

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5265 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE H.H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
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? : NO

NEW INDIA ASSURANCE CO LTD

Versus

RENUKA SUSHANT SHAH

Appearance:

MR PV NANAVATI for Appellant
MR MTM HAKIM for respondent Noa.1-4
MR GT PARIKH for Respondent No. 9

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE H.H.MEHTA

Date of decision: 30/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Heard the learned counsel for the appellant Insurance Company and learned counsel appearing for respondent nos.1 to 4 (original claimants). Appeal admitted. Mr. MTM Hakim appears and waives service of notice in the appeal for respondent nos.1-4 original claimants.

2. On a joint request of learned counsel this appeal is taken up for hearing today.

3. This is an appeal under section 173 of the Motor Vehicles Act, 1988, at the instance of the Insurance Company, challenging the judgement and award passed by the Motor Accident Claims Tribunal (Auxi) at Vadodara in Motor Accident Claim Petition No.592/93.

4. Learned counsel for the appellant fairly conceded that no grounds would arise in the appeal flowing from the statutory defences available to an Insurance Company under section 149(2) of the said Act. He, therefore, sought to challenge the impugned award only on quantum and merits.

5. In this context, on inquiry from the learned counsel for the appellant, we are shown the application made by the Insurance Company to the Motor Accident Claims Tribunal (Exh.25) being an application under section 170 of the said Act, for permission to take up defences which would otherwise be available to the owner and driver of the vehicle in question. We have examined the certified copy of the application together with the order passed thereon. The order is a terse order viz. "Permission granted".

6. Obviously such an order does not meet the test laid down by the Supreme Court in the case of Shankarayya Vs. United India Insurance Co. Ltd, reported in AIR 1998 SC page 2968 (=1998(3) SCC page 140), which has been followed by a Division Bench of this Court in the case of United India Insurance Company Ltd. Vs. H.C. Bagadia, reported in 1999(1) GLH page 5. These decisions interpret section 170 of the Act and lay down that the order of the Tribunal under section 170 granting permission to the insurer to take up defences available to the owner and driver must be an order in writing and supported by reasons.

7. On the facts of the case, as we have observed

hereinabove, the order passed by the Tribunal granting permission to the Insurance Company under section 170 of the said Act is a terse order not containing any reasons whatsoever. On the facts of the case, therefore, the said order would not serve to confer upon the Insurance Company, grounds which are otherwise available to an owner or driver of the insured vehicle.

8. In the premises aforesaid, we find that there is no substance in the present appeal and the same is, therefore, dismissed with no order as to costs.
