(2019) 01 GUJ CK 0021

In the Gujarat High Court

Case No : R/First Appeal No. 1096 Of 2015

United India Insurance Company Ltd — APPELLANT

Vs

Hansaben Wd/O Ramnik Vanvi — RESPONDENT

Date of Decision : 09-01-2019

Acts Referred:

Citation : (2019) 01 GUJ CK 0021

Hon'ble Judges : S.G. Shah, J

Bench : Single Bench

Advocate : Maulik J Shelat, Hiren M Modi

Final Decision : Allowed

Judgement

1. Heard learned advocate Mr.Maulik J. Shelat for the appellant and learned advocate Mr.HIren Modi for the respondent nos.1,2 and 3. Respondent no.4 is deleted whereas respondent nos.5,6 and 7 though duly served have remain absent. Perused the record and R and P.

2. The appellant herein is original opponent no.2 in M.A.C.P. No.716 of 2000 before the Motor Accident Claims Tribunal, Junagadh. The respondent nos.1 to 5 are original claimants in such claim petition whereas respondent nos.6 and 7 are respectively opponent nos.1 and 3 before the Tribunal. The opponent nos.1, 3 and appellant are respectively owner, driver and insurer of vehicle no.GJ 11 V 3750 which was met with an accident.

3. The appellant has contended that vehicle was not involved in the accident, however, scrutiny of record shows that driver of vehicle has been chargesheeted and when driver and owner have not came forward to confirm that vehicle was not involved at all and when fortunately Form No.54 is produced on record at Exh.54 disclosing the number of vehicle with details of the driver, owner and insurer of such vehicle, I do not see any substance in such submission by the appellant that such vehicle was not involved in the accident.

4. So far as factum of accident is concerned, the record discloses that on 04.09.2000 when deceased victim Ramnik Ruda Vanavi was driving his auto-rickshaw towards Indiranagar in Keshod one another public carrier rickshaw No. GJ 11 V 3750 has came in full speed from the opposite direction and dashed with the rickshaw driven by the victim which resulted into fatal injuries to him. Because of such accidental death of the victim, the respondent nos.1 to 5 being legal representatives as his widow, minor children and parents of the victim have preferred such claim petition claiming Rs.4,00,000/- as compensation. The respondent nos. 6 and 7 are driver and owner of offending vehicle though served have remained absent before the tribunal, whereas appellant has contested the claim petition contending that driver of the vehicle who has not holding valid driving license. To prove such contention the appellant has examined one witness namely Thobhanbhai Devabhai Parmar being Senior Clerk of the office of the RTO, Junagadh at Exh.62. The witness has stated on oath before the Tribunal that respondent no.6 driver of the vehicle though holding driving license no.GJ11/JD/94/39902 since 13.09.1994, for driving auto- rickshaw, license was valid only upto 12.09.1997. In support of such submission, witness has produced a certificate at Exh.64 which was issued by the Licensing Authority, Junagadh which confirms such position that driver was holding driving license for a period between 13.09.1994 till 12.09.1997. Such certificate is issued on 17.06.2014 and since there is no evidence regarding renewal of driving license till date, driver was not having license after the year 1997 whereas accident has took place in the year 2000. Therefore, there is reason to believe that on the date of accident, driver was not holding effective driving license though he was having driving license for above referred period at the relevant time. In view of above situation, when driver and owner have remained away from the proceedings before the Tribunal so before this Court, there is reason to believe that they have nothing to say about the evidence on record that driver was not holding effective driving license on the date of accident.

5. In view of above position, it is clear and certain that the Tribunal has committed an error in imposing absolute liability of the appellant - insurance company to pay full compensation to the claimant, when there is a clear breach of policy condition. It is unfortunately that though tribunal has referred decision in the case of National Insurance Co. Ltd. V/s Swaran Singh and Ors. reported in 2004 (1) GLH 691 SC and though in such judgment Hon'ble Supreme Court of India has categorically confirmed that in such cases principle of pay and recover would apply, whereby though insurance company may be directed to pay compensation to the victim or his legal representatives being 3rd party, not involved in the accident, the Tribunal has erred fixing absolute liability of the insurance company and not making it clear in the award that though insurance company has to pay an amount of compensation, it is entitled to recover it from the driver and owner in accordance with law.

6. For the purpose, the appellant is relying upon the decision in the case of National Insurance Company Ltd. V/s. Bhikhabhai Jeshabhai and Anr. in First

Appeal No.476 of 2005 which was decided on 26.08.2014. Since coordinate bench has discussed the relevant issue in detail in such judgment and reproduced from the case of Swarnsingh (supra) and therefore, I do not wish to reproduce all these things again and again.

7. In view of the aforesaid situation, I find that this appeal deserves to be allowed partly and is allowed accordingly. It is held that the Insurance Company is not liable to satisfy the impugned award. The award is modified only to the extent that the amount awarded will not be payable by the Insurance Company but by the owner of the vehicle. It appears that the Insurance Company has deposited the entire awarded amount before the Tribunal which was ordered to be invested in a Fixed Deposit. Although I have arrived at the conclusion that the Insurance company has no liability to pay the amount, yet, I, however, propose to follow the principles laid down by the Supreme Court in case of ISHWAR CHANDRA AND ORS. v. ORIENTAL INSURANCE CO. LTD. & ORS. [supra] and ORINENTAL INSURANCE COMPANY LTD vs. NANJAPPAN reported in AIR 2006 SC 1630 by passing the following direction:

8. The amount deposited by the Insurer should be released in favour of the claimant and would be recovered from the owner of the vehicle. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between, the insurer and the owner was the subject-matter of determination before the Tribunal and the issue has been decided against the owner and in favour of the insurer. Before release of the amount, the insured, the owner of the vehicle, shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle or any other vehicle now owned by the insured shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured."

9. In view of above, this Appeal is partly allowed.

