
(1985) 08 GUJ CK 0013
In the Gujarat High Court

United India Fire and General Insurance Co. Ltd.	APPELLANT
Vs	
Hemlata and Others	RESPONDENT

Date of Decision : 13-08-1985

Acts Referred:

Citation : (1986) ACJ 1085 : (1986) ACJ 108

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

Bench : Division Bench

Judgement

Majumdar, J.—In this first appeal, the appellant-insurance company has challenged the award passed by the Motor Accidents Claims

Tribunal, Panchmahals at Godhra, under the provisions of the Motor Vehicles Act, 1939. By the said award, an amount of Rs. 40,000 has been

awarded by way of compensation to the original claimants who are respondents Nos. 1 to 5 in this appeal. The accident occurred on November

27, 1977, at about 3.30 p.m. near village Baska on Baroda-Halol Highway. The deceased, Kirtikumar, had gone to Baroda for purchasing puja

materials in connection with a sacred yagna at his village Sansoli. While returning from Baroda, he had boarded motor truck No. GTG 2610. The

said truck unfortunately met with an accident wherein the deceased lost his life. That resulted in the aforesaid claim petition by his widow and minor

children. In the claim petition, the driver and the owner of the truck as well as the insurance company were joined as parties. The father and mother

of the deceased were also joined as parties. The Tribunal, after recording evidence and hearing the concerned parties, came to the conclusion that

the accident was caused on account of rash and negligent driving of the driver of the truck and for that act, the owner of the truck as well as the

insurance company which had insured the vehicle against third party claims were also liable to make good the claim and that is how the aforesaid

award was passed. The solitary contention canvassed by the appellant-insurance company before us to the effect that as the deceased was a paid

passenger in a goods vehicle and he was not carrying any goods with him while he was travelling in the truck, the insurance company will not be

liable to make good the claim as to Act liability that would arise against the insurance company. In order to appreciate this contention, it is

necessary to note that the insurance company did take up a contention in the written statement, exhibit 16, that as the deceased was travelling as a

passenger in the truck, the insurance company was not liable to make good the claim. No contention was taken in the written statement that the

deceased was a gratuitous passenger. The Tribunal considered this aspect of the matter and relying on the evidence of the widow of the deceased

held that the deceased was a paid passenger in the vehicle. The Tribunal relied upon the probabilities of the case, namely, that the deceased was

neither related nor in any way connected with the driver and the driver of a goods vehicle would not allow a stranger to travel in the vehicle without

taking consideration. The aforesaid reasoning of the Tribunal is well supported by evidence on record and the probabilities of the case. There is no

reason to disbelieve the version of the widow of the deceased to the effect that her husband used to travel in goods vehicles by paying charges.

This inference also gets further support from the fact that no specific plea was put forward by the insurance company in the written statement that

the deceased was a gratuitous passenger. Mr. P.V.Nanavati, learned counsel for the appellant-insurance company, in that view of the matter,

submitted an alternative contention that even if the deceased was a paid passenger, the insurance company will not be liable to effect a statutory

coverage for such a passenger as it was a goods vehicle which was insured by the company. Now, unfortunately for the insurance company, the

insurance policy is not on record. It is, therefore, not possible even to examine, much less accept, the contention of the insurance company that

there was breach of any specific condition of the policy and that the vehicle in question was not covered at the relevant time by a permit entitling

the driver of the vehicle to carry any passenger for hire or reward. In a Full Bench decision of this court in the case of New India Assurance Co.

Ltd. v. Smt. Nathiben Chatrabhuj [FB], it has been held that unless all the requisite conditions as laid down by the Act are proved up to the hilt by the insurance company, it cannot escape its liability to meet the claim under the Act even when a passenger carried in a goods vehicle for hire or reward meets with accidental injuries. As, in the present case, the insurance company does not seem to have made any serious efforts to get the policy produced on record or for that matter even the permit of the vehicle, it is too late in the day for the insurance company to submit for the first time before us in appeal that the insurance company is not liable under the Act to meet the claim of the claimants. Consequently, the solitary contention canvassed by the insurance company in the present case is found to be devoid of any substance and not made out on record. In the result, this appeal fails and it is dismissed. In the facts and circumstances of the case, there will be no order as to costs.