
(1991) 02 GUJ CK 0018
In the Gujarat High Court
Case No : F.A. No. 683 of 1980

United India Fire and General Ins. Co. Ltd.	APPELLANT
Vs	
Manibehn and Others	RESPONDENT

Date of Decision : 26-02-1991

Acts Referred:

Citation : (1993) ACJ 941

Hon'ble Judges : S.D. Dave, J; R.D. Vyas, J

Bench : Division Bench

Advocate : M.I. Patel, for the Appellant; G.D. Bhatt, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Dave, J.—This rust Appeal arises out of the judgment and award pronounced by the learned M.A.C. Tribunal No. 1 at Bharuch in M.A.C. Case No. 34 of 1979, awarding the total compensation of Rs. 70,000/- to the claimants together with the costs and interest. The award says that the insurer, namely, the United India Fire & General Ins. Co. Ltd. would also be jointly and severally liable to satisfy the award.

2. Deceased Govindbhai was travelling by an auto-rickshaw bearing No. CTA 786 on 28.1.1979 and the abovesaid rickshaw was going towards Piraman Naka from Ankleshwar Railway Station. It appears that when the auto-rickshaw had reached near Rasdhara Cold Drink House, near the curve, it had to negotiate the curve on the road and, at that time, the auto-rickshaw had collided with a horse-drawn carriage. The deceased Govindbhai had sustained grave injuries and he had died on the spot. Ultimately, the applicants who happen to be the widow and the four minor children of the deceased along with the father of the deceased also filed the M.A.C. case for obtaining the total compensation in the sum of Rs. 1,30,000/-. The learned Tribunal after the appreciation of evidence on record had reached, the conclusion that the applicants were entitled to the total compensation of Rs. 70,000/-together with the proportionate costs and the

interest at the rate of 6 per cent per annum from the date of application till realisation. The insurance policy was produced and proved before the Tribunal and on the appreciation of the same and especially after appreciating the endorsement No. 13 (b) with the blank gaps in the insurance policy the learned Tribunal had reached the conclusion that the insurance company was not able to establish that its liability was a limited one. In view of this position the insurance company has been made liable jointly and severally for the entire awarded amount. Being aggrieved and dissatisfied with the abovesaid judgment dated 11.1.1980 and the consequent award that the present appeal has been filed by the appellant, namely, the insurer.

3. Mr. M.I. Patel, the learned advocate, appeals on behalf of the appellant, while the respondent No. 8 has been represented by the learned advocate, Mr. G.D. Bhatt. Mr. M.K. Chavda, the learned advocate, appears for respondent Nos. 1 to 6. The respondent No. 7 is served.

4. Mr. Patel, the learned advocate, who appears on behalf of the appellant, the insurance company, has contended that the learned Tribunal has erred in coming to the conclusion that the liability of the insurance company would be an unlimited one. Mr. Patel has urged that when the reference is made to the policy of insurance at Exh. 47 it becomes clear that an additional premium of Rs. 45/- has been paid for covering the risks of three passengers and that even if the blanks have been kept open in endorsement No. 13 (b) attached to and forming part of the policy, it cannot be urged that the liability of the insurance company would be an unlimited one. Mr. Patel has also tried to urge that when certain blanks have not been filled in and when they have been kept open the Tribunal ought to have come to the conclusion that the wider risk has not been accepted and that, therefore, the liability of the insurance company would be limited one.

5. But Mr. G.D. Bhatt, the learned advocate, who appears on behalf of the respondent No. 8, has urged that the learned Tribunal was perfectly justified in coming to the conclusion that the liability of the insurance company would be unlimited because if the liability was intended to be limited, a specific mention of the same ought to have been made in the endorsement No. 13 (b) attached to the policy. Mr. Bhatt has also further contended that because the necessary figures have not been filled in, in the endorsement No. 13 (b) attached to the policy, it can never be urged that there was contract between the insurer and the insured under which the limited liability was accepted. Mr. Bhatt has also urged that in the instant case, because the blanks have been kept open and have not been filled in, there is no scope of having two opinions or interpretations. But going a step further, Mr. Bhatt has urged that even if two interpretations are possible that which is favourable to the claimants could have been accepted.

6. When the reference is made to the insurance policy at Exh. 47, it becomes clear that under the clause of "Limits of liability", it is stated very clearly that the company's liability u/s II-I (ii) in respect of any one claim or series of claims arising out of one event would be limited to an amount of Rs. 50,000/-. We are

not concerned with the abovesaid clause regarding the limit of liability because it is in respect of Section 2 (1) (2) which relates to the damage to the property caused by the use of the motor vehicle. But in premium clause, firstly, there is an entry showing an amount of Rs. 44/- as the premium. It is also stated that an amount of Rs. 45/- is also charged for covering the additional risk of three passengers. Because of this position Mr. Patel wanted to urge that, at the relevant time, the tariff charges for the risk of one passenger in the auto-rickshaw would be Rs. 15/- and that, therefore, only an amount of Rs. 45/- has been paid by way of premium and that the Tribunal ought to have accepted the case put forth by the insurance company that the limited or the statutory risk was only covered. It requires to be appreciated that the abovesaid case regarding the tariff charges was not placed before the Tribunal. Mr. Patel has showed us one document known as India Motor Tariffs Schedule of Premiums, which is valid with effect from 1st February, 1982. Mr. Patel has invited our attention to page 22 of the abovesaid booklet and has urged that with effect from 1.2.1982 the tariff for a passenger has been increased to Rs. 30/- for the limited liability. Mr. Patel has urged that if the liability were to be unlimited, now the tariff charges per passenger would be Rs. 100/-.

7. But it requires to be appreciated pertinently that what were the tariff charges at the relevant time and what was the amount received by the insurance company would be a question of fact. This question cannot be examined and entered into at the time of hearing of the first appeal, when the award made by the Tribunal in respect of insurance company is under challenge. Therefore, we shall have to look into clause 13 (b) annexed to insurance policy at Exh. 47. A specific reference of the endorsement has been made on the policy of insurance itself. The insurance policy at Exh. 47 says that there would be special conditions subject to the attached clause and endorsement Nos. 1 M.T./2 (1)13 (b)-16 which are attached along with the insurance policy. Therefore, the endorsement No. 13 (b) which is specifically mentioned in the column of the special conditions requires a specific consideration. When we turn to the above-said endorsement No. 13 (b) attached to and forming part of the insurance policy, it becomes clear that, it is stated that in consideration of an additional premium the company will indemnify the insured against liability at law for compensation for death or for bodily injury to any person being carried in the motor vehicle; such indemnity would be limited to the sum of a particular amount of Rupees... The amount has not been showed near the word Rupees. It, therefore, becomes clear that this important particular has not been furnished and the printed blank has been kept open.

8. In view of the abovesaid position we are of the opinion that the learned Tribunal was perfectly justified in coming to the conclusion that the insurance company was not able to establish that its liability was limited to a stipulated extent. Mr. Patel as noticed above had tried to urge before us that, as no amount has been shown in the abovesaid printed blank, one could presume or accept that the limited liability was accepted by the insurance company. We are in

complete disagreement with the above-said statement made by Mr. Patel. On the other hand, we feel that if the insurance company had accepted a limited liability, it was the bounden duty on the part of the insurance company to say so very clearly in endorsement No. 13 (b) attached to and forming part of the policy. It should not be overlooked that the policy itself shows in the column of special conditions the existence of endorsement No. 13 (b). Therefore, when the abovesaid policy was prepared the insurance company knew it well that there is an additional endorsement, namely, endorsement No. 13 (b) attached to and forming part of the policy. In view of this position if the liability of the insurance company were to be made limited there must have been a specific mention of the same in the endorsement No. 13 (b). We feel that as the printed blank is kept open and the amount in Rupees has not been shown, one would legitimately come to the conclusion that there was no limitation on the liability of the insurance company. To take the other view around would result into a hazardous position. Merely because the gap has not been filled in and merely because the printed blank has been kept open, it cannot be presumed or inferred that the insurance company had accepted the limited liability.

9. In the above view which we are going to take, we are supported by certain decisions. Firstly, taking up the decision of a learned single Judge of this court in *Bomanji Rustomji Ginwala v. Ibrahim Vali Master* 1982 ACJ 380 (Gujarat), it appears that there also a similar position had occurred. The learned single Judge in the abovesaid case-law had examined the policy of insurance at Exh. 100 and had noticed with great care that Section II (1) (i) (ii) of clause C.V. had clearly shown that the company's liability for meeting the claims of third parties on account of death, etc., was limited to Rs. 50,000/-. But so far as the company's liability to answer the claim of the third parties for damage to properties caused by the use of motor vehicle is concerned the column opposite to the said limit was" kept blank.

10. Here, in the instant case as noticed above the column regarding the damage done to the vehicle is duly filled in but the print gap in endorsement No. 13 (b) attached to the policy has been kept open. Therefore, it can be said that the learned single Judge was also concerned with a similar question. It was sought to be contended before the learned single Judge that there may be some error or omission on the part of the insurance company or its servants or officers, but this had not appealed to the learned single Judge because it is stated very clearly in para 30 on page 384 that even if there is any such error or omission the benefit thereof should go to the insured and the claimants rather than to the insurance company. We would like to point out that here before us nobody has urged that there was some mistake, error, omission or inadvertence while preparing the endorsement No. 13 (b) attached to and forming part of the insurance policy. But even if such a contention were to be raised before this court we would have been inclined to take the same view as has been taken by the learned single Judge in the abovesaid decision. If the policy shows that there are certain extra conditions like endorsement No. 13 (b) attached to and forming part of the policy and if the

insurer keeps the important printed gaps open, it cannot be urged that there was inadvertence or error or omission on the part of the insurance company.

11. In a similar situation the learned single Judge of the Rajasthan High Court has also taken the same view in *New India Assurance Co. Ltd. v. Vidya Devi* 1988 ACJ 558 (Rajasthan). When reference is made to paras 9 and 10 of the abovesaid decision on page 560, it becomes clear that there was rubber seal put in the insurance policy but the same was put in some other column. The learned single Judge had come to the conclusion that because the seal was not placed at the appropriate column it loses its relevancy. The learned single Judge has also stated that if it was the result of some mistake the benefit of mistake should not go to the insurer but it should go to the insured, because it is a social welfare legislation.

12. More or less, the same view came to be taken up by a learned single Judge of the Punjab & Haryana High Court in *Kako Devi v. Gian Parkash Gupta* 1990 ACJ 395 (P&H). In this decision also, it appears that a plea was sought to be raised that the liability of the insurance company was limited to Rs. 50,000/-. However, no such limit was mentioned in the policy of insurance. In the column "Limits of liability" a sum of Rs. 50,000/- was mentioned but it was in regard to damage to the property caused by the use of the motor vehicle. No such limitation found its mention against the column dealing with "liability arising from death, etc.", arising out of the use of the motor vehicle. The learned single Judge had declined to come to the conclusion that Rs. 50,000/- should be accepted as the liability in respect of death or bodily injury.

13. The abovesaid three decisions, therefore, clearly support the view which we are going to take in this matter. We, therefore, say that because the printed gaps in endorsement No. 13 (b) attached to and forming part of the insurance policy were kept open it can never be inferred that the liability of the insurance company was limited to the statutory limits. On the other hand, we say it, rather expressly, that when the said printed blanks have been kept open it would mean that there was no restriction or limitation on the liability which has been accepted by the insurance company under the contract between the insurance company and the insured. No other view except the abovesaid one, which we are taking, is possible.

14. Even if two views would have been possible, looking to the spirit of the Act, one would definitely be inclined to take a view which would be in favour of the victim. A learned single Judge of Rajasthan High Court has stated so in *Smt. Kako Devi and Others Vs. Gian Parkash Gupta and Others*, . We would like to make it clear that in the case on hand, two views are not possible and coming to a different or a contrary view is absolutely impossible. But, even if two views were possible, one which would be favourable to the claimant ought to have been accepted.

15. Looking to the abovesaid position, it appears very clearly that the learned

Tribunal was justified in coming to the conclusion that the liability of the insurance company was not limited and, therefore, the insurance company was liable jointly and severally for the entire awarded amount. In view of our abovesaid conclusion the present appeal fails and the same requires to be dismissed with costs. We, accordingly, dismiss the appeal with costs and confirm and uphold the judgment and the award under challenge.