(2023) 03 GUJ CK 0005

In the Gujarat High Court

Case No : R/Special Civil Application No. 2951 Of 2023

Universal Sompo General Insurance Co. Ltd — APPELLANT

Vs

Suresh Devram Vegad — RESPONDENT

Date of Decision : 02-03-2023

Acts Referred:

Gujarat Motor Vehicle Rules, 1989 — Rule 220
Motor Vehicles Act, 1988 — Section 170, 172, 172(2)

Citation : (2023) 03 GUJ CK 0005

Hon'ble Judges : Gita Gopi, J

Bench : Single Bench

Advocate : Masumi V Nanavaty, Vibhuti Nanavati

Final Decision : Disposed Of

Judgement

Gita Gopi, J

1. Insurance Company, aggrieved by the order dated 14.12.2022 passed below Exh.35 in MACP no.868/15, has moved this Court contending that the order is against the rule of natural justice and that the learned Tribunal has erred in coming to the conclusion that there is an inordinate delay in filing the written statement by the insurance Company.

2. Ms. Masumi Nanavaty, learned advocate for the petitioner submits that the impugned order is oppressive as the Tribunal has failed to take into consideration the provision of Section 172 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act") and even the provisions under the Gujarat Motor Vehicle Rules, 1989 (hereinafter referred to as "the Rules"). Ms. Nanavaty submits that on 19.4.2017, an application under Section 170 of the MV Act was allowed and the insurance Company was permitted to defend the claim petition on all the grounds on the merits of the case and submits that due to non-availability of the documents and details, the insurance Company could not prepare and submit the written statement before the Tribunal and thus, on 11.5.2022, a prayer was

made to permit the insurance Company to submit the reply-cum-written statement in the interests of natural justice. Ms. Nanavati submits that the application was placed for hearing and on 14.12.2022, the Tribunal permitted the written statement to be placed on record on the terms and conditions which were not in accordance to the provisions of the Act.

3. The terms and conditions as reflected in the impugned order show that the insurance Company was ordered to pay Rs.20,000/- as delay cost to the claimant for filing the written statement at a belated stage. Sub-Section (2) of Section 172 of the MV Act keeps a cap on the order of the cost to be granted by the Claims Tribunal. Sub-section (2) of Section 172 of the MV Act lays down that no Claims Tribunal shall pass an order for special costs under sub-section (1) for any amount exceeding one thousand rupees. Sub-section (1) is with respect to an order for special costs in case tribunal adjudicating upon any claim for compensation is satisfied for the reasons to be recorded by it in writing that the policy of insurance is void on the ground that it was obtained by representation of fact which was false in any material particular or any party or insurer has put forward a false or vexatious claim or defence.

4. Here in this case, the Tribunal has not come to any such observation of any falseness from the side of the insurer, nor has observed any misrepresentation by the insurance Company rather by an order under Section 170 of the MV Act, the Tribunal has permitted the insurance Company to raise the defence on the grounds on merits of the case.

5. In case of New India Assurance Company] Limited Vs. Sanjay Devshri @ Kalubhai Bharwad, reported in 2005 (0) GLHEL-HC 208632, while referring to the Rules, it has been observed that the words “written statement” in the referred Rule 220 is nothing but the response or response if any to the averments made in the claim petition and that the MAC Tribunals deal with Motor Accident Compensation cases are not supposed to strictly follow the technicalities of the Civil Procedure Code and therefore, only material procedural provisions are made by framing Rules by respective State. Referring to the provision of Rule 220 of the Rules, it has been observed that in view of structure and phraseology of the said Rule, the contesting party is required to file written statement dealing with claim raised in the compensation petition and it is obligatory on the part of the Tribunal to take that written statement on record. The period of limitation is prescribed in the amended Civil Procedure Code, whereby it becomes obligatory to file the written statement within 90 days and it would not apply strictly to the proceedings before the MAC Tribunal. Thus, Advocate Ms. Masumi Nanavaty is right in submitting that the order passed imposing costs to the insurance Company for filing the written statement is very onerous as delay aspect would not be applicable. Ms. Nanavaty further states that restriction to the insurance Company not allowing reexamination of the claimant would be against the principles of natural justice, where during the course of proceedings, the insurance Company or the other contesting party would have the right to bring

all the details or any new facts which come to the knowledge of either of the parties to the notice of the Tribunal and the Tribunal cannot resist the insurance Company to deal with all the defence when already permission has been granted under Section 170 of the MV Act.

6. Here in this case, it clearly shows that the insurance Company can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the Section are found to be satisfied and for that purpose, the insurance Company has to obtain order in writing from the Tribunal, which should be a reasoned order by the Tribunal. Unless that procedure is followed, the insurance Company cannot have wider defence on the merits that was available to it by way of statutory defence. In a claim petition, the claimant would join the insurance Company itself as party respondent. Such exercise is undertaken owing to the statutory liability on the insurance Company on account of contract of the insurance. The insurance Company which was impleaded by the claimant would get the right to avail the benefit of larger defence on merits only on an order of the Court permitting the insurance Company on being satisfied of the two conditions mentioned in Section 170 of the MV Act.

7. Here in this case, by an order dated 19.4.2017, such permission was granted by the Tribunal concerned. In view of the fact the terms and conditions laid down in the order dated 14.12.2022 are quashed and set aside. The permission granted to file the written statement stands unaltered.

8. However, in case the insurance Company makes a prayer for reexamining the claimant, then, reasonable cost of transportation to and fro from the Tribunal be granted to the claimant, if claimed.

9. Accordingly, the present petition is disposed of. Direct service is permitted today.

