
(1985) 08 GUJ CK 0009
In the Gujarat High Court

United India Fire and General Insurance Co. Ltd.	APPELLANT
Vs	
Bachu Kaba Satrotia and Others	RESPONDENT

Date of Decision : 14-08-1985

Acts Referred:

Motor Vehicles Act, 1988 — Section 95(2), 95(2)

Citation : (1986) 2 ACC 180 : (1987) ACJ 485 : (1986) 1 GLR 463

Hon'ble Judges : P.R. Gokulakrishnan, C.J;S.B. Majmudar, J

Bench : Division Bench

Judgement

S.B. Majumdar, J.—The United India Fire & General Insurance Co. Ltd., is in appeal against the award passed by Motor Accidents Claims Tribunal, Junagadh, in Motor Accidents Claim Petition No. 33 of 1978 which was decided alongwith the companion claim petitions by common judgment. In order to appreciate the grievance of the appellant insurance company, few relevant facts are required to be noted at the outset.

2. The appellant Insurance Company had insured an auto-rickshaw GTW 259 against accidental risk under Insurance Policy which is at Exh. 21 on record of the case. The said auto-rickshaw was being plied on 15-2-77 at about 3.00 P.M. near the culvert between the villages Dungarpur and Padaria. At the relevant time, the rickshaw was over-loaded with 10 passengers. In the accident, injuries were caused to the passengers in the rickshaw and one of them Lavji Bachu succumbed to his injuries. The heirs and legal representatives of Lavji Bachu as well as the other injured persons filed different Claim petitions before the Motor Accidents Claims Tribunal, Junagadh, seeking compensation from the owner of the vehicle, the driver of the vehicle and the appellant Insurance Company. They were joined as opponents Nos. 1, 2 and 3 respectively in each of the claim petitions. We are concerned with claim petition No. 33 of 1978 which was filed by the heirs and legal representatives of deceased Lavji Bachu. They had originally made a claim of Rs. 1,00,0000/-. However, the Tribunal awarded an amount of Rs. 16,000/- to the claimants with running interest at 6% per annum from the

date of the application till realisation with proportionate costs.

The Claims Tribunal awarded the amount payable by the owner, the driver of the auto-rickshaw and the Insurance Company the appellant. The contention before the Claims Tribunal was that as the deceased was a passenger of the insured vehicle, the liability of the Insurance Company would be only Rs. 10,000/-. The learned Tribunal relying upon the endorsements on the Policy Ex. 21 took the view that as the policy was comprehensive one and the limit of liability was mentioned at Rs. 50,000/-, full claim of Rs. 16,000/- can be awarded also against the appellant. It is this part of the award which has been brought in challenge by the appellant in these present proceedings.

Now, it is an established position that even though this was a fatal accident case and even though the original claim was for Rs. 1,00,000/- and the awarded amount was only Rs. 16,000/-, no cross-appeal or cross-objections are filed. We, are, therefore, concerned only with the question whether the Insurance Company was liable to meet the full claim or Rs. 16,000/- with proportionate costs and interest as submitted by the learned advocate for the respondents Nos. 1 and 2.

3. Mr. Nanavaty, the learned Counsel for the appellant, took us to the Insurance Policy Ex. 21 on record. Sec. II of the Insurance Policy contains the usual clause regarding liability to third parties. Clause 1 thereof reads us under:

1. Subject to the limits of liability the company will indemnify the insured against all sums including claimant's cost and expenses which the insured shall become legally liable to pay in respect of.

(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the Motor Vehicle.

(ii) damage to property caused by the use (including the loading and/ or unloading) of the Motor Vehicle.

So far as limits of liabilities are concerned, the following endorsement is found in the slip attached to the policy:

It is hereby declared and agreed that the limitations of liability should be read as under and not as mentioned in the policy. Limits of liability:

Under Section II-I (1):--Such amount as it is necessary to meet with requirement of M.Act, 1939.

Under Section II-I (2):--Rs. 50,000/-.

All other terms, conditions and warranties remains unaltered.

When the said endorsement is read in the light of Section II-Clause 1(1) and (2), it becomes apparent that for claims arising out of death or bodily injuries to such persons caused by the use of the insured vehicle, the limit of the insurance would be as per the requirements of Motor Vehicles Act. It appears that the learned Tribunal placed reliance on the limit of liability of Rs. 50,000/-, as

mentioned against the provision as per Section II-1 (2). Now that provision really dealt with the limit of liability of the Insurance Company in claims arising out of damage to property caused by the use of the vehicle. It is this limit of liability which has been read by the learned trial Judge to be the liability of the Insurance Company under the Insurance Policy even to meet the claims arising out of death or bodily injuries caused to persons. Consequently, it must be held that the reasoning adopted by the learned Tribunal is patently erroneous when we turn to the requirements of Section 95(2) of the Motor Vehicles Act as existing at the time of the accident which clearly started in the face. The relevant part thereof reads as under:

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

(a) x x x (b) where the 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;

(ii) in respect of passengers, a limit of ten thousand rupees for each individual passenger.

Now, it is not in dispute that the deceased was a passenger in the injured vehicle. Consequently, the act liability of the Insurance Company for meeting the claim out of fatal injuries caused to the passengers would be only Rs. 10,000/- per passenger. Consequently, the award of the tribunal which extends upto Rs. 16,000/- is patently erroneous against the appellant.

4. In that view of the matter, the present appeal is allowed. The award of the Claims Tribunal shall stand modified as under. The liability of the original opponents Nos. 1 and 2 will of course remain intact to meet the entire claim awarded of Rs. 16,000/- with running interest at the rate of 6% per annum from the date of the pauper application till realisation with proportionate costs and which part of the award is not in challenge before us. However, so far as the appellant Insurance Company is concerned, the award will stand modified and instead of Rs. 16,000/-, the award amount awarded against the appellant will be "Rs. 10,000/-" with running interest thereon at the rate of 6% per annum from the date of the pauper application till realisation with proportionate costs thereof. Thus the claimants will have to recover the balance of Rs. 6,000/- with running interest and costs from the remaining opponents Nos. 1 and 2. The appeal is allowed as aforesaid. In the facts and circumstances of the case, there will be no order as to costs.