(2012) 03 GUJ CK 0083

In the Gujarat High Court

Case No : First Appeal No. 1575 of 2001 with First Appeal No. 4586 of 2001

United India Insurance Co. Ltd. — APPELLANT

Vs

Hajarabibi and Others — RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 195(2)

Citation : (2012) 03 GUJ CK 0083

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : P.V. Nanavatis, Mr. Vibhuti Nanavatis, for the Appellant; J.D. Ajmera for Defendant(s) : 1 - 4, Mr. Himansu M. Padhya for Defendant(s) : 6.2.1, 6.2.2, 6.2.3, 6.2.4, 6.2.5, 6.2.6, 6.2.7, 6.2.8, 6.2.9, Mr. Mukesh Dave AGP for Defendant(s) : 7, for the Respondent

Judgement

Honourable Mr. Justice K.S. Jhaveri

1. These two appeals have been preferred against the common judgment and award dated 14.06.2000 passed by the Motor Accident Claims

Tribunal (Main), Banaskantha at Palanpur in M.A.C.Ps. No. 843/1988 whereby, the claim petition was allowed in part and respondents no. 1 to

5, original claimants, were awarded total compensation of Rs. 2,50,500/- along with interest at the rate of 12% per annum from the date of

application till its realization with proportionate costs. The aforesaid claim petition was filed in connection with the vehicular accident that took

place on 11.07.1988 involving two vehicles, viz. a Jeep bearing registration No. GAE 3210 belonging to the respondent-State and a Tractor

bearing registration No. GJF 5827. In the aforesaid accident, one person died and two others sustained severe bodily injuries.

2. The main ground under which the appellant-Insurance Company has challenged the impugned award is that the Insurance Policy of the Tractor

in question was an Act Policy and that the liability of the Insurance Company with respect to personal injury within the clause of limits of liability is

Rs. 50,000/- and Rs. 1,50,000/- as per the amended Section 195(2) of the Act. It is, therefore, submitted that the impugned award of the Tribunal

holding the liability of the appellant Insurance Company as unlimited deserves to be quashed and set aside.

3. The original claimants have challenged the impugned award mainly on the ground that the Tribunal has erred in deciding the issue of negligence

inasmuch as there was no negligence on the part of the Jeep driver and that the accident occurred on account of the sole negligence of the driver of

the Tractor. It is, therefore, submitted that the compensation awarded deserves to be enhanced appropriately.

4. Heard learned counsel for the respective parties. It appears from the documentary evidence on record in the form of photographs of the two

vehicles taken at the site of accident [Exh.133/1 to 133/7] and from the oral evidence of Mukundbhai Thakkar that the accident took place while

the Tractor, which was loaded with goods, all of a sudden turned without noticing the fact that the Jeep was coming from the opposite direction.

The driver of the Jeep was also in excessive speed as he could not stop the Jeep in time in spite of noticing the fact that the Tractor was in the

process of turning. Considering the evidence on record, I am of the opinion that the Tribunal has rightly apportioned the negligence between the

Tractor and the Jeep at 75 : 25.

5. So far as the issue regarding liability of the appellant-Insurance Company is concerned, it appears from the Insurance Policy that it is an Act

Policy and that the liability of the Insurance Company is limited to Rs. 1,50,000/- only in view of the amended provisions. Therefore, the Tribunal

has seriously erred in holding the liability of the Insurance Company as unlimited. Hence, the impugned award deserves to be modified so far as the

aspect of liability of Insurance Company is concerned. For the foregoing reasons, First Appeal No. 1575/2001 is allowed and First Appeal No.

4586/2001 is dismissed.

The impugned common judgment and award passed in M.A.C.P. No. 843/1988 is modified to the extent that the liability of the appellant-

Insurance Company shall be limited to Rs. 1,50,000/- only. The original claimants shall be at liberty to recover the balance amount of Rs.

1,04,250/- (Out of the total amount of Rs. 2,54,250/- which is equivalent to 75% of the total decretal amount of Rs. 3,34,000/-), along with

interest and costs from the owner of the vehicle. It is made clear that if the amount lying with the Tribunal is already withdrawn by the original

claimants, then the same shall not be recovered from the original claimants but, shall be recovered from the owner of the offending vehicle and if the

amount has not been withdrawn by the original claimants, then the same shall be refunded to the Insurance Company and the claimants shall be at

liberty to recover the balance amount from the owner of the offending vehicle. The impugned award stands modified to the above extent. The

appeals stand disposed of accordingly. No order as to costs.