
(1984) 04 GUJ CK 0017
In the Gujarat High Court

The New India Assurance Co. Ltd.

APPELLANT

Vs

Gunwanti Hemraj and Others

RESPONDENT

Date of Decision : 04-04-1984

Acts Referred:

Evidence Act, 1872 — Section 65, 65, 66, 66
Motor Vehicles Act, 1988 — Section 95(2)(b)(ii)

Citation : (1984) 2 ACC 399

Hon'ble Judges : N.H. Bhatt, J;M.B. Shah, J

Bench : Division Bench

Judgement

N.H. Bhatt, J.—These two appeals arise out of the judgment and the award in Motor Accident Claims Petition No. 65 of 1974 decided by the Motor Accident Claims Tribunal at Godhra. The First Appeal No. 713 of 1976 has been preferred by the Insurance Company, the opponent No. 3 in the claim petition, whereas the First Appeal No. 837 of 1976 is preferred by the original opponents Nos. 1 and 2, who were the owners of the vehicle in question. The owners complained that the amount awarded by the Tribunal was far too excessive. The insurance company's contention right from the stage of the trial was that in respect of the death of deceased Hemraj, the husband of the original claimant No. 1 and father of the rest of the three minor claimants, their liability was limited to Rs. 5000/- alone and that the Tribunal's judgment making the insurance company liable for Rs. 38,250/- was clearly contrary to law.

2. In order to understand the question, a few facts are required to be stated. The vehicle in question was a luxury bus so made as to carry more than six passengers. On 4-5-74 deceased Hemraj was travelling by that vehicle from Indore and was heading towards Ahmedabad by that bus No. MPI 4865. When the bus reached near village Veganpur, about 10kms. away from Godhra, one truck came from the opposite direction and there was collision between these two vehicles with the result that the side portion of the truck pierced into the right side portion of the bus and the whole of the right hand of Hemraj was cut and amputated in a few seconds with profuse bleeding which resulted into shock

and haemorrhage, which accounted for his almost instantaneous death. Deceased Hemraj was 29 years of age on the day of accident. His heirs had filed the claim petition to have Rs. 70000/- from the owner, the driver and the insurance company.

3. The first question and the foremost one that arises for our consideration is whether the insurance company's liability is limited to Rs. 5000/- per passenger. With very heavy heart so to say, we have to uphold the argument canvassed on behalf of the insurance company. Section 95(2)(b)(ii)(4) of the Act leaves no scope for any mincing of matters. This is a policy of insurance required under the statute and the policy was required to cover any liability in respect of this vehicle in which passengers were carried for hire or reward, to Rs. 5000/- for each individual passenger. Clause (4) of sub Section (2)(b)(ii) says that subject to the limits aforesaid (those limits are set out in sub-paragraphs (1) to (3), the liability in respect of an individual passenger of a vehicle other than a motor car will be Rs. 5000/-. We have before us the judgment of this Court delivered by me sitting with late M.K. Shah, J. in the case of the New India Assurance Co. Ltd. v. Abdul Rehman Hasanbhai and Ors. 1980 GLR 677 where the very Clause (4) of Section 95(2)(b)(ii) of the Motor Vehicles Act was on our anvil. We, therefore, find no way out to hold the poor dependents of the deceased, the unfortunate victim.

4. Mr. Shah, however, invited our attention to the fact that the policy in question, which is not the original but a true copy, was given an exhibit by the Tribunal at the time of delivering the judgment and the document could be said to have been duly brought on record. This argument does not sound well for the simple reason that on the list exh. 8 with which the document was produced at the earlier stage, there is an endorsement by the advocate for the owner himself that they had no objection to the document being exhibited. It is no doubt true that in the initial stages, objection was lodged to its being exhibited, but the subsequent endorsement does away with the earlier one. Mr. Shah's argument is that mere consent to exhibiting document does not amount to proof of the contents of the document. In the circumstances of the case, it appears clear that consent was given to reading the document as a whole and the consent was not limited to dispensing with formal proof of the document. The argument that this document exh. 65. is only a copy of the policy is hardly of any avail, because the original policy of the insurance will be with the owner, who has conveniently kept it back. In a case like the one, he was expected to produce the original policy vide Sections 65 and 66 of the Indian Evidence Act.

5. It was then urged that the Supreme Court had left the question open. Our attention was invited to the case of Motor Owners Insurance Co. Ltd. v. Jadavji Keshavji Modi and Ors. AIR 1981. S.C. 2029. The fact that the Supreme Court was not required to deal with this question and it left the question open, that is, undecided, will not detract from the legal situation that arises from the insurance company's view being upheld by this Court on the earlier occasion. The judgment of this Court in the case of New India Assurance Co. Ltd. (supra) 21.

GLR 677 lends support to the view of the Insurance Company, which in its turn refers to earlier judgments of this Court. So the insurance company's appeal will be required to be allowed by declaring that the liability of the insurance company will be limited to Rs. 5000/- plus proportionate costs and interest thereon i.e. Rs. 5000/-. The First Appeal No. 713 of 1976 accordingly stands allowed with no order as to costs.

6. This brings us to the First Appeal No. 837 of 1976. We do not think that the owner can contend that the award amount is in any way higher. We would say that the amount of Rs. 38,580/- awarded in the case of the death of a young man of 29 years of age is far below the normal standards. Mr Shah in this connection urged that the deceased had kept his hand outside and there was specific instruction issued not to keep the hand protruding. There is no satisfactory evidence to show that such an instruction was issued.

7. The result is that the First Appeal No. 237 of 1976 stands dismissed with cost. It is hoped that within 4 weeks from to-day, the owner now will deposit the amount for which i.e. is held liable finding that at the level of the High Court, his hope of roping the Insurance Company has been frustrated.