
(1978) 07 GUJ CK 0004
In the Gujarat High Court

The Oriental Fire and General Insurance Co. Ltd.	APPELLANT
Vs	
Ganchi Ramanlal Kantilal (Since Decd.) and Others	RESPONDENT

Date of Decision : 10-07-1978

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 95(2), 95(2)(b), 95(2)(b)

Citation : (1979) 1 GLR 134

Hon'ble Judges : S.H. Sheth, J;M.K. Shah, J

Bench : Division Bench

Judgement

S.H. Sheth, J.—These two appeals have been filed by the Insurance Company in a motor accidents claim case. The facts of the case brief stated are as under:

2. On 20th November 1973 a station wagon belonging to Moder Construction Company was proceeding from Dharoi colony to Dharo project site and, amongst others, two employees of the State Government Ramanlal Kantilal and Sevantilal Somchand were travelling by that station wagon. While taking a turn on way, the station wagon fell in the nearby ditch because the driver did not slow down the speed. As a result of this accident, Sevantilal died on the spot, Ramanlal became unconscious and was removed to the hospital where he never regained consciousness and ultimately died on 8th of May 1975. M.A.C.T. Petition No. 19 of 1974 was filed by the heirs of Ramanlal and M.A.C.T. Petition No. 74 of 1974 was originally filed by Sevantilal himself but after his death it was continued by his heirs. Ramanlal's heirs claimed the compensation of Rs. 60,000/-. Sevantilal's heirs claimed the compensation of Rs. 50.000/-. Both the petitions were filed in forma pauperis. The Tribunal heard both the petitions and made in favour of Ramanlal's heirs award for Rs. 50,200/- while it made in favour of Sevantilal's heirs award for Rs. 28.500/-These awards have not been challenged by the owner of the vehicle Modern Construction Company. There is no challenge to these awards on behalf of any of this claimants on the ground that the amount awarded by the Tribunal is less. The challenge to the awards has been made only by Oriental Fire and General Insurance Company Limited with which the vehicle

was insured by Modern Construction Company.

3. On behalf of the Insurance Company, Mr. Zaveri has raised two contentions before us:

(i) The deceased were gratuitous passengers. Therefore, the Insurance Company under the terms of the policy was not liable to pay anything to the claimants in order to indemnify the insured,

(ii) In the alternative, liability of the Insurance Company is limited in terms of the policy to a sum of Rs. 15,000/- only in case of the claim made by Sevantilal's heirs.

He has contended that since Ramanlal died about 11 years after the accident took place, his heirs are not entitled to claim anything under the terms of the policy from the Insurance Company. In this context, he has invited our attention to the policy of insurance Ex. 99.

4. The material portion of the policy reads as under:

In consideration of the payment of an additional premium it is hereby understood and agreed that the Company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by any passenger other than the insured and/or his paid driver attendant or cleaner and/or a person in the employ of the insured coming within the scope of the Workmen's Compensation Act, 1923 and subsequent amendments of the said Act and engaged in and upon the service of the insured at the time such injury is sustained whilst mounting into, dismounting from or travelling in but not driving the Motor Car and caused by violent accidental external and visible means which independently of any other cause shall within three calendar months of the occurrence of such injury result in:

Scale of Compensation. (1) Death.... Rs. 15,000/-

It is not necessary to reproduce other scales given in the policy. Proviso (a) to this term reads as under:

Provided always that:

(a) Compensation shall be payable under one only of items (I) to (7) above in respect of any such person arising out of any one occurrence and the total liability of the Company shall not in the aggregate exceed the sum of....during any one period of insurance.

The blank which is shown in proviso (a) was not filled in.

5. Mr. Zaveri has argued that the expression "any passenger" does not include a gratuitous passenger. We are not impressed by this argument. The expression "any passenger" is an expression of very wide amplitude and means all passengers, whether they are gratuitous or whether they are carried on payment. If the expression "any passenger" was exclusive of gratuitous

passengers, the clause in the policy would have clearly said so. The fact that the expression "any passenger" has been used in the policy without any qualifying words of the nature suggested by Mr. Zaveri clearly shows that it includes within its ambit the gratuitous passengers as well. The first contention raised by Mr. Zaveri is, therefore, without any substance and is rejected.

6. The second contention which Mr. Zaveri has raised is that, in any case, the liability of the insurance company in case of Sevantilal's heirs is limited to Rs. 15,000/- as shown in the policy. He has further argued that so far as Ramanlal's heirs are concerned, the company owes no liability to them because Ramanlal did not die within three months after the accident. There is no dispute about the fact that Ramanlal died 1 year after the occurrence of the accident. The material expression which has been used in the policy (a part of the clause in the policy is reproduced above) states "...within three calendar months of the occurrence of such injury result in death". The argument which Mr. Zaveri has raised is required to be examined with reference to the provisions of Section 95 of the Motor Vehicles Act, 1939. He has invited our attention to Clause (c) of Sub-section (2) of Section 95 which provides as follows:

Subject to the proviso (sic) Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely:

(a)

(b)

(c) save as provided in Clause (d) where the vehicle is a vehicle of any other class, the amount of liability incurred.

He has argued that the amount of liability which the insurance company incurred in the instant case was to the tune of Rs. 15,000/- and no more. It was also conditioned by the fact that the accident led to the death of the victim within three months. He has relied upon the decision of the Supreme Court in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, The contention which Mr. Zaveri has raised indeed finds support from the decision of the Supreme Court in Pushpabai's case provided the case is governed by Clause (c) of Sub-section (2) of Section 95 of the Motor Vehicles Act, 1939. Interpreting the relevant provisions of Section 95, the Supreme Court has observed in that decision that the section does not require that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. However, an insurer can always take the policy covering risks which are not required to be insured by Section 95. In that case the insurer had insured with the insurance company the risk of the passengers. The policy contained an endorsement or clause exactly to the same effect as it is the policy in our case, Ex. 99. The scale of compensation which was fixed was also Rs. 15,000/-. It was argued on behalf of the insured that the liability of the insurance company was unlimited with regard to the risk to passengers. Reliance was placed upon Section II in the policy which is verbatim the same as Section II in the policy in

our case, Ex. 99. It was contended that Section II in the policy provided that the insurance company shall indemnify the insured against all sums including claimant's costs and expenses in the event of an accident caused by or arising out of the use of the motor car which the insured will become liable to pay in respect of death of or bodily injury to any person. It was argued in that case that the wording of this clause was wide enough to cover all risks including injuries to passengers. Interpreting both these clauses, the Supreme Court negated the contention which was raised on behalf of the insured and held that what was intended was the risk to passenger limited to a sum of Rs. 15,000/- u/s 95 of the Motor Vehicles Act. The Supreme Court, therefore, upheld the plea raised on behalf of the insurance company.

7. Now, if the case is governed by Section 95(2)(c), we have no doubt in our mind that the liability of the insurance company extends only to Rs. 15,000/- as stipulated in the policy of insurance, Ex. 99, in case of the claim made by Sevantilal's heirs, while there will be no liability for the insurance company in case of claim made by Ramanlal's heirs because he died after the expiry of three months as stipulated in the policy Ex. 99. The company under the terms of the policy had rendered itself liable to indemnify the insured only if the victim of an accident died within three months of the accident.

8. Mr. Vakil who appears on behalf of the owner of the vehicle or the insured and Mr. Majmudar who appears on behalf of the claimants in both the cases have argued that the present case is not governed by Section 95(2)(c) but is governed by Section 95(2)(b) and that, therefore, the liability of the insurance company extends to Rs. 50,000/- in case of any one accident. In order to examine this contention, it is necessary to have a look at the language of Clause (b) of Sub-section (2) of Section 95. It provides as follows:

Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely

(a)

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, -

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all.

Both the learned advocates have not relied upon the expression "carried for hire or reward" in the instant case, Both of them have argued that Sevantilal and Ramanlal were carried by the vehicle in question "by reason of or in pursuance of a contract of employment". It is necessary in this context to note a few facts.

9. Modern Construction Company is the Government contractor which is constructing Dharoi dam. Persons employed by the Government of Gujarat are working at the site of Dharoi dam. It appears that these persons are housed in a colony situate nearby. The vehicle in question was carrying Ramanlal and

Sevantilal, two of the employees of the Government of Gujarat, from Dharoi colony to Dharoi dam site when the accident occurred. The facts therefore clearly show that the Government contractor, engaged in constructing a dam for the Government, was carrying the Government servants to the dam site for the purpose of their duty. It cannot be gainsaid that Sevantilal and Ramanlal were not the employees of Modern Construction Company. The relationship with Modern Construction Company was through Government. They were the employees of the Government of Gujarat which had entered into a contract with Modern Construction Company. The evidence also shows that the vehicle in question or any other vehicle of Modern Construction Company did not carry these Government servants everyday from the colony to the dam site. Generally they were carried by Government vehicles. On the day of the accident, no Government vehicle was available. Therefore, those who were residing in the colony and had to go to work at the dam site would have been required to cover the distance on foot or would have been required to be carried by the vehicle of Modern Construction Company if their time was to be saved.

10. On these facts, can it be said that Ramanlal and Sevantilal fell within the expression "passengers...by reason of or in pursuance of a contract of employment"? Mr. Zaveri who appears on behalf of the insurance company has argued that the expression "contract of employment" means contract of employment between the deceased and the insured and no other contract of employment. Therefore, according to him, benefit of Clause (b) of Sub-section (2) of Section 95 cannot be extended to the claimants. Mr. Vakil and Mr. Majmudar, on the other hand, have argued that the expression "contract of employment" does not necessarily mean a contract of employment between the insured and the deceased or a contract of employment between the owner of the vehicle and those who were carried on the vehicle and died an accidental death but means any contract of employment with which, directly or indirectly, the insured is rationally or reasonably connected and associated."

11. The expression "a contract of employment" used in Section 95(2)(b) is not conditioned by any qualifying words. Therefore, we see no reason, to narrow down or squeeze its connotation so as to mean a contract of employment between the deceased and the insured. While on one hand we are not prepared to take such a narrow view of such expression, on the other hand we cannot take such a view so as to mean any contract of employment which the deceased may have with any one in the world. Whereas the narrow connotation of this expression is unjustified by the language of legislation because if the Parliament had intended only "a contract of employment" between the insured and the deceased it would have certainly used an appropriate qualifying expression for the purpose, the wider connotation is equally unjustified because we cannot fasten upon the insurance company the liability of every employed person carried by a vehicle irrespective of whether his employment had any reasonable and rational connection with the business of the owner of the vehicle-the insured or in any other manner. Whereas if we take the narrow view we would be guilty of

stepping out of our bounds and trespassing into the realm of legislation, if we take the wider view we shall be exposing the insurance companies or insurers to unforeseen, unexpected and unimagined business hazards. Therefore, in our opinion, what the expression "a contract of employment" means is that the passenger carried in a vehicle must be a passenger who is either employed by the insured or whose employment with some one else has a reasonable and rational association with the business which the insured is carrying on.

12. Reliance has been placed on behalf of the insured and the claimants upon *Izzard v. Universal Insurance Co. Ltd.* (1937) 2 All ER 79. In order to appreciate the principle which the House of Lords have laid down in that case, it is necessary to note a few facts. The deceased Izzard was employed at the time of the fatal accident by Industrial Builders Ltd., which were engaged in building operations at Coventry. There was a verbal contract with Druce that he should do haulage work for it between Didcot and Coventry and at Coventry and should also put a lorry at their disposal every week-end for the conveyance of workmen from Coventry to Didcot and back. The deceased Izzard lived near Didcot and agreed to work at Coventry on the terms which were agreed between the parties. One of the terms stipulated that a lorry would be placed at his disposal if he desired to go to Didcot at week-ends. Accordingly, he went home to Didcot every Saturday and returned to Coventry every Monday. On the day of the accident, while he was being carried back to Didcot on the insured vehicle, he met with his death. The arbitrator under those circumstances found that Izzard was being carried as a passenger on the vehicle by reason of and in pursuance of a contract of employment and his death arose out of the use of the vehicle and, at the time the death was caused, the commercial motor vehicle was being used for a purpose mentioned in the schedule to the policy -that is to say, general haulage and other trades. On these findings, the question arose whether the insurance company was liable to the appellant. In that context, an expression similar to one with which we are concerned in these appeals came up for consideration of the House of Lords. It was contended in that case that the expression "by reason of or in pursuance of a contract of employment." would mean a contract of employment with the insured. It was further argued that the arbitrator had found that there was no contract between Izzard - the deceased - and Druce - the insured, but that there was a contract between Izzard and Industrial Builders Ltd. for which company he was working under a contract, which included, as one of its terms, the option of being conveyed between his home at Didcot and the work at Coventry at week-ends. The House of Lords upon the aforesaid findings recorded the conclusion that the contention raised by the respondent company that "contract of employment" should be construed as subject to the implied limitation "with the person insured by the policy" could be accepted. Such a departure from the clear language, in their opinion, was not justified. Observing further, the House of Lords stated that the law on the subject was dealing with persons who were on the insured vehicle for sufficient practical or business reasons and had taken a contract of employment in pursuance of

which they were on the vehicle as an adequate criterion of such reasons. However, in the opinion of the House of Lords, there would be no sufficient ground for holding that this criterion should be limited to employees of the insured person. Proceeding further, the House of Lords have observed that employees of the insured, if injured or killed, would ordinarily fall under Exception (i) and that such employees, if injured or killed, would rarely claim compensation as passengers. Where the man killed or injured was on the vehicle in pursuance of a contract, not with the owner of the vehicle, but with someone else, for instance, with the person whose goods were being carried on the vehicle, that is to say, a commercial vehicle, carrying the contractor's or merchant's goods, would frequently, and, perhaps, even normally, have on it an employee of the goods' owner, of see loading or unloading or delivering the goods, or caring for them in transit. For such purposes, such a man might be carried as a passenger. The House of Lords, therefore, found that Izzard and his mates were being carried, as found by the arbitrator, for the purposes of the trade in which the truck was engaged and as an incident of the haulage so far as Druce was concerned. The words of the statute, in the opinion of the House of Lords, were general and unlimited and to insert the words "with the insured person" would be to insert words of specific limitation beyond what can be inferred from the general tenor of the Act or policy. If those words had been intended, the learned Law Lords further observed, they could and should have been expressed and that since they were not expressed they ought not to be and could not properly be implied.

13. Support is lent to the view which we are taking by proviso (i) to Clause (b) of Sub-section (1) of Section 95 which specifically deals with the case of a person in the employment of the insured. Therefore, to take the view which Mr. Zaveri has canvassed will mean repetition in Clause (b) of Sub-section (2) of Section 95 what has been provided by proviso (i) to Clause (b) of Sub-section (1) of Section 95. It cannot be done because it will render one of the two clauses redundant. Therefore, when we compare proviso (i) to Clause (b) of Sub-section (1) of Section 95 with Clause (b) of Sub-section (2) of Section 95, we are emboldened to take the view which we are taking. In Izzard's case (*supra*), the House of Lords has also compared two similar provisions occurring in the English Act and expressed the same view.

14. In *Oriental Fire and General Insurance Co. Ltd. Vs. Smt. Gurdev Kaur and Others*, the expression "a contract of employment" came up for construction before the Full Bench of that High Court. The question which was canvassed before that High Court was slightly different. The argument which was raised in that case was that the hiring of a goods carrier amounted to "a contract of employment". That argument was negatived. In that context, it was observed that the expression "by reason of or in pursuance of a contract of employment" goes with the word "passengers". The expression "a contract of employment" points to a person being employed to do something or to carry out something for another person. It has been so observed by the Punjab High Court. This decision

upon which reliance has been placed on behalf of the claimants and the insured does not lend much support to the argument which has been canvassed before us.

15. The last decision upon which reliance has been placed is *The Vanguard Insurance Co. Ltd., Madras Vs. Chinnammal and Others*, The question which arose before the learned single Judge of that High Court was whether the expression "contract of employment" would mean employment between the person carried on the vehicle and the insured or whether it would include persons on the vehicle in pursuance of a contract of employment with the owner of the goods carried in the vehicle. The learned single Judge rejected the narrow construction of that expression and held that if a person was on the vehicle for sufficient practical or business reasons, the person must be regarded as having been on the vehicle in pursuance of a contract of employment. The test which has been applied by the House of Lords in *Izzard's* case is the test of practical and business reasons irrespective of the person whose employee the deceased was. If he was on the vehicle at the time of his accidental death for practical and business purposes relating to his employer, he must be deemed to be on the vehicle by reason of and in pursuance of a contract of employment. Presence of the deceased on the vehicle for practical and business purposes of his employer (other than the insured) establishes rational and reasonable relationship or nexus between him and the insured and satisfies the requirement of the expression "a contract of employment" used by Parliament without any qualifying words in Section 95(2)(b).

16. We have already analysed above the evidence on this aspect of the case. The evidence points to one and one conclusion only. The insured, Modern Construction Company, was engaged as the contractor of Government of Gujarat in constructing Dharoi dam. It was for the purpose of working at the dam site that the vehicle of the insured was carrying Ramanlal and Sevantilal - the two deceased persons - who were in the employment of the Government of Gujarat from whom the Modern Construction Company had taken a contract for constructing the Dharoi dam. Therefore, both the deceased were being carried by the insured for practical and business reasons connected with the construction of Dharoi dam by them for the Government of Gujarat. Therefore, in our opinion, Section 95, (2)(b) governs the instant case. Compulsory insurance of such a nature as contemplated by Section 95 (2)(b) of the Motor Vehicles Act, 1939 ought to have been taken out. By insuring the vehicle in question for a lesser amount under a clause inapplicable to the instant case, the insurance company cannot escape its liability. In that view of the matter, we are unable to accede to the second contention which Mr. Zaveri has raised before us.

17. We are of the opinion that within the meaning of Clause (b) of Sub-section (2) of Section 95 of the Motor Vehicles Act, 1939, the appellant insurance company is liable to indemnify the insured in respect of each of the two deaths to the extent of Rs. 50,000/- and the claimants are entitled to recover

compensation from the appellant insurance company to that extent. Now, in M.A.C.T. Petition No. 19 of 1974, the Tribunal has made an award in favour of the claimants for a sum of Rs. 50,200/- with interest at the rate of 6% per annum from the date of the claim petition until payment and the proportionate costs. We modify this award and direct that so far as the liability of the appellant insurance company is concerned, it is limited to a sum of Rs. 50,000/- with interest at the rate of 6% per annum on the sum of Rs. 50,000/- from the date of the claim petition until payment and with proportionate costs on that amount. The balance of the amount awarded by the Tribunal to the claimants in this claim petition shall be recoverable by the claimants only from other respondents. First Appeal No. 70 of 1977 is, therefore, allowed to the slight extent stated above.

18. The Tribunal has made in favour of the claimants in M.A.C.T. Petition No. 74 of 1974 an award in the sum of Rs. 28,500/- with interest at the rate of 6% per annum from the date of the claim petition until payment and with proportionate costs. In view of the finding which we have recorded, this award does not require any modification. Therefore, First Appeal No. 71 of 1977 is dismissed. The appellant shall pay the costs of the appeal in both the cases to the respondents.