(1985) 08 GUJ CK 0024

In the Gujarat High Court

The New India Assurance Co. Ltd. APPELLANT

Vs

Modi Narayanbhai Maganbhai Mehsana and Others RESPONDENT

Date of Decision : 14-08-1985

Acts Referred:

Citation : (1986) 1 ACC 489 : (1986) ACJ 807 : (1986) 2 GLR 1185

Hon'ble Judges : J.P. Desai, J

Bench : Single Bench

Judgement

J.P. Desai, J.—Respondent No. 2 has now produced before this Court a zerox copy of Certificate of Insurance which shows that the vehicle was insured with this Insurance Company on the date of this incident. This is, of course, produce after the matter was admitted by this Court yesterday. The clerk of the respondent produced this zorox copy yesterday and is also present before the Court today.

2. Mr. R.H. Mehta, learned advocate for the appellant-Insurance Company states that he has verified from his office records after the zerox copy was produced before this Court yesterday that the vehicle was insured with the appellant on the date of the accident. In view of this, Mr. Mehta, with his usual fairness, states that he does not wish to press this appeal. He also states that the appellant will deposit the amount of the award with costs of the trial Court and interest within eight weeks from today with the Tribunal. The interim stay granted in Civil Application No. 2084 of 1985 to continue till then.

3. Now, as the appeal is being withdrawn by the appellant, ordinarily I would not have passed a speaking order, but it is necessary to do so for the guidance of the Tribunals. In the present case, neither the claimant not the owner of the vehicle gave any details about the policy of Insurance so as to enable the Insurance Company to trace from their records whether the vehicle was insured with the Insurance Company at any time. It was not possible for the Insurance Company to trace from their records whether the vehicle was insured with the said Insurance Company on the date of this accident, if at all it was insured with the

said Company. The Tribunal also did not call upon the owner of the vehicle to produce the policy of insurance or any other document showing that the vehicle was insured or any other document showing that the vehicle was insured on the date of this incident with this Insurance Company. Inspite of the fact that no material was produced before the Tribunal showing that the vehicle was insured with the appellant Insurance Company, the learned Tribunal passed an award against the Insurance Company, The relevant contention in this regard has been discussed by the Tribunal at para 8 of the judgment under appeal. The learned Tribunal has observed that the Insurance Company was trying to avoid its liability. The learned Tribunal has also observed that the Insurance Company being a pubic body was expected to act in a fair manner and should not act to avoid its liability by coming out with such a vague allegation. The learned Tribunal has observed that though sufficient time was given to the Insurance Company, the Insurance Company could not trace the policy. The Tribunal has also observed that there was gross negligence on the part of the Insurance Company. The learned Tribunal has taken the view that the Insurance Company did not come forward with a specific say that the vehicle was not insured with them even though sufficient time was given to them to ascertain this fact and, therefore, it cannot be believed that the vehicle was not insured with them. This view of the learned Tribunal, with respect, was not a correct one. The approach of the learned Tribunal was not proper. The Tribunal ought to have called upon the applicant-claimant as well as the owner of the vehicle to give details of the insurance so to enable the Insurance Company to search their records and come forward with a say whether the vehicle was insured with them on the date of the incident or not. It will be very difficult, well-neigh impossible, for an Insurance Company to search their huge records and find out whether a particular vehicle was insured with them unless some material is supplied to the Insurance Company to make search in their records. The Insurance Companies have got several branches throughout the country and unless it is known as to with which branch the vehicle was insured and for what period and in whose name, it will be difficult, well-nigh impossible, for the Insurance Companies to search their records to ascertain whether the vehicle was insured with them and hence the Insurance Company naturally cannot come forward with positive statement that the vehicle was not insured with them. Simply because a petition for compensation under the provisions of the Motor Vehicles Act is filed against an insurance Company, it cannot be presumed in absence of some material on record that the vehicle was insured with that Company on the relevant date i.e. the date of accident simply because the petitioner and even owner of the vehicle come forward with a say that the vehicle was insured with a particular Insurance Company on the date of the accident. Instead of finding fault with the Insurance Company, if the Tribunal had called upon the opponent-owner to produce the certificate of insurance or any other document showing that the vehicle was insured with this Insurance Company on the date of the accident, then the owner would have certainly produced the same, as has been done in this appeal. The Insurance Company would have in that case admitted after searching their record that the vehicle was insured with them. I would also like to mention here that it was not proper on the part of the learned Tribunal to have made passing and sweeping observations against the Insurance Company. The Insurance Company was not at all interested in denying the Claim if, in fact, the vehicle was insured with the said Company. Simply because the Insurance Company was not able to trace their records for want of necessary information, it cannot be said that the Insurance Company waned to avoid the liability. The Insurance Company, on the contrary, has been very fair to this extent that no sooner the opponent-owner produced before this Court yesterday the Certificate of Insurance, inquiry was made immediately and today Mr. Mehta fairly conceded that no interference was called for with the award passed by the Tribunal in these circumstances and the very fairly withdrawn the appeal, as stated in the beginning. The Insurance Companies are responsible bodies and their officers are responsible officers who cannot have any reason to deny the factum of insurance if the vehicle is, in fact, insured with the concerned Company. It would not be fair to the Insurance Companies and their officers to make observations criticising. Them as was done in the present case by the learned Tribunal I hope that the Tribunals working under the Motor Vehicles Act will make proper approach in such cases and instead of finding fault with the Insurance Companies and their officers and instead of saddling the Insurance Companies with liabilities without any material on record, see that necessary material is brought on record an order is passed against an Insurance Company.

4. A copy of this order should be circulated to all the Tribunals in the State.

