

(2011) 11 GUJ CK 0013
In the Gujarat High Court
Case No : First Appeal No. 2022 of 1996

United India Insurance Co. Ltd.

APPELLANT

Vs

Ukabhai V Bharvad and 7

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A
Motor Vehicles Act, 1988 — Section 167
Workmens Compensation Act, 1923 — Section 3(5)

Citation : (2011) 11 GUJ CK 0013

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

Bench : Single Bench

Advocate : Vibhuti Nanavatis 1, for the Appellant; Suresh M. Shah for Defendant(s) 1 - 5 and None for Defendant(s) 7, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K.S. Jhaveri

1. Being aggrieved by the award dated 21.03.1992 passed by the Learned Commissioner of Workmen's compensation, Amreli in Workmen Compensation Application No. 19 of 1985 awarding Rs. 61172/-to the claimant, the present appeal is preferred.

2. It is the case of the appellant that on 01.09.1985 the deceased Bhikha bhai Ukabhai had gone to Jetpur driving a matador and while returning on 02.09.1985 with the children of the respondent no. 1 and the original claimant no. 4 in the matador. At that time a public carrier no. GTX 3246 which was loaded with iron bars came from the opposite direction in high speed and dashed with the matador. The driver of the matador died on the spot. The other passengers were seriously injured. The legal heirs of the deceased filed compensation of Rs. 142080. The Commissioner after hearing the parties passed the aforesaid award.

3. Mr. Nanavati, learned advocate appearing for the appellants submitted that

the Commissioner ought to have seen that the parents and brothers of Bhikha bhai have received compensation in Motor Accident Claims Petition No. 81/85 to an extent of Rs. 42000/-and therefore are not entitled to claim compensation on the same cause of action.

4. Mr. Shah, learned advocate appearing for the claimants submitted that pointed out that the amount of compensation received in Motor Accident Claims Petition No. 81/85 is for different policy and is claimed from the vehicle which he was driving. It does not have any connection with the present insurance company.

5. Having heard learned advocate for the parties and having perused the papers on record, this court is of the view that the contention by the learned advocate for the respondent is required to be accepted. It is pointed out by the learned advocate for the claimant that the compensation received is for a different policy which covered the risk of the vehicle driven by the deceased. In fact the issue involved in the present appeal is squarely covered by a decision of this Court dated 10.07.2009 passed in First Appeal No. 2704 of 2009 with Civil Application No. 7118 of 2009. The said decision has been confirmed by the Apex Court by dismissing the SLP filed against it. Relevant paras of the said decision read as under:

13. In view of the decision of Division Bench of this Court as referred to above, law is very much clear on the subject that the claimants are entitled to file independent proceedings against respondent if two vehicles are involved in accident and claimants are entitled to file claim petition before claims tribunal against offending vehicle being third party under the MV Act and simultaneously claimant is also entitled to file claim application before WC Commissioner against his employer and insurance company of the vehicle of employer. Employer is statutorily bound to pay compensation in case of death of its employee because of the relationship of employer and employee and claimant is also filing claim petition against tortfeasor who is liable to pay compensation under the MV Act, 1988. Particular observations made by Division Bench of this Court are reproduced as under:

Even otherwise, there is no force in the submissions raised by the learned counsel for the appellant-Insurance Company. Section 110A of Motor Vehicles Act, 1939 is applicable to a person who has two remedies against the joint tortfeasor(s) while object of Section 3(5) of the Workmen's Compensation Act, 1923, is to save the employer from double jeopardy, meaning thereby, from multiplicity of litigation, one under the Workmen's Compensation Act, 1923, and other under the Motor Vehicles Act, 1939. Where a claimant can avail one remedy against the employer under the Workmen's Compensation Act, 1923, he is not debarred from raising /claiming compensation under the Motor Vehicles Act, 1939, against the tortfeasor. Present is a case where claimants are receiving compensation from the employer who is statutorily bound to pay the same on the death of deceased being his Master. This is separate relationship and liability and has nothing to do with the liability of a tortfeasor under the Motor Vehicles Act,

1939. In the claim petition before the Claims Tribunal, employer and insurer of Tanker are not party, therefore, no claim has been raised against them. Submission raised by the appellant, if accepted, would mean that claimants should feel satisfied with whatever is paid to them under the Workmen's Compensation Act, 1923, by the employer, and thereby, tortfeasor escaping liability under the Motor Vehicles Act, 1939, which remedy is independently available to the claimants as third party qua the offending vehicle.

14. Entire issue is becoming clear in view of observations made by Division Bench of this Court as referred to above and looking to facts of this case, respondents claimants are entitled to claim compensation from tortfeasor namely driver owner and insurance company of offending truck and they are also entitled to claim and receive compensation from employer of deceased and insurance company of tempo owned by employer and are therefore entitled to file two separate proceedings claiming compensation against tortfeasor means third party driver and driver cum owner of truck and insurance company of truck and in view of that, contentions raised by learned Advocate Ms. Hina Desai that there is bar of section 167 of MV Act cannot be accepted because in said claim petition, owner Ajaysinh J. Raol and insurance company were formal party and matter was decided by claims tribunal only on the basis of negligence of driver of tempo means deceased who was driving vehicle and, therefore, nothing was awarded to claimants from employer and insurance company of tempo driven by deceased and, therefore, that can be considered to be formal party since no effective orders were passed against employer and insurance company of vehicle and, therefore, all such contentions raised by learned Advocate Ms. Hina Desai are rejected.

In view of observations made by this Court in respect to same question and this Court has also considered Section 167 of MV Act and also considered Section 3(5) of Workmen's Compensation Act. After examining this whole issue relying upon decision of Division Bench of this Court in case of Nasimbanu (Supra), this Court has come to conclusion that claimant is having two different rights to claim compensation from respective respondents. The contention raised by learned advocate Mr. Mehta that it amounts to double benefits to claimant cannot be accepted, because, this benefit is not obtained by claimant from same party, but, it was obtained from different party, meaning thereby, against present appellant and owner of truck, claimant has not filed claim petition under the provisions of Workmen's Compensation Act, but, claim petition was filed against owner of Tanker and insurance company of Tanker. Therefore, it cannot consider to be a double benefit and claimant is having a different rights under both acts, therefore, question of option u/s 167 does not arise to be operated against claimant.

6. In view of above observations made by this Court, contentions raised by learned advocate Mr. Nanavati cannot be accepted. Therefore, there is no substance in present First Appeal. Accordingly, appeal is dismissed.