

(2014) 01 GUJ CK 0149
In the Gujarat High Court

Case No : First Appeal No's. 2954, 2955 of 2013 to First Appeal No. 2957 of 2013, Civil Application No. 10929 of 2013 in First Appeal No. 2954 of 2013 to Civil Application No. 10932 of 2013 in First Appeal No. 2957 of 2013

The New India Assurance Co. Ltd.

APPELLANT

Vs

Dineshkumar Chhotelal Tiwari and Others

RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2014) 3 ACC 167

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

Bench : Single Bench

Advocate : Vibhuti Nanavati, s No. 1, for the Appellant; Hiren M. Modi, Advocate for the Respondent(s) No. 6 - 8, for the Respondent

Final Decision : Dismissed

Judgement

M.D. Shah, J.—All these first appeals have been filed by the original opponent No. 3-The New India Assurance Company Ltd. under Sec. 173 of the Motor Vehicles Act, 1988 being aggrieved and dissatisfied with the judgments and awards dated 14-12-2012 passed by the Motor Accidents Claims Tribunal (Aux.) at Ahwa in MACP Nos. 101, 102, 103 and 119 of 2007 respectively. Civil Application Nos. 10929 of 10932 of 2013 have been filed for stay of the impugned judgments and awards. Facts in short are that claim petitions were filed by the claimants, who were heirs and legal representatives of the deceased and injured persons, claiming compensation for death/injuries suffered by them in an accident which occurred on 25-11-2006 between vehicles namely, Maruti Van and Truck when they were going to Shirdi from Vyara. Upon issuance of summons and after hearing the learned counsel appearing for the parties and considering the oral as well as documentary evidence on record, the impugned judgments and awards were passed by the Tribunal.

2. I have heard learned advocates, Mr. Vibhuti Nanavati for the appellant-Insurance Company and Mr. Hiren M. Modi for the original claimants. I have also gone through oral as well as documentary evidence on record.

3. It is submitted by Mr. Vibhuti Nanavati, learned advocate for the Insurance Company that though notice is served upon driver and owner, they did not remain present and, therefore, an adverse inference ought to have been drawn against them by the Tribunal. It is also submitted that copy of the certificate issued by RTO in reference to legal and valid license of the driver has been placed on record and investigator of the Insurance Company is also examined, in spite of that, the Tribunal has committed error in holding that it is not proved by the insurance company that driver is not having legal and valid license and is holding only a fake license and, therefore, impugned judgments and awards require to be quashed and set aside and appeals require to be allowed.

4. It is however submitted by Mr. Hiren M. Modi, learned advocate for the original claimants that considering the oral as well as documentary evidence and other factors such as income, age and proper multiplier at the relevant time, the Tribunal, by a reasoned order, has passed just, legal and proper awards and hence, same may not be interfered with in these appeals.

5. This court has also gone through the judgments and awards as well as record and proceedings of the cases.

6. It is to be noted that policy is not in dispute and risk is also covered. It is an admitted fact that simple copy of the certificate issued by the RTO Officer, Lucknow, is placed on record. From the RTO office, no person is examined to prove the contents of this certificate nor genuine document is produced by the insurance company by itself or through a person of competent authority i.e. RTO office at Lucknow. The investigator examined on behalf of opponent No. 3 at Ex. 100 did not produce certified copy allegedly issued by RTO, Lucknow. Therefore, the story put forward by the insurance company about fake license being held by opponent No. 1 is not proved at all and, therefore, the Tribunal has not committed any error in holding that insurance company has not proved that driver was holding a valid and legal license to drive the vehicle. Moreover, driver of the truck has not stepped into witness box nor any attempt has been made by the insurance company to examine the driver. Further, even though he was served with process in 2007, written statement was filed by the insurance company only on 17-9-2011 i.e. after a long delay of about four years and no convincing and satisfactory explanation is coming for the same and also for non-production of certified copy of status of license of driver of the offending vehicle from RTO.

7. In view of the above, the Tribunal discussing the evidence in great detail and considering the documentary evidence such as FIR and other evidence in detail has rightly held that offending vehicle-truck is negligent in causing the accident and hence, finding on this aspect is legal and proper.

8. As far as quantum awarded in MACP No. 101 of 2007 is concerned, the deceased was 35 years of age and necessary income tax returns were also placed on record. Considering these documentary evidences, it was rightly held by the Tribunal that the deceased was earning approximately Rs. 1,10,000/- per year and deducting one-third towards personal expenses and applying a suitable multiplier of 15 has awarded just and adequate compensation and no error is committed in the same. As far as amounts awarded under funeral expenses, etc. are concerned, just and adequate amounts have been awarded under those heads.

9. As far as other claim petitions are concerned, considering the oral as well as documentary evidence such as monthly income, age and other relevant factors, just and adequate compensation has been awarded and, therefore, findings on the aspects of quantum in those claim petitions are not interfered with. In view of the above, this Court is of the opinion that these appeals deserve to be dismissed.

10. All the appeals are dismissed. In view of the dismissal of main first appeals, Civil Applications for stay do not survive and are accordingly disposed of.

11. Office to place a copy of this judgment in each matter. Records and proceedings be sent back forthwith.