

(2012) 05 GUJ CK 0026
In the Gujarat High Court

Case No : First Appeal No. 19 of 2005 and First Appeal No. 20 of 2005

United India Insurance Co. Ltd.

APPELLANT

Vs

Sidikbhai Ukabhai Solanki and Another

RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

Constitution of India, 1950 — Article 142
Motor Vehicles Act, 1988 — Section 140, 144, 166

Citation : (2012) 2 GLH 465

Hon'ble Judges : Bhaskar Bhattacharya, Acting C.J.

Bench : Single Bench

Advocate : Vibhuti Nanavati 1, for the Appellant; P.J. Kanabar for Defendant 1 and Mr. J.J. Yajnik for Defendant 2, for the Respondent

Judgement

Mr. Bhaskar Bhattacharya, ACJ.

1. These two appeals were heard analogously as these appeals arise out of a common order by which the Tribunal disposed of two different

proceedings u/s 166 of the Motor Vehicles Act arising out of the selfsame accident. By the orders impugned, the Tribunal held that opponent No.

1, the owner of the vehicle, was liable to pay Rs. 85,100/- to the claimant as compensation in MACP No. 108 of 2002 with proportionate costs

and running interest at the rate of 9% p.a. from the date of claim-petition till realisation. In the other matter being MACP No. 109 of 2002, the

Tribunal below awarded compensation of Rs. 28,000/- for the injury caused to the applicant.

2. However, the Tribunal below further held that in these cases it has been established from evidence on record that the victims were not carrying

any goods owned by them while travelling in the goods" vehicle and that the

driver the vehicle had no valid licence. On such findings, the Tribunal further held that the Insurance Company after making payment to the claimants will be free to recover the amount from the owner of the vehicle on filing regular suit.

3. Being dissatisfied, the Insurance Company has come up with the present appeals.

4. Mr Nanavati, the learned Advocate appearing on behalf of the appellant, has strenuously contended before me that after having found that the

driver of the vehicle had no valid licence and that the victims while travelling on the goods vehicle were not carrying any goods owned by them for

which purpose they allegedly hired the vehicle, the Tribunal below committed substantial error of law in directing the Insurance Company to make

payment and thereafter to recover the amount from the owner of the vehicle. According to Mr Nanavati, such direction can be passed only by the

Supreme Court in exercise of power under Article 142 of the Constitution of India, but the Tribunal under the Motor Vehicles Act is not vested

with such power.

5. Mr P. J. Kanabar, the learned Advocate appearing on behalf of the victim, on the other hand, has opposed the aforesaid contention of Mr

Nanavati and has contended that since the Tribunal has passed award in favour of his clients and they are not challenging the quantum of

compensation in these appeals, his clients are nevertheless entitled to support the ultimate award by even challenging the finding of the Tribunal as

regards want of valid driving licence and status of the claimants as gratuitous passengers. Mr Kanabar contends that arising out of the selfsame

accident, his clients also filed proceedings u/s 140 of the Motor Vehicles Act and in that proceedings, the Tribunal has awarded Rs. 25,000/-, the

statutory amount, in favour of his clients by directing the Insurance Company to make such payment. Mr Kanabar contends that the Insurance

Company having made such payment and not having challenged the decision u/s 140 of the Act by contending that it had no liability to pay the

amount on the ground that the conditions of the insurance had not been fulfilled, these questions were no longer open before the Tribunal below in

the subsequent proceedings u/s 166 of the Act. According to Mr Kanabar, those two questions are concluded by the principles of constructive res

judicata in the proceedings u/s 166 of the Act and, therefore, I should set aside those two findings arrived at by the Tribunal against Mr Kanabar's

clients and should affirm the ultimate award.

6. Therefore, the only question that falls for determination in these appeals is, whether in view of the fact that in the earlier proceedings u/s 140 of

the Act arising out of the selfsame accident and between the same parties, the Insurance Company had suffered award which has attained finality,

the question of liability to make payment on the ground of alleged violation of the terms of the policy can be re-agitated in the proceedings u/s 166

of the Act.

7. After having heard the learned Counsel for the parties and after going through the materials on record, I find that in the case before me the

Insurance Company already suffered an award u/s 140 of the Act. It is true that in the proceedings u/s 140 of the Act, the Tribunal is not required

to go into the question of negligence of the driver or the question of contributory negligence on the part of the victim but it is settled law that the

pleas that the vehicle was not involved, or the driver had no requisite driving licence or that the vehicle was not insured at the relevant point of time

or even if it was insured, the terms of the policy had not been complied with by the insured, are very much available to the Insurance Company u/s

140 of the Act. It is not the law that even if all the above four questions are answered in favour of the Insurance Company, the Tribunal can ask the

Insurance Company to pay the amount in a proceeding u/s 140 of the Act.

8. Therefore, if in the proceedings u/s 140 of the Act all those questions are not raised or even after raising are decided against the Insurance

Company and the Insurance Company does not challenge such order by preferring appeal against the award passed u/s 140 of the Act, it will be

precluded from raising the selfsame plea in subsequent proceedings u/s 166 of the Act.

9. Therefore, in the facts of the present case, the Tribunal committed substantial error of law in holding that the vehicle in question being the goods"

vehicle, the victims were not carrying their own goods and as such, were not entitled to claim compensation or that the driver of the vehicle had no

valid driving licence at the time of accident. Those two issues are concluded by the principle of constructive res judicata as the Insurance Company

has not challenged the award u/s 140 of the Act.

10. I, therefore, find that in the facts of the present case, there is no justification of setting aside the awards impugned in these appeals since the owner of the vehicle has not challenged the decision of the Tribunal permitting the Insurance Company to recover the amount from the owner of the vehicle. I do not enter into the question whether the Tribunal was justified in passing such order inasmuch as such benefit has been given in favour of the Insurance Company and against the owner who has not preferred any appeal.

11. I do not find any substance in the contention of Mr Nanavati that in view of the provisions contained in Section 144 of the Act, the finding recorded in the proceedings u/s 140 of the Act cannot be binding upon the Tribunal in the proceedings u/s 166 of the Act. Section 144 of the Act merely suggests that notwithstanding the provisions contained in Chapter XI of the Act, the provisions contained in Chapter X will have overriding effect, meaning thereby, that even without proving negligence on the part of the driver of the vehicle, the victim can claim compensation which is not permissible in the proceedings u/s 166 of the Act. But once the Tribunal passes an award against the Insurance Company in a proceeding u/s 140 of the Act. the pleas of non-involvement of the vehicle or non-coverage of insurance or violations of the terms of insurance must be agitated by filing an appeal against the award otherwise those points cannot be urged in the proceedings u/s 166 of the Act if the previous award u/s 140 is not challenged by preferring an appeal.

12. Similarly, the other point taken by Mr. Nanavati, that the fact that there was no specific finding as regards involvement of the vehicle or validity of the insurance in the earlier proceedings u/s 140 of the Act enables his client to take those pleas in this proceeding, is also not tenable because of the fact that award has been passed against the Insurance Company. For the purpose of application of the doctrine of constructive res judicata, there is no necessity of any specific finding. If those two issues were available to resist an award and the Tribunal without even deciding those issues had passed award, it was the duty of the Insurance Company to challenge the award and the fact that such award has not been challenged implies that the Insurance Company has not disputed the implied findings of

involvement of vehicle or coverage of insurance.

13. Similarly. I do not find any substance in the contention of Mr. Nanavati that the decision of this Court in the case of New India Assurance Co.

Ltd. Vs. Mithakhan Dinakhan Netiyar and Others, supports the Insurance Company in any way. Paragraph 8 of the said judgment does not lay

down any proposition of law that the Insurance Company will be required to pay the amount to the claimant even if the vehicle is not involved or

there is no valid insurance or the conditions of insurance have been violated by the insured. Therefore, all that has been meant in that paragraph is

that the other questions than those referred to above are open for adjudication in the proceedings u/s 166 of the Act. I, thus, find no substance in

the aforesaid contention.

14. I consequently find no reason to interfere with the ultimate award passed by the Tribunal below although I do not approve the aforesaid two

findings recorded by the Tribunal against the claimants and set aside the findings that the driver had no valid licence and that the claimants were not

carrying the goods owned by them in the vehicle on the ground of constructive res judicata. The appeals are thus disposed of on the above

reasonings. In the facts and circumstances, there will be, however, no order as to costs.