

(1999) 12 GUJ CK 0056

In the Gujarat High Court

Case No : Civil Revision Application No. 819 of 1996

Vinubhai Rambhai Dalwadi

APPELLANT

Vs

Mangabhai Sartanbhai

RESPONDENT

Date of Decision : 03-12-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 16, 115

Citation : (2001) 2 GLR 1334

Hon'ble Judges : Y.B. Bhatt, J

Bench : Single Bench

Advocate : H.M. Parikh, for the Appellant; Darshan M. Parikh, for the Respondent

Final Decision : Allowed

Judgement

Y.B. Bhatt, J.—This is a revision u/s 115 of C.P.C. at the instance of the petitioner, who is the original-opponent No. 2 in a Motor Accident Claim Petition being the owner of the vehicle insured by opponent No. 3-Insuree Company.

2. At the request of learned Counsel for the petitioner-opponent Nos. 1 and 2 stand deleted.

3. I have heard learned Counsel for the petitioner and learned Counsel for respondent No. 3-Insurance Company.

4. On the facts of the case, it appears that in respect of a claim petition presented by the present opponent No. 1, initially the Insurance Company, the owner and the driver were all represented by the same Advocate. However, at a later stage the Insurance Company informed the Tribunal that it would not represent the owner and driver. For this reason, the owner and the driver engaged a separate Advocate and consequently filed a separate written statement.

5. During the stage of the trial the Insurance Company gave an application to the Tribunal at Exh. 93 praying for issuance of witness summons to three persons

specified in the said application. The person noted as the third person in the said application on whom witness summons was also sought happens to be the present petitioner and the owner of the vehicle in question. It would appear from the record that the trial Court has granted this application for issuance of witness summons in a routine manner.

6. The petitioner herein as the owner of the vehicle, and as the third person against whom a witness summons was sought in the application Exh. 93 has objected to the issuance of such witness summons. It is to be noted that the person at serial No. 2 against whom witness summons was also sought and granted happens to be the driver of the vehicle, and the present petitioner raises no objection to the issuance of the witness summons as against the driver inasmuch as it is at the petitioner's request that the opponent No. 2 has been deleted.

7. Learned Counsel for the petitioner places reliance upon a decision of the Bombay High Court in the case of Pirgonda Hongonda Vs. Vishwanath Ganesh and Others, , whereby the long standing law has been discussed including the decisions of the Privy Council, whereby the practice of calling upon the opponent as a witness by the applicant has been condemned in very strong terms. On the facts of that case the Court held that an order issuing summons to the defendant to appear as a witness (for the plaintiff) was inconsistent with the practice generally prevailing in the Courts. Such an order sought to introduce a practice which has been condemned by the Privy Council in very strong terms. This order was, therefore, set aside. The Court further held that normally a party to a suit is expected to step into the witness box in support of his own case and if a party does not appear in the witness box, it would be open to the trial Court to draw an inference against him. If a party fails to appear in the witness box, it should normally not be open to his opponent to compel his presence by the issue of witness Summons.

8. As against this, learned Counsel for the Insurance Company sought to rely upon a decision of the Bombay High Court in the case of National Insurance Company Ltd. v. Bashasab Shaikh & Ors., reported in 1995 (1) ACC 663. In this decision, it has been held that where the Insurance company contended that the owner has been in collusion with the driver, it was for the Insurance Company to furnish evidence as regards such collusion, and in such a case, it was the bounden duty of the Insurance Company to have summoned the driver and the owner for being examined before the Court in order to establish that this was a case of collusion. In the absence of this effort the argument on behalf of the Insurance Company cannot be sustained (as regards collusion). What requires to be noted is that the observations made in the decision are in the specific context of a specific allegation made by the Insurance Company that there has been a collusion between the owner and the driver. On the facts of the case learned Counsel for the Insurance Company is unable to point out that any such allegation has been made during the course of the proceedings before the

Tribunal. This decision, therefore, is of no assistance to the Insurance Company.

9. Even otherwise, even assuming that such an allegation may be made in future, the Court has already issued a witness summons to the driver to appear as a witness for the Insurance Company to which no objection has been raised or can be raised by the petitioner owner of the vehicle. It is, therefore, open to the Insurance Company to elicit the true facts by examining the driver.

10. In the premises aforesaid, the impugned order of the trial Court issuing witness summons to the present petitioner is illegal and outside the discretionary jurisdiction of the Tribunal. Consequently, the same is quashed and set aside. This revision is accordingly allowed and rule is made absolute with no order as to costs. Interim relief stands vacated. Direct service permitted.

11. Petition allowed.