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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2019 of 1982
with
FIRST APPEAL No 131 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA Sd/-

and
MR.JUSTICE S.K.KESHOTE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

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2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

Versus

Appearance:
FA No.2019/82 Mr. K.H. Baxi for the appellants.
Mrs.Girish Patel for respondent no.1
Mr.B.R. Shah for respondent no.4
Respondent nos.2 & 3 served.

FA No.131/83 Mr.Girish Patel for the appellants
Mr.K.H. Baxi for respondent no.2
Mr.B.R. Shah for respondent no.3

Respondent no.1 served.

CORAM : MR.JUSTICE R.A.MEHTA and
MR.JUSTICE S.K.KESHOTE
Date of decision: 19/04/95

ORAL JUDGEMENT
Coram : R.A. Mehta & S.K. Keshote, JJ.
April 19, 1995

ORAL JUDGMENT : (Per R.A. Mehta, J.)

These are two cross appeals arise out of Motor Accident Claim Petition No.24 of 1981 before the Motor Accident Claims Tribunal (Main), Rajkot. First Appeal No.131 of 1983 is by original claimants for enhancement of compensation; and First Appeal No.2019 of 1982 is by the driver and owner of the vehicle, because the insurance company has been exonerated and not held liable to satisfy the award as the deceased was considered a gratuitous passenger.

2. The facts are not in dispute. The motor vehicle accident took place on 28th August 1979 near village Naranka, Morbi Taluka of Rajkot District. The vehicle involved was a jeep car belonging to the Gujarat Rural Housing Board. There was Machu Dam disaster in August 1979 and in connection with relief operations, deceased Dy. Engineer of the Board had gone to Morbi and was going to village Naranka in the jeep of the Board. This jeep car was being driven by Bababhai Chihorbhai, driver of the Board. The jeep had gone off the road and fallen into a ditch, as a result of which Deputy Engineer, F.H. Rangwala died. The claimants are widow and children of the deceased Deputy Engineer.

3. The income of the deceased as per the last pay certificate, Exh.65 was Rs.1481.10 ps. The Tribunal held that loss of dependency benefit was Rs.800/- per month and Rs.9800/- per annum. Applying the multiplier of ten, the pecuniary loss was assessed at Rs.96,000/-. Adding the conventional amount of Rs.5,000/-, total amount of Rs.1,01,000/- was awarded to the claimants.

4. As regards the liability of the insurance company the Tribunal held that the deceased being an employee of the Board was not covered by the policy exh.74, and the insurance company was not bound to satisfy the award. The policy was not a comprehensive policy and no additional premium was paid for the occupants of the

vehicle and therefore, the insurer was not liable.

5. As far as the appeal of the claimants is concerned, it is submitted that the award is grossly inadequate. It is submitted that having regard to the last pay certificate, exh.65, where his emoluments are shown at Rs.1481.10 ps. the monthly income of the deceased can safely be taken to be around Rs.1500/- per month.

6. That would be his current income at the time of his death at the age of 43 years. His future income is bound to be substantially higher, and after deducting for his personal expenditure, the datum figure can be safely taken at Rs.1500/- per month. Thus, Rs.18,000/- per year would be the loss of dependency benefit to the claimants. Having regard to the age of 43 years, multiplier of 15 is required to be applied. therefore, the total loss of dependency benefit would be Rs.2,70,000/-. Adding conventional amount of Rs.15,000/- the claimants would be entitled to total amount of Rs.2,85,000/-. The claim of the appellants is Rs.2,25,000/-, which is required to be allowed with 12% interest from the date of application to the Tribunal till the date of realisation. Accordingly, the appeal of the claimants is required to be allowed in full and the award made by the Tribunal is required to be modified by directing that the claimants are entitled to compensation of Rs.2,25,000/- together with costs throughout and interest at the rate of 12% per annum from the date of application till realisation. The next question is whether the insurer is liable to indemnify the owner.

7. As regard the appeal of the owner of the vehicle and the question of liability of the insurer is concerned, the defence of the insured is that the deceased Deputy Engineer was an employee of the Board in whose jeep he was travelling in the course of his employment and therefore the jeep car was a vehicle in which he was carried in pursuance of the contact of employment or by reason of contract of employment. Therefore his risk was not covered under the policy. In the alternative it was submitted that in case the risk is covered, the liability of the insurer would be restricted to Rs.50,000/- only under sec.95(2)(1)(b).

8. On the other hand it is contended that the deceased was not being carried in the vehicle in pursuance of any contract of employment or by reason of contract of employment, and merely because he was an employee travelling in the vehicle of the employer for

the employer's work, he does not cease to be an occupant and his risk is covered under the Act as well as under the policy. It is further submitted that in any case the insurer has given additional coverage in respect of all occupants and the liability of the insured is unlimited.

9. The policy is a private and professional car policy. The limitations as to use mentioned in the policy are use only for social, domestic and pleasure purposes and for the insured's business or profession. The policy does not cover use for hire or reward. This is the rubber stamp endorsement in the policy column relating to limited use.

10. The claimants and the owner have therefore, submitted that this vehicle is not a vehicle in which passengers are carried in pursuance of any contract of employment or by reason of contract of employment. The nature of the vehicle is 'general purpose', private car which permits use for social, domestic and pleasure purpose and also for the business of the insured. In such a vehicle there can be any person or class of persons such as Chairman and members of the Board (who are not employees at all) or contradictors, builders, engineers, architects and their staff members who are not employees of the Board, and at the same time they have legitimate business with the Board and they may be carried in the vehicle of the Board. They are occupants of the vehicle. Merely because the Deputy Engineer was an employee of the Board it cannot be said that he was being carried in the vehicle of the Board in pursuance of the contract of employment or by reason of contract of employment. These words go with the vehicle and not with the occupant. Because the wordings of the statutory provision are that vehicle is a vehicle in which passengers are carried in pursuance of a contract of employment or by reason of contract of employment. It is further submitted that the two phrase, namely, "in the course of employment" and "in pursuance of contract of employment" or "by reason of contract of employment", are entirely different. The legislature has deliberately used these different phrases in the same section and they have to be given different meanings and different legislative intentions. It is therefore, submitted that merely because an employee is carried in the employer's vehicle in course of his employment cannot necessarily mean that the person is carried in pursuance of contracat of employment or by reason of contract of employment.

11. Learned counsel for the insurer has relied on the Full Bench judgment of this High Court in the case of New

India Assurance Co. vs. B.G. Thakkor, reported in 1993 (2) GLR 1051. The facts in that case are almost similar to the facts of the present case. In that case also an engineer of ONGC, while proceeding for field work in the jeep car belonging to ONGC met with an accident and the question was about the liability of the insurer. It was held that the liability of the insurer was limited. In that case the Full Bench of this Court observed that it is not necessary to consider the implications of section 95(1) and the proviso thereto, but the question which the Full Bench considered was confined to subsection (2) and that question was whether clause 3 (1) or clause (2) of sec.95 was attracted. It is clear that the Full Bench has proceeded on the assumption and undisputed proposition that an employee travelling in employer's vehicle and in course of employment is necessarily carried in the vehicle in pursuance of or by reason of contract of employment and the Full Bench was not called upon to decide the question whether travelling in the course of employment in employer's vehicle is necessarily travel by a vehicle in which passengers are carried in pursuance of contract of employment.

12. Although there is some force in this contention raised by the owner of the vehicle, it is not necessary for us to deal with the question because this appeal can be decided on the other point of additional coverage. Therefore, even on the assumption that there is no statutory coverage or there is limited statutory coverage, according to the Board there is additional coverage of all the people with unlimited liability under the policy.

13. For this purpose it is necessary to refer to the provisions of sec.95 of the Act and the decision of the Supreme Court in the case of Pushpahai Parshottam udshi vs. Ranjit Ginning & Pressing Co. Pvt. Ltd., reported in AIR 1977 SC 1735. In that case interpreting the provisions of sec.95(1)(d)(1) of the Act the Supreme Court held that there was no requirement of statutory provision that the policy of insurance should cover the risk of passengers who were not carried for hire or reward. The plea that the words "third party" are wide enough to cover all persons except the insured and the insurer. After referring to the provisions of sub-clause (ii) the Supreme Court held as follows :

> "Therefore, it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As under sec.95 the risk to a passenger in a vehicle who

is not carried for hire or reward is not required to be insured the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act."

14. In that case it was further contended that the insurer can always issue policies covering risks which are not covered by the requirements of sec.95. In that light the Supreme Court considered sec.II of the policy relating to liability to third parties. It was contended that clause (a) of sec.II of the policy provided coverage in respect of "death of or bodily injury to any person", and it was submitted that the wording was wide enough to cover all the risks including injuries to passengers, on the construction of clause (a) which reads as follows :

"(a) death of or bodily injury to any person but except so far as is necessary to meet the requirements of sec.95 of the Motor Vehicles Act, 1939, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured."

The Supreme Court held that the insurance policy had insured the owner only to the limited extent of Rs.15,000/-.

15. After the judgment of the Supreme Court in the case of Pushpabai (supra) dated 25th march 1977 on 17th March 1978 the Tariff Advisory Committee issued Circular MV. No.1 of 1978 which reads as follows :

"TARIFF ADVISORY COMMITTEE
BOMBAY REGIONAL COMMITTEE

Circular M.V. No.1 of 1978 Bombay
17th March 1978

INSURANCE COMPANY'S LIABILITY IN RESPECT OF GRATUITOUS PASSENGERS CONVEYED IN A PRIVATE CAR STANDARD FROM FOR PRIVATE CAR COMPREHENSIVE POLICY - SECTION II - LIABILITY TO THIRD PARTIES.

I am directed to inform Insurers that advices have been received from the Tariff Advisory Committee to the effect that since the industry had all these years been holding the view

liability the same practice should continue.

In order to make this intention clear, Insurers are requested to amend clause 1(a) of section II of the Standard Private Car Policy by incorporating the following words after the words "death of or bodily injury to any person" appearing therein:

Including occupants carried in the motor car provided that such occupants are not carried for hire or reward.

I am accordingly to request Insurers to make the necessary amendment on sheet 38 of the Indian Motor Tariff pending reprinting of the relevant sheet.

All existing policies may be deemed to incorporate the above amendment automatically as the above decision is being brought into force with effect from 25th March 1977.

Sd/-
Regional Secretary

This circular came to be considered by Division Bench of this Court in the case of Harshvardhatiya vs. Jyotindra, reported in 1981 (22) GLR 555 and this Court observed as follows :

"It is argued by counsel that in view of this policy decision the Insurance Company should make full payment in the present case also, in disregard of the fact that the deceased was a gratuitous passenger. Taking into consideration the spirit underlying the aforesaid instructions issued by the Tariff Advisory Committee, all the insurers would be expected to adhere to the policy decision in its true spirit. The policy decision had to be evolved by reason of the fact that for years the insurers were considered to be liable even in cases of gratuitous passengers. The situation came to be altered by virtue of the decision in Pushpabai's case (supra) rendered on 25th March 1977. The insurance business having been nationalised - it is but reasonable to expect the Insurers not to take advantage of the altered situation and to continue to discharge their obligation as hitherto."

In the present case, the policy is issued after, and in the light of this circular on 5.12.1978 and section II liability of third parties. The amendment suggested by the Tariff Advisory Committee is incorporated and given effect to by the words "including occupants carried in the motor car provided that such occupants are not carried for hire or reward" after the words 'in section II 1(a). It is thus clear that the insurer has not only continued his practice of providing insurance coverage to third parties including all occupants but it has been made clear in spite of Supreme Court's judgment in Pushpabhai's case by issuing circular for giving coverage even under the existing policies but also by making specific amendment in the new policies. In the present case the policy which has been issued after the circular incorporated the amendment giving express coverage to gratuitous occupants. In view of this additional and express coverage given to the occupants, the insurance company is liable to satisfy the award against the insured.

16. Learned counsel for the insurer submitted that for additional coverage additional premium is necessary and without such additional premium there cannot be any additional coverage. Reliance is placed on the judgment of the Supreme Court in the case of National Insurance Co. Ltd. Jyotindra. Jugal Kishore, reported in AIR 1988 SC 719. In that case the contention was that the insurer had given additional coverage. It was ascertained whether the rules permit such coverage and whether any additional premium was paid. It was in the context of ascertaining whether additional coverage is given or not that the question of additional premium was considered. The Supreme Court came to the conclusion that there was no additional premium. But this judgment cannot be said to have laid down that no additional coverage can be given in absence of any additional premium. In fact no additional coverage has been given in the present case because whatever coverage given prior to Pushpabai's case has been continued by the insurers without charging any extra premium. This so called extra coverage is in fact the same coverage which was being given by all the insurers under the Act and the Policy. It is only because of the restricted interpretation in Pushpabai's case that the Tariff Advisory Committee laid down the same coverage be continued to be given notwithstanding the judgment in Pushpabai's case and all future policies were directed to be amended so as to give coverage to gratuitous passengers by specifically incorporating the words "including occupants" after the words "any person." Therefore, merely because the words

'any person' is made more explicit by amendment, it cannot be said that any additional premium was called for. Therefore, this contention raised by the insurer has no merit and it must fail.

17. In the result, both the appeals are allowed. There shall be award against all the opponents including the insurer for a sum of Rs.2,25,000/- with 12% interest per annum from the date of application till the date of realisation with costs all throughout. The insurer is directed to deposit the amount as per this award within three months. On such deposit the Board would be entitled to withdraw the amount which it has already deposited or paid in pursuance of the award with proportionate interest. The amount is ordered to be apportioned equally. The Tribunal shall invest a sum of Rs.1,00,000/- each in favour of the three claimants in their respective names for a period of three years. The balance amount in respect of the three claimants be paid to them by account payee cheques in their names. On the invested amount, periodical interest be paid to the claimants by account payee cheque.

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