

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 700 of 2002

with

CIVIL APPLICATION NO 2688 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

and

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
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 concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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NEW INDIA ASSURANCE CO. LTD

Versus

MEHUL SURESHBHAI

Appearance:

1. First Appeal No. 700 of 2002

MS MEGHA JANI for Petitioner No. 1

MR HARSHIT S TOLIA for Respondent No. 1-2,4

NOTICE UNSERVED for Respondent No. 3

MR PV NANAVATI for Respondent No. 5

MR VIBHUTI NANAVATI for Respondent No. 5

SERVED BY RPAD - (N) for Respondent No. 5

CORAM : MR.JUSTICE KSHITIJ R.VYAS

and

MR.JUSTICE H.K.RATHOD

Date of decision: 30/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

Heard learned advocate Ms. Jani for the appellant insurance company; Mr. Tolia, learned advocate for respondents no.1,2 and 5 and Mr. P.V. Nanavati, learned advocate for respondent No.5. By means of this appeal, the appellant - NEW INDIA ASSURANCE CO. LTD has challenged the award made by the Motor Accident Claims Tribunal (Aux.) Surat in Motor Accident Claim Petition No. 577 of 1987 dated 24.9.2001. Under the impugned award, the tribunal has awarded compensation of Rs. 2,00,000.00 with interest thereon at the rate of 9 per cent per annum from the date of the claim till the realization thereof with proportionate costs in favour of the respondents - original claimants. The tribunal has also directed the present appellant to deposit the awarded amount with interest and costs before the tribunal within three months from the date of the award. The tribunal has also declared that the claimants are entitled to receive the aforesaid amount in equal share. Under the impugned award, the tribunal has also directed that out of the total amount which fall in the share of each claimant, 60 per cent with interest and costs be deposited in any nationalized bank in the name of the claimants for a period of five years with a further direction to the bank not to advance any loan, over draft or permit withdrawal of the deposit or to create any encumbrance and/or charge without prior permission of the tribunal. Remaining 40 per cent of the total amount has been ordered to be paid in cash to the claimants by account payee cheque after deducting the amount of court fees, if any. The tribunal has also directed that if the amount is paid to the claimants under section 140 of the Motor Vehicles Act, 1988, same is required to be deducted by the office while making final payment to the claimants.

2. Brief facts of the present appeal are to the effect that on 17th March, 1987, at about 9.00 o'clock at night on National Highway No.8, opposite Gupta Synthetic Factory within the limits of village Pipodara, the Truck bearing No. M.R.L. 7202 which is of the ownership of original opponent NO.2 was parked on the road obstructing the traffic and the rear light of the truck has not been switched on and there was no guard or other indication to warn the other vehicles and it was lying on the highway obstructing the traffic, at the time, the opponent NO.4 who is the father of the claimants came with his motor

car and when this car reached near the place where the truck was parked and as the truck was parked in the negligent manner and as there was no light and from the opposite direction the vehicles were coming and due to dazzling, the car of the original opponent no.4 dashed with the back side of the stationary truck and, therefore, accident has taken place due to negligence on the part of the truck driver. Due to the said accident, the mother of the claimants and the wife of the opponent NO.4 who was the occupant in the car died. It is also averred that the deceased mother Alkabab was aged about 35 years at the time of said accident. According to the claimants, she was doing the household work and was also doing the work of assorting and grading of the diamond and thereby she was earning Rs.18,000.00 per year. Therefore, in the circumstances, the claimants, by filing the aforesaid claim petition, claimed an amount of Rs.2,50,000.00 from the opponents.

3. The said claim petition was resisted by the present appellant original opponent no.3 New India Assurance Co. Ltd. by filing its written statement at Exh.26 wherein it has been contended that the accident has taken place due to rash and negligent driving of the original opponent NO.4. It has been contended that the stationary truck had parked there with proper indication and with rear light on. It has also been contended that that the claim put forward by the claimants is excessive and exorbitant. Except that, there is no other contention raised by the appellant insurance company before the tribunal. The issues were framed by the tribunal at Exh. 33 wherein no such issue has been framed by the tribunal as to whether the truck involved in accident has been insured with the appellant company or not. Before the tribunal, the appellant has raised the only contention that the vehicle bearing No. MRL 7207 is not insured with the appellant company and that the insurance policy was not produced by the claimant or the owner of the vehicle and, therefore, in absence of the policy, the claimants are not entitled to claim any compensation from the appellant insurance company. Before the tribunal, an application was submitted by the appellant wherein it has been prayed to direct the owner of the offending vehicle to produce the insurance policy before the tribunal wherein the owner of the offending vehicle was directed to produce the insurance policy before the tribunal by order dated 17th July, 1999. Before the tribunal, vide Mark 82/2, one document has been produced by the RTO Department and vide Exh.61 dated 12th August, 1987, one document has been produced by the original claimants. In light of these two documents, the

appellant insurance company has raised the contention that looking to the documents Mark 82/2 and the date of accident 17th March, 1987, the vehicle in question was not insured with the appellant insurance company on the day of accident.

4. Learned advocate Ms. Megha Jani has contended that looking to the evidence which was produced by the RTO as well as the claimants before the tribunal, on the date of accident 17th March, 1987, the vehicle in question was not insured with the appellant company and, therefore, the tribunal has committed gross error in relying upon the document at Exh. 61 without proving the said document. She has also contended that in absence of the policy of insurance, the tribunal ought not to have believed the document at Exh. 61 and ought not to have awarded the compensation in favour of the claimants. According to her submissions, the policy is a must which is required to be produced and proved either by the claimants or by the owner of the vehicle involved in the accident. According to her, since the insurance policy has not been produced either by the claimants or by the owner of the offending vehicle and since the policy has not been proved, the tribunal ought not to have relied upon the document at Exh. 61 and in doing so, the tribunal has erred. Except these contentions, no other contentions have been raised by Ms. Jani before this Court.

5. We ourselves have perused the judgment and award made by the tribunal. In respect of the contention raised by Ms. Jani, relevant discussion is at para 16 of the impugned award. The tribunal has considered this contention raised by the appellant insurance company before the tribunal and has discussed the documents at Exh. 61 and Mark 82/2. Both the documents have been shown to us by learned advocate Ms. Jani. We have perused these two documents and considering the documents shown to us as well as the discussion made by the tribunal in respect of these two documents, the tribunal has come to the conclusion that in respect of the document Mark 82/2, the truck was insured with the New India Assurance Company Ltd. from 12.8.1985 to 2.10.1986 and then the vehicle was transferred in favour of one Birendra Singh and the insurance was for the period from 12.10.1987 to 3.12.1987. The accident took place on 17.3.1987 and, therefore, on the date of accident, the vehicle was not insured with the New India Assurance Company. The tribunal has observed that in one document, it is stated that the vehicle on the date of the accident was insured with the original opponent NO.3 while in the second document, it is not stated specifically that on the

date of the accident, the vehicle was insured with the insurance company. The tribunal has observed that the document mark 82/2 has not been exhibited but it can be considered as evidence produced by the RTO and must have to be read in evidence and, therefore, that document has been exhibited before the tribunal.

It is necessary to note one important aspect that in respect of the order passed by the tribunal on 17th July, 1999 against the owner of the vehicle, the owner of the vehicle truck has not produced the insurance policy. Therefore, one application on the same day has been submitted by the appellant - Insurance Company before the Tribunal wherein it has been prayed that the witness summons may be issued to the Regional Transport Officer and the witness may be asked to produce the documentary evidence in respect of the insurance policy of the vehicle in question bearing No. MRL 7202 on the date of accident i.e. 17th March, 1987 with all the details in reference to the letter dated 12th August, 1987 issued in favour of Mahendrakumar T. Dalal. The Tribunal has issued summons as prayed for by the appellant company and ultimately, the document Mark 82/2 has been produced relating to the truck bearing No. MRL 7207 dated 17th August, 1999. Exh. 61 has been produced by the claimants before the tribunal. Therefore, letter of the RTO dated 12th August, 1987 has been exhibited as Exh. 61 and, therefore, the contents of that document must be read in the evidence. The contention has been raised by Ms. Jani, learned advocate for the appellant insurance company that these two documents are not proved documents and, therefore, while deciding the claim petition, the tribunal ought not to have taken into consideration the contents of such documents. The contention raised by Ms. Jani cannot be accepted on the ground that the document at Exh. 61 has been produced by the claimant and has been proved before the tribunal and, therefore, contents of that document must be read in the evidence. As per the document at Exh. 61, validity of the insurance in respect of the truck in question is from 3.10.1986 to 2.10.1987 which covers the date of accident 17th March, 1987. In Exh. 61, insurance policy number is also given 353440 and the name of the owner has also been given whereas the document at mark 82/2 has been produced by the RTO Authority at Mumbai vide list dated 21st August, 1999 which has been endorsed by the appellant insurance company subject to the contention, said document is also required to be admitted in evidence. In view of these facts, the tribunal has rightly considered these two documents which have been placed on the record, one by the RTO pursuant to the witness summons issued by the

Tribunal and one produced by the claimants. The tribunal has also exhibited the document at mark 82/2 as mentioned in its judgment.

It is necessary to make reference of the relevant portion of both the documents namely the document at Exh. 61 and the document at mark 82/2 which cover the period of insurance policy from 3.10.1986 to 2.10.1987. Relevant portion of the document Exh. 61 dated 12th August, 1987 issued by the Regional Transport Officer Bombay (C) addressed to one Mahendrakumar Thakordas Dalal and produced by the original claimants before the tribunal is reproduced as under :

"Required information issued furnished below:

Name & address of the Regd. Owner: Mr.Nisharahmed Faiyaz.

N.H.Rd. No.1, Shop

No. 3, Opp.Jolly

Chambers, B'bay-9.

Insurance as on 17.3.87: THE NEW INDIA ASS.CO. LTD.

Insurance No. : 353440.

Insurance validity : 3.10.86 to 2.10.87

HPA with : --"

Relevant portion of the second page of mark 82/2 is reproduced as under:

"12-10-87/15-10-87 Mr. Birendra Singh

R/16, Bori Chawl

55/56, Behind the New China Mill

T.J. Rd.,Sew..., Bombay 15

THE NEW INDIA INS. CO. LTD.

353440

3/10/86 TO 2/10/87."

Thus, bare perusal of these two documents would make it abundantly clear that the truck bearing No. MRL 7207 was insured with the appellant insurance company on the date of accident 17th March,1987. In both the documents, period of insurance in respect of the vehicle in question is from 3.10.86 to 2.10.87. However, it is required to be noted that while dealing with this contention in paragraph 16 of its award,the tribunal has not applied its mind in respect of the second page of the document mark 82/2 and because of that,the tribunal has observed that the details of two documents produced by the RTO, in one document, it is stated that the vehicle in question was insured with he appellant insurance

company on the date of accident but in second document, it is not so stated specifically that on the date of accident, the vehicle in question was insured with the appellant insurance company. After considering the first page of the document mark 82/2, the tribunal has observed that between the entry dated 12.10.85 and 12.10.87, there is no other entry. If the tribunal would have considered the second page of the document mark 82/2, then, this confusion would not have arisen in the mind of the tribunal. If it would have considered the second page also, then, it would have come to the conclusion that from both the documents, it is clear that the vehicle in question was insured with the appellant insurance company on the date of accident 17th March, 1987. However, relying upon document Exh. 61, the tribunal has come to the conclusion that the vehicle in question was insured with the appellant insurance company on the date of accident 17th March, 1987 and based upon such conclusion, the tribunal has made the award in question holding the appellant insurance company liable. Thus, ultimate conclusion is proper. However, if it would have considered the second page of the document mark 82/2, then, whole confusion would have gone and it would not have given such ground to the appellant insurance company in this first appeal. In view of these factual aspects, the contention raised by Ms. Jani cannot be accepted. After considering the document mark 82/2 wherein, relevant entry is appearing at page 2, the said document was shown by us to Ms. Jani and after perusal of the second page of the document mark 82/2, she has not been able to make any comment. On the contrary, she has agreed that as per the second page of the document mark 82/2, very period has been mentioned with policy number in respect of the vehicle in question and it would mean that the vehicle in question was insured with the appellant insurance company on the date of accident 17th March, 1987 and, therefore, she is fully satisfied after perusal of the second page of the document mark 82/2 that the period of insurance of the vehicle in question was from 3.10.86 to 2.10.87 which would cover the date of accident 17th March, 1987.

In view of this documentary evidence on record before the tribunal, the tribunal has given the award in question. We ourselves have also perused both the documents and these two documents are clearly establishing the fact that the vehicle in question was insured with the appellant insurance company on the date of accident 17th March, 1987 and in such circumstances, it is also necessary to note one important aspect that the appellant insurance company has not examined any witness

to rebut the document Exh. 61 before the tribunal to establish that the vehicle in question was not insured with the appellant insurance company on the date of accident. The original claimants discharged their burden prima facie by producing and proving the document Exh.61 and, therefore, the insurance company was liable to discharge such burden by producing the evidence to say that the vehicle in question was not insured with the appellant insurance company. Therefore, in absence of such evidence, the tribunal was right in believing and has rightly inferred that the vehicle in question was insured with the appellant insurance company on the date of accident 17th March,1987 and in doing so, the tribunal has not committed any error and, therefore, the contention raised by Ms.Jani in that regard cannot be accepted that in absence of the insurance policy, the tribunal ought not to have awarded the compensation in favour of the claimants. Sufficient evidence was there before the tribunal and since the ultimate conclusion of the tribunal is just and proper, therefore, same is not required to be interfered by this court in this appeal. This was the sole contention raised by Ms.Jani in this appeal. No other contention has been raised by Ms.Jani. We are fully satisfied that the vehicle in question was insured with the appellant insurance company on the basis of the documents Exh. 61 and 82/2. Therefore, according to our opinion, there is no merits in this first appeal filed by the insurance company. Therefore, the appeal is required to be dismissed.

Accordingly, this first appeal is dismissed. Notice is discharged. There shall be no order as to costs. The appellant insurance Company has deposited an amount of Rs.25,000.00 (Rupees twenty five thousand only) before the Registry of this Court. There, the Registry of this Court is directed to transmit the said amount of Rs.25,000.00 immediately to the Motor Accident Claims Tribunal (Aux.), Surat.

In view of the order made by this court on the first appeal, civil application no.2688 of 2002 shall not survive. Same is, therefore, disposed of as not surviving with no order as to costs.

Dt. 30.8.2002 (K.R.Vyas,J.)

Vyas (H.K.Rathod,J.)