

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2045 of 1997

with
CIVIL APPLICATION NO.6225/97

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 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?
 5. Whether it is to be circulated to the Civil Judge?

UNITED INDIA INSURANCE CO LTD

Versus

GSRTC

Appearance:

MR PV NANAVATI for Petitioner

MR KS JHAVERI for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 30/09/97

ORAL JUDGEMENT

1. Admit. Mr.Kalpesh Zaveri appears and waives service of admission on behalf of GSRTC and other respondents are not required to be served. With the consent of learned advocates appearing for parties matter is finally heard and decided today.

1. This first appeal is filed by the United India Insurance Co.Ltd on it being aggrieved by the judgment and award of the MACT(Main) at Bhavnagar, dated 20.11.96 whereby the tribunal has partly allowed the application as against respondent Nos 1,3 & 4 and has awarded amount of Rs.42,000/- with interest at the rate of 15% from the date of application till realisation.

2. Mr.P.V.Nanavaty, Ld.advocate appearing for the Insurance Co has two-fold grievance to make, namely, that the amount awarded is unreasonable, unjust and on higher side of the brackets and that the interest awarded is also higher rate of interest than what is ordinarily awarded in vehicular accident, and on the other hand Mr.Zaveri has submitted to the court that the award is just, proper and within the brackets and is not required to be interfered with by this court.

3. The tribunal has taken into consideration various documentary evidences produced by the ST corporation which was examined at Exh.28 and the statements recorded by him as well as application filed by him are exhibited between Exs.19 to 23 and 29. The tribunal has found that the that there was contributory negligence of the driver of the ST bus as well as the driver of the carrier which is assessed at 20% and 80%. So assessing the contributory negligence the tribunal has worked out the liability of the Insurance Co of the vehicle at Rs.42,000/- as the tribunal has found that the driver of the vehicle was negligent to the extent of 80% in driving his vehicle while the driver of the GSRTC was rash and negligent to the extent of 20%.

4. Mr.P.V.Nanavaty, Ld.counsel appearing for the United India Insurance Co. Ltd with whom the truck was insured bearing Reg.No.GTG 86 and since the liability is fastened to the extent of 80% the tribunal has erred in assessing the liability of the truck driver. According to him, the amount of Rs.42,000/- is excessive, unreasonable and beyond the brackets and the award of interest at the rate of 15% is also unreasonable. Mr.Zaveri on the other hand supported that the award of the tribunal. Now, if one turns to the evidence recorded before the tribunal it shall have to be stated that the accident occurred between the bus and the truck on the National Highway near the village Dhandhli at cross-roads in the early morning. The driver has filed a complaint

which exhibited at Exh.19 and criminal complaint was also filed. The Conductor of the bus has also given statement at Exh.22 and the carrier driver of the truck has also given statement at Exh.21. Panchnama was also produced at Exh.20. The road is found to be 24 Ft wide at the place of the accident and from the reading of the panchnama and the condition of the two vehicles when they were lying stationary the tribunal has found that the negligence of the carrier driver was 80% while that of the driver of the bus was 20%. Looking to the width of the place where the vehicles were lying in my opinion the tribunal has reached a correct finding about the contributory negligence. Turning now to the quantum, the ST corporation has established that the bus was taken to Amreli workshop where it was repaired for a period of 19 days and the bus therefore did not work on the road for 19 days. The expenses towards spare-parts was Rs.15,264.66ps and the income which was received on this route by this very bus was approximately stated to be Rs.2,000/-per day. The loss to the vehicle is established by statement at Exh.23 and the loss at the rate of Rs.2,000/- multiplied by 19 days is worked out at Rs.38,000/-. Mr.Nanavaty submitted that the way of working out compensation is arbitrary and unreasonable because there was nothing to show that actually on this route the bus was earning Rs.2,000/-per day. In his submission the tribunal has simply worked out on the guess work and he submitted that assuming the bus has any work for 19 days, in the absence of actual income per day from this very basis it would hazardous to award Rs.2,000/- per day and award of Rs.53,000/- in his submission is also higher side. Partially, agreeing with the aforesaid submission, when there is no specific proof of actual earning on this vehicle on this road per day, the imagination can not be permitted to run riot and the guess work shall have to be more unreasonable. In my opinion, amount of Rs.38,000/- which would include costs incurred for repairing the vehicle and towards loss arising from nonuser of the vehicle for 19 days would be just and proper, and the amount of interest which is ordinarily awarded in such type of cases is 12% p.,a. and the tribunal was, perhaps, charitable in awarding 15% interest, and to that extent the award of the tribunal is modified by awarding interest at the rate of 12% p.a. on the awarded amount.

5. In the result, FA partially succeeds. The claimant would be entitled to recover amount of Rs.38,000/- + interest at the rate of 12% p.a. and proportionate costs as directed by the tribunal.

Judgment and award of the tribunal stands modified to the aforesaid extent. Amount of Rs.25,000/- deposited in this court is directed to be transferred to the tribunal and the registrar/Nazir branch of this court is directed to take appropriate action for transferring the amount to the tribunal.

6. In view of the order on FA, no order on CA No.6225/97.