
(2010) 11 GUJ CK 0053
In the Gujarat High Court
Case No : First Appeal No. 359 of 1991

United India Insurance Co. Ltd.

APPELLANT

Vs

Manjulaben and Others

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 95(1), 95(2)

Citation : (2010) 11 GUJ CK 0053

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

Bench : Single Bench

Advocate : Vibhuti Nanavati and B.C. Thomas, for the Appellant; R.N. Shah, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.

1.0 This appeal is directed against the judgment and award dated 07.08.1990 passed in M.A.C.P No. 760 of 1984 by Motor Accident Claims Tribunal (Main), Palanpur whereby the petition filed by the opponent was partly allowed by awarding sum of Rs. 1, 97,000/- together with interest ! 12% p.a. from the date of application i.e. 18.08.1994 till realization and proportionate costs.

2.0 The claim petition was filed in pursuance of an accident which had occurred on 08.06.1984 at about 12.30 p.m. near Vejalpur bus stand. When the deceased along with his wife and children travelled in Rickshaw from Gidhra to Vejalpur and when the rickshaw dropped the passengers near S.T. Stand Vejalpur and having received the fare, took a sudden turn knocking down Rameshchandra and the rickshaw turned turtled turtle and the deceased was crushed under the rickshaw and succumbed to the injuries. The widow and minor children have filed Claim Petition No. 760 of 1984 for claiming an amount of Rs. 3, 14, 150/-, by way of compensation. The claim petition was partly allowed by awarding a sum of Rs. 1,97,000/- together with interest @ 12% p.a. from the date of application

i.e 18.08.1984 till realization and proportionate costs.

3.0 Learned advocate for the Appellant has contended that in view of the specific provision contained in Section 95(2)(b)(ii) of the Motor Vehicles Act, the Insurance Company's liability in respect of passenger carried for hire or reward is limited to Rs. 50,000/-. The relevant part of the said section as existing at the time of accident 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) xxx xxx xxx (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,

(i) a limit of fifty thousand rupees in all where the vehicle is registered to carry not more than 30 passengers..

XX XX XXX (4) subject to the limits aforesaid, ten thousand rupees for each individual passenger where the vehicle is a motor and five thousand rupees for each individual passenger in any other case.

4.0 Learned advocate for the Appellant has lost sight of the fact that there is restriction only for the insurer. Here in the present case, the case is of pedestrian, i.e. third party and therefore the risk of third party in the present case will be unlimited. Hence, the Tribunal has rightly held that the liability of the Appellant-Insurance Company would extend to the limit of the award of Rs. 1,97,000/- Further, The Tribunal after considering the decision in the case of The New India Assurance Co. Ltd. Vs. Satyanath Hazarika and Others, of the Gauhati High Court and decision of this Court in case of Oriental Fire and General Insurance Co. Ltd v. Ganchi Ramanlal Kantilal and Ors. 2 G.L.R 134 has rightly awarded the compensation as claimed by the opponent. I am in complete agreement with the findings adopted by the Tribunal. The judgment and award passed by the Tribunal is just and proper. No case is made out. The appeal is dismissed.