider and dealt with the defence raised by the appellant -

Insurance Company. The Court has to appreciate the evidence on record for the issue raised. It will be better if both the parties to lead sufficient

evidence and agitate the issue afresh. Therefore, the matter requires to be remanded back to the tribunal .

15. In view of the above, the appeals being First Appeal No. 564 of 2018 & First Appeal No. 631 of 2018 are allowed. The impugned judgement and

award dated 17.11.2017 passed by learned M.A.C.Tribunal (Aux.) & 4th (Ad-hoc) Addl. District Judge, Gir-Somnath at Veraval in M.A.C.P No. 74

of 2012 is quashed and set aside with following directions :-

a. Matter is remanded back to the Tribunal with a direction to the readmit the claim petition under its original number in institution register.

b. Ld. Tribunal will consider proceeding to determine the claim petition and the evidence already recorded during the original trial shall, subject to all

just exceptions, be evidence during trial after remand. Both the parties are at liberty to produce their evidence.

c. Learned Tribunal to decide it afresh after giving reasonable opportunity to both the sides within four months from the date of receipt of copy of this

order.

d. The amount of compensation withdrawn by the claimants shall be adjusted with the final outcome of claim petition to be taken by the tribunal

afresh.

e. Amount of compensation deposited but not withdrawn shall be fixed in FDR with cumulative effect. The same will be subject to final outcome of

the proceeding before the tribunal.

15. It is made clear that this Court has not expressed any opinion on merits of the case. Record and proceedings shall be returned forthwith to the

learned tribunal.