

(2016) 02 GUJ CK 0185

In the Gujarat High Court

Case No : Cross objection no. 214 of 2009 in first appeal no. 3312 of 2006 With
Cross objection no. 215 of 2009 in first appeal no. 3314 of 2006 With
Cross objection no. 216 of 2009 in first appeal no. 3316 of 2006

United India Insurance Co. Ltd

APPELLANT

Vs

Shantilal Nathalal Patel

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2016) AAC 1834

Hon'ble Judges : Mr. R.P. Dholaria, J.

Bench : Single Bench

Advocate : Ms Hina Desai, Advocate, for the Appellants No. 1; Mr R.K. Mansuri, Advocate, for the Defendants No. 1; Rule Unserved, for the Defendants No. 3

Final Decision : Dismissed

Judgement

Mr. R.P. Dholaria, J. (Oral)—These appeals as well as cross-objections have been preferred against common judgment and award dated 15.03.2005 passed by Motor Accident Claims Tribunal (Auxillary), Sabarkantha at Himatnagar in Motor Accident Claim Petition Nos. 747/96, 749/96 and 807/96 respectively.

2. Appellant-United India Insurance Company Limited has preferred these appeals, inter alia, contending that the Tribunal has erred in allowing the claim petitions recording the finding that the claimants were travelling on Mini Truck No.GJ-3-U-9366 as the labourers and the owners of the goods in the truck. That the Tribunal failed to appreciate that the injured were travelling as unauthorised passengers on the said truck and no extra premium has been paid for the vehicle/truck in question and therefore liability could not be fastened on the insurer as there was no coverage of insurance and consequently the insurance company has prayed to exonerate it from payment of any amount of compensation and liability thereof.

3. Original claimants have also preferred cross objections seeking enhancement

of compensation against the aforesaid common judgment and award passed by the Tribunal.

4. The facts of the case in each of the motor accident claim petition filed by the claimants are more or less similar. That on 01.05.1996 the claimants were travelling on the Mini Truck No.GJ-3-U-9366 from their native place Kherwada, Dist. Udaipur (Rajasthan) to Prantij, Dist. Banaskantha, for purchasing grass and at that time, due to rash and negligent driving of the driver, the driver had lost control of the speeding vehicle resulting in the accident and the truck turned turtle and consequently, the claimants sustained injuries.

5. At the outset of hearing, learned Counsel for the respective parties have agreed that since the award is passed before a decade and the accident occurred in the year 1996 i.e. about two decades ago, they have urged that even though the appellant-insurance company has also raised contention as regard fixation of compensation and the original claimants have also preferred cross-objections but this Court may not consider the same as they have not pressed the matters so far as the award of compensation arrived at by the Tribunal.

6. In view of the aforesaid position, now this Court is called upon to examine the question as regards whether liability fixed upon the appellant-insurance company is in accordance with law or not.

7. As narrated above the original-claimant of FA No.3312/06 (MACP No.747/96) pleaded his case before the Tribunal that some of the claimants were travelling as labourers in the aforesaid truck and some were travelling as the owner of the goods loaded in the truck and the pleading made by the respective claimants have been disputed by the appellant-insurance company and it has taken the contention that they were not travelling as labourers or the owner of the goods in the truck but they were travelling as unauthorised passengers. In order to prove the averments made in MACP No.747/96 the claimant-Shantilal Nathalal Patel has been examined at Exh.47 wherein he clearly deposed that on 01.05.1996 he, along with another person viz. Gautambhai Patel, came to Prantij, Dist. Banaskantha, from their native place Kherwada, Dist. Udaipur (Rajasthan) for purchasing grass. He also deposed that when the said truck was proceeding nearby the place of incident the driver of the truck was driving the truck in hectic manner and as a result of which the truck turned turtled and due to which the persons, who were travelling in the truck sustained serious injuries. He has been cross examined by the learned advocate for the insurance company before the Tribunal wherein the insurance company itself has established that he was engaged in the agricultural work and he came for purchasing grass from Prantij and paid Rs.5,000/- for grass and he was travelling as the owner of the grass.

8. Claimant-Gautambhai Manabhai Patel of FA No.3314/06 (MACP No.749/96) has been examined before the Tribunal below Exh.31 wherein he deposed that on 01.05.1996 along with others he boarded Mini Truck No.GJ-3-U-9366 for purchasing grass from Prantij, Dist. Sabarkantha (Guj.) and they were

proceeding from their native place at Rajasthan to Prantij at that time the truck turned turtle and the accident occurred. In the cross-examination it is established that he has purchased the grass and he was travelling on the truck as the owner of the grass therein. It is further established that some other persons were also travelling as labourers in the said truck.

9. The original claimant-Hakrabhai Purabhai Patel of FA No.3316/06 (MACP No.807/96) has been examined before the Tribunal below Exh.100. He deposed in similar manner and further deposed that he was travelling in Truck No.GJ-3-U-9366 as a labourer for bringing the grass to Rajasthan. In his cross-examination nothing worth has come out.

10. Panchnama of scene of the accident was came to be drawn soon after the accident by Himatnagar Police Station wherein Mini Truck No.GJ-3-U-9366 was lying at the side of the road on turtled condition wherein wheat grass was found in scattered position.

11. On overall appreciation of the evidence on record the driver has filed the written statement and admitted that the truck was hired for bringing the grass and the persons, who were travelling in the aforesaid truck were travelling as labourers and owner of the goods on the truck. The fact mentioned by the claimants as well as the driver and the owner gets corroboration from the panchnama of scene of the accident. Even otherwise also the claimants, who have been cross-examined by the learned Counsel for the insurance company in which the status of the persons, who were travelling in the aforesaid truck, also get established that they were travelling either as the owners of grass/goods or as the labourers on the truck. In that view of the matter in view of clear provisions contained in Section 147 of the Motor Vehicles Act, 1988 since on 14.11.1994 risk of the persons, who were travelling on the truck as labourers as well as the owner of the goods thereof is statutorily covered in the insurance policy itself and therefore the contention raised by the learned Counsel of the appellant-insurance company that the aforesaid persons were travelling on the truck as unauthorised passengers is not established and therefore the appeals deserve to be dismissed as such.

12. For the reasons recorded herein above, the aforesaid appeals as well as the connected cross-objections deserve dismissal and hence, the same are hereby dismissed. No costs.

13. Record and proceeding be sent to the trial Court forthwith.

14. If any amount is deposited before this Court in these appeals, the same shall be forthwith remitted to the Tribunal and the Tribunal shall disburse the said amount of compensation to the claimants in terms of the award thereon.

15. Registry to place a copy of this order in connected matters.