
(2022) 12 GUJ CK 0037

In the Gujarat High Court

Case No : R/First Appeal No. 2017 Of 2022, Civil Application (For Stay) No. 1 Of 2022

Tata Aig General Insurance Co Ltd

APPELLANT

Vs

Patel Vishnubhai Shankarlal

RESPONDENT

Date of Decision : 09-12-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2022) 12 GUJ CK 0037

Hon'ble Judges : Dr? Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Rathin P Raval, Tirth Nayak

Final Decision : Allowed/Disposed Of

Judgement

Dr. Ashokkumar C. Joshi, J

1. Admit. Learned advocate Mr. Tirth Nayak waives service qua respondent No. 1.
2. This is an appeal filed under Section 173 of the Motor Vehicles Act, 1988 (MV Act) by the appellant - Tata AIG General Insurance Co. Ltd. challenging the judgment and award dated 11.05.2022 passed in Motor Accident Claim Petition No. 23 of 2014 by the learned Motor Accident Claims Tribunal (Auxiliary-V), Mahesana whereby, against the claim of Rs.2 lakh for the injuries sustained by the original claimant in an accident that had occurred on 10.11.2013, the Tribunal has awarded an amount of Rs.1,91,560/- with 9% interest per annum from the date of filing the claim petition till realization holding the opponents therein jointly and severally liable to pay the compensation.
3. Heard, learned advocate Mr. Rathin P. Raval for the appellant – insurance company and learned advocate Mr. Tirth Nayak for the respondent No. 1 – original claimant. The respondent No. 2, who is the owner of the offending vehicle, has remained unserved as expired.

4. The sole contention that has been raised by the learned advocate for the appellant is that pending the claim petition, the owner of the vehicle i.e. the respondent No. 2 herein – original opponent No. 1 had died.

Nonetheless, the Tribunal has passed the award holding liable the opponents before the Tribunal i.e. the owner and the insurance company (the appellant herein) to pay the compensation to the claimant. Accordingly, in his submission, the award and decree having been passed against a dead person, stand nullity and eventually, he urged to set aside the impugned judgment and award and thereby, to allow this appeal.

4.1 In support, he has relied upon following decisions:

i) order dated 27.02.2020 passed by the coordinate Bench in First Appeal No. 4485 of 2018 with Civil Application (For Stay) No. 1 of 2018;

ii) order dated 30.04.2019 passed by the coordinate Bench in F/First Appeal No. 32469 of 2018;

iii) decision of the Division Bench of this Court in United India Insurance Co. Ltd. v. Mohanlal Nandiram and Others, 2001 ACJ 567;

iv) decision of the Division Bench of this Court in Oriental Insurance Co. Ltd. v. Hansaben Khumansinh Padhiyar and Others, MANU/GJ/0937/2009;

v) order of the coordinate Bench passed in First Appeal (Stamp Number) No. 3446 of 2012 with Civil Application No. 1276 of 2014 in Civil Application No. 9699 of 2013 dated 10.03.2014.

5. Per contra, learned advocate Mr. Tirth Nayak for the respondent No. 1 – original claimant, while heavily resisting this appeal, submitted that the impugned judgment and award passed by the Tribunal being just and proper and in accordance with law, no interference is required at the hands of this Court. He further submitted that even otherwise, it is an undisputed fact that the offending vehicle was insured by the appellant – insurance company and in the circumstance, when the appellant is to indemnify the insured i.e. the owner of the offending vehicle, such a technicality may not come in the way of the claimant who is the ultimate sufferer. Accordingly, he urged to dismiss this appeal.

6. Regard being had to the submissions made and considering the facts and circumstances of the case vis-a-vis the decisions relied upon by the learned advocate for the appellant, indisputably, the owner of the vehicle had died prior to the award passed in the original claim petition. It is also an undisputed fact that the legal heirs of the deceased owner of the offending vehicle have not been brought on record till date. It is settled law that the decree passed against a dead person is nullity. This Court has, time and again, has reiterated the said proposition of law in the decisions referred to herein above and as relied upon by the learned advocate for the appellant. Accordingly, without burdening this

judgment anymore, as the issue is no more res integra, in the considered opinion of this Court, the appeal is required to be allowed by setting aside the impugned judgment and award. However, considering the fact that the incident is of 2013 and the injured – claimant may not have to undergo further traumatic condition as also considering the fact that the MV Act is a benevolent legislation, the Court deems it proper to remand back the matter to the Tribunal to decide the same afresh in a time frame schedule.

7. In the aforesaid backdrop, this appeal succeeds and is allowed accordingly. The impugned judgment and award, as referred to herein above, is hereby set aside. The matter is remanded back to the Tribunal concerned for deciding the same afresh, in accordance with law, without being influence by any order. Amount, if any, disbursed in favour of claimant / invested in fixed deposit, shall not be disturbed and the same shall be subject to the final out come of the claim petition so decided afresh. Keeping in view the fact that the incident is of the year 2013, the Tribunal concerned shall decide the petition as early as possible, preferably within four months from the date of receipt of writ of this order.

7.1 In view of main appeal is disposed of, civil application therein does not survive and the same also stands disposed of accordingly.