

(1985) 01 GUJ CK 0017
In the Gujarat High Court

Case No : F.A. No's. 1439, 1440 and 1441 of 1979

United India Fire and General Insurance Co. Ltd.	APPELLANT
Vs	
Bhagwanji Nathubhai and Others, Labhuben Naran and Others and Adodaria Shantaben Vallabh and Others	RESPONDENT

Date of Decision : 25-01-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(1)

Citation : (1987) ACJ 579 : (1987) 62 CompCas 675

Hon'ble Judges : S.B. Majmudar, J;P. Subramonian Poti, J;I.C. Bhatt, J;D.H. Shukla, J;B.K. Mehta, J

Bench : Full Bench

Advocate : P.V. Nanavati, for the Appellant; N.D. Nanavati, for the Respondent

Judgement

Majmudar, J.—In this group of first appeals, a Division Bench of this court, consisting of N.H. Bhatt and M.B. Shah JJ. by order dated

March 22, 1983, referred the following question for decision of a Full Bench of this court:

2. When some persons with some goods with them are transported for hire or reward by the driver and the cleaner by a goods vehicle of a private carrier, whether the insurance company would be liable or not.

3. This reference was made to the Full Bench in view of the fact that according to the Division Bench which referred the question, certain

observations made by an earlier Full Bench of this court in the case of New India Assurance Co. Ltd. and Another Vs. Nathiben Chatrabhuj and

Others, were required to be reconsidered. When the said reference came before the Full Bench, consisting of P.S. Poti C.J. and G.T. Nanavati

and I.C. Bhatt JJ., a further reference was made by the aforesaid Full Bench on

April 11, 1984, to a yet larger Bench for reconsideration of the decision of the Full Bench in New India Assurance Co. case, in so far as interpretation of the second clause to the proviso to section 95(1)(b)(i) of the Motor Vehicles Act, 1939, was concerned. That is how the matter is placed before the present larger Bench.

4. In order to highlight the nature of the controversy between the parties which has culminated in the present reference, it will be necessary to

quickly glance through a few relevant facts. The common appellant in these first appeals is United India Fire and General Insurance Co.Ltd. It is

aggrieved by the common award passed against it by the Motor Accidents Claims Tribunal, Jungadh, in a group of Claim Petitions Nos. 7 of

1976, 8 of 1976 and 11 of 1976. They all arise from a common set of facts. One motor truck bearing No. GTZ 3662 belonging to Gujarat

Fisheries Central Co-operative Association Limited, Veraval, common respondent No.2, was brought to Ahmedabad by its driver, Noormahmad,

in connection with the transport of certain machineries of the association. One Nathu Hussain, who was the cleaner, accompanied the driver on the

vehicle. This vehicle was admittedly insured by United India Fire and General Insurance Co.Ltd., which was common opponent No. 3 before the

Claims Tribunal. It is alleged that the driver picked up certain passengers on the way, viz., Bhagwanji, claimant of claim petition No.7 of 1976,

who sustained injuries out of the accident; and Velji Daya and Vallabh Duda who died on account of the accident. Velji Daya's heirs are claimants

in Claim petition No.8 of 1976 whereas heirs of Vallabh Duda are claimants in Claim Petition No.11 of 1976. These two deceased were picked

up from Venthali for being carried further. The case of the claimants is that the driver had driven the vehicle in a rash and negligent manner and,

therefore, the driver, his master, respondent No.2 and the insurance company were liable for various amounts. The truck was driven in such a rash

and negligent manner that it went on the wrong side and dashed against a tree. The result was that all the 4 persons sitting in the driver's cabin, viz.,

cleaner, and passengers, Bhagwanji, Velji Daya and Vallabh Duda, came to be injured and ultimately Velji and Vallabh succumbed to the injuries.

5. So far as the appellant-insurance company is concerned, it resisted the claim petitions by filing written statements in the concerned claim

petitions. Exhibit 30 was the written statement filed in Claim Petition No.7 of 1976. In para 1, it was submitted that vehicle No. GTZ 3662 was a

goods vehicle and was insured with the opponent under policy No.218/251/00849 and that the said policy was in force at the time of the accident.

Under the terms and conditions of the said policy, it was stipulated that the use of the vehicle was restricted to use only under a public carrier

permit within the meaning of the Motor Vehicles Act. It was further submitted that it was stipulated that the policy did not cover any risk arising out

of use for the conveyance of passengers for hire or reward. It was then submitted that at the time of the accident, the vehicle was being used for

carrying of passengers in the vehicle and, therefore, it was contended that there was breach of the specific condition on the policy; that the vehicle

was goods vehicles and it was not allowed to carry passengers by the permit under which the vehicle was used and hence, the company was not

liable to meet the claim of the claimants. Identical written statements were filed in the other two companion claim cases. The aforesaid written

statements shows that the appellant insurance company came out with a specific case that the offending vehicle was a public carrier goods vehicle

and that as per the limits of liabilities as mentioned in the insurance policy and as per the express conditions of the policy, prohibiting use of the

insured vehicle for carrying passengers for hire or reward, the company would not be answerable for the claim as the breach of the said condition

was committed by the driver of the insured who carried passengers for hire and reward in the said vehicle at the time of the accident. The insurance

company produced with list, exhibit 37, office copy of the insurance policy covering the goods vehicle in question. It was produced at list item

No.1 being exhibit 37/1. It was admitted on record at exhibit 48. It appears that thereafter it was felt that the vehicle in question was not a public

carrier goods vehicle but a private carrier goods vehicles. By list, exhibit 119, opponent No.2 viz., the chairman of the Gujarat Fisheries Central

Co- operative Association, the insured, produced a copy of the original insurance policy. That was marked exhibit 120. Now, a look at exhibit

120 shows that it is not the original insurance policy but merely a copy of the original. Thus, exhibit 48 remains the office copy of the insurance

policy produced by the appellant-insurance company and on which reliance is

placed by it; while exhibit 120 is a copy of the insurance policy produced by the insured, though wrongly styled as original insurance policy in list exhibit 119. Clause C.V. attaching to and forming part of policy has been produced on record at exhibit 179. It is a part and parcel of the copy exhibit 120. Before the Tribunal, it transpired on evidence that the insured vehicle in question was not a public carrier but was a private carrier goods vehicle. The learned advocate for the appellant-insurance company also accepts that finding and submits that the vehicles in question was a private carrier goods vehicle and it is on that basis that he contends that the insurance company is not liable to answer the claims of the respective claimants who were passengers carried for hire and reward in the vehicle and they could not have been carried for hire and reward in a private carrier goods vehicle. Certain observations made by the Full Bench in *New India Assurance Co. Ltd. and Another Vs. Nathiben Chatrabhuji and Others*, which appeared to be wider in nature and which may cover a private carrier goods vehicle have resulted into the present reference first by the Division Bench to the Full Bench and by the Full Bench to the present larger Bench. It must, therefore, be taken to be an accepted position between the contesting parties that the offending vehicle was a private carrier goods vehicle covered by a permit for private carrier goods vehicle and during its use as such, it met with the accident in question. The Tribunal held the insurance company liable to answer the claims of the claimants. That brought the insurance company to this court by way of the aforesaid three appeals. It would have been necessary for us to delve deep into various aspects of the matter and to answer the question referred for our consideration. But on the peculiar facts of this case, as we will presently point out, we are spared that exercise and in our view, the question referred to us is not required to be answered. The appellant insurance company pleads special defence on the basis of the condition in the insurance policy which excludes use of the insured vehicle for carrying passengers for hire or reward. Now, so far as the policy, exhibit 48, is concerned, it is an office copy of the insurance policy produced by the appellant company itself. Section II of the policy, exhibit 48, refers to the liability to third parties. It states as under:

6. Subject to the limits of liability, the company will indemnify the insured

against all sums including claimants cost and expenses which the insured shall become legally liable to pay in respect of --

(i) death, of 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 case (including the loading and/or unloading) of the motor vehicle.

Provided always that:

(a) The company shall not be liable in respect of death/injury or damage caused or arising beyond the limits of any carriage-way or thoroughfare in

connection with the bringing of the load to the motor vehicle for loading thereon or the taking away of the load from the motor vehicle after

unloading therefrom.

(b) Except so far is necessary to meet the requirements of section 95 of the Motor Vehicles Act, 1939, the company shall not be liable in respect

of death of, or bodily injury to, any person in the employment of the insured arising out of and in the course of such employment.

(c) Except so far is necessary to meet the requirements of section 95, of the Motor Vehicles Act, 1939, in relation to liability under the

Workmen's Compensation Act, 1923, the company shall not be liable in respect of death of, or bodily injury to, any company shall not be liable in

respect of death of, or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being

carried in or upon or entering or mounting or alighting from the motor vehicle at the time of the occurrence of the event out of which any claim

arises.

(d) The company shall not be liable in respect of damage to property belonging to or held in trust by or in the custody or control of the insured or a

member of the insured's household or being conveyed by the motor vehicle.

(e) The company shall not be liable in respect of damage to any bridge and/or weighbridge and/or viaduct and/or to any road and/or anything

beneath by vibration or by the weight of the motor vehicle and/or load carried by the motor vehicle.

(f) The company shall not be liable in respect of damage to property caused by sparks or ashes from the motor vehicle or caused by or arising out

of the explosion of the boiler of the motor vehicle. (g) The company shall not be liable in respect of death or bodily injury caused by or arising out

of the explosion of the boiler of the motor vehicle unless such death or injury is caused by or arises out of the use of the motor vehicle in a public

place in India within the meaning of the Motor Vehicles Act, 1939.

7. Now, a look at the aforesaid terms of the policy shows that subject to any other prescribed limits of liability in any other part of the policy, the

company has agreed to indemnify the insured against all sums including claimants cost and expenses which the insured shall become legally liable to

pay in respect of death of, or bodily injury to any person caused by or arising out of the use of the motor vehicle. These terms are very wide in

nature and would ex facie cover the claims in the present case. Mr. P.V. Nanavati for the appellant also fairly stated that none of the terms (a) to

(g) would cover the present cases. If that is so, it must be held that in the light of the aforesaid terms of the policy, if any claim arises in connection

with death or bodily injury to any person caused by or arising out of use of the motor vehicle, such claim would be protected by the insurance

cover unless of course there are any other limits of liability prescribed in the policy elsewhere. For that purpose, Mr. Nanavati invited our attention

to the column on the bottom of the schedule annexed to the policy, exhibit 48. That column refers to limitation as to use. A rubber stamp affixed in

that column refers to public carrier. The rubber stamp reads as under:

8. Use only under a public carrier's permit within the meaning of the Motor Vehicles Act, 1939.

9. The policy does not cover--.....

(3) use for the conveyance of passengers for hire or reward.

10. It is obvious that the aforesaid rubber stamp found in the copy of the policy, exhibit 48, refers to limitation as to use of the public carrier. Now,

it is an admitted position between the parties that the insured vehicle in question is not a public carrier but a private carrier goods vehicle. Under

these circumstances the aforesaid rubber stamp affixed to the copy of the policy, exhibit 48, laying down limitation as to use will not apply to the

vehicle in question. May be, that a wrong rubber stamp might have been affixed by the personnel of the insurance company while issuing the

insurance policy. Be that as it may, the fact remains that so far as copy of the

insurance policy produced by the insurance company itself at exhibit 48 is concerned there is no proper rubber stamp covering the vehicle in question and laying down any special condition restricting its use or laying down any limitation as to its use. The result is that it must be held there is no limitation as to its use. The result is that it must be held that there is no limitation as to use or no special condition about the same affixed to the policy in question which covers the insured vehicle. If that is so, it must be held, on account of the general wording of clause 1 of section II, of the insurance policy extracted above, that the insurance company in its wisdom, extended the contractual coverage of insurance to all claims arising on account of death of or bodily injury to any person caused by or arising out of the use of the insured vehicle. Once it is so held it is obvious that the insurance company will be liable to answer the claims not on account of any statutory requirements of coverage of such claims but on account of the extension of the contractual coverage of insurance on the express wording of the insurance policy itself. The rubber stamp regarding public carrier as affixed in the column laying down condition as to limitation as to use being irrelevant, will remain inoperative and otiose.

11. The copy of the insurance policy at exhibit 120 also cannot help the insurance company for the simple reason that it does not appear to be a copy of the original policy. If exhibit 118 is the office copy of the original insurance policy as produced by the insurance company itself exhibit 120 which also purports to be a copy of the original as produced by the insured, must necessarily purport to be a copy made from the original insurance policy. But the two copies which are on record, exhibit 48 produced by the insurance company on the one hand and exhibit 48 produced by the insured on the other, do not tally in material particulars viz., limitation as to use of the vehicle. As seen above in exhibit 48, office copy on which the insurance company relied the column of limitation as to use bears the rubber stamp referring to a public carrier; while the copy exhibit 120, produced by the insured bears a rubber stamp laying down condition for limitation as to use as a private carrier. Even that apart, exhibit 120, does not appear to be the carbon copy of exhibit 48 own a mere visual comparison. Under these circumstances, the insurance company will be bound by the office copy of the insurance policy on which it itself

stated its claim before the Tribunal and which is produced from its office files and which according to the insurance company, is the office copy of the original insurance policy. Under these circumstances it must be held that the insurance company will be liable to answer the claims of the concerned claimants on account of the contractual coverage of this claim on the express terms of the insurance policy itself. It is now well-settled that even though an insurance policy may cater to the minimum statutory requirements for effecting insurance coverage in cases contemplated by the statute, it is always open to the insurance company to contract with the insured and to afford a larger coverage of accident risks arising out of the use of the insured vehicle. On the facts of the present case, it therefore, clearly appears that the insurance company afforded a larger coverage of accidental risks arising out of use of the insured vehicle and in these circumstances, it was bound by the larger contractual coverage of accidental risks.

12. Once the aforesaid emerges on the record, it is obvious that the further question on the assumption that there is no wider contractual coverage and in these circumstances, whether the insurance company will be liable to answer the claims on account of the statutory requirements of minimum coverage of accidental risks arising out of the use of the insured vehicle which is private carrier goods vehicle wherein passengers who were carried for hire or reward met with accidental injuries, would not strictly arise for consideration at all. That question will be totally academic on the peculiar facts of the case as discussed above. That question would have remained germane provided it was held that the insurance company had not effected a larger contractual coverage for such accidental risks and then urged that as the insured vehicle was a private carrier goods vehicle, the observations made by the Full Bench in the case of *New India Assurance Co. Ltd. and Another Vs. Nathiben Chatrabhuj and Others*, could not cover cases like the present one. As that eventuality on the facts of the present case does not arise, we deem it fit not to answer the question referred to us. We hold that the said question does not survive for consideration.

13. Accordingly, these matters will now be placed before the Division Bench for passing appropriate orders in the light of what is held herein.

Orders accordingly.