IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 133 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO. - Appellant(s)
Versus
BANIBIBI AMIRMIYA PATEL & 6 - Defendant(s)

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Appearance :

MR PV NANAVATI for Appellant(s) : 1,
None for Defendant(s) : 1 - 6.
- for Defendant(s) : 7,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 28/04/2006

CAV JUDGMENT

The present appeal is filed by the United India Insurance Company, Ahmedabad – appellant herein under Section 110-D of the Motor Vehicles Act

challenging the judgment and award passed by the learned Motor Accident Claims Tribunal (Main), Surat dated 15.10.1985 in Motor Accident Claim Petition No.249 of 1984, by which the Tribunal has partly allowed the claim petition and has ordered opponent Nos.1 and 2 to pay the sum of Rs.27,600/- by way of compensation to the claimants No.1 and 2 with proportionate costs and with running interest @12% p.a., from the date of claim petition till the payment.

2. It can be seen from the record that on the day of accident which occurred on 16.11.1993 at about 12.30 midnight near village Suyani on Surat-Bardoli highway, deceased Aziz Amarmiya was travelling as a cleaner-cum-conductor in a rickshaw tempo bearing No.GTT-6069 which was driven by opponent No.1 who is the owner of the said vehicle. The said vehicular accident occurred because rickshaw-tempo dashed with a truck coming from the opposite direction as a result of which, deceased Aziz Amirmiya was practically crushed under the rickshaw-tempo for which the claimants have filed Motor Accident Claim Petition No.249 of 1984 before the Learned Motor Accident Claims Tribunal (Main), Surat. Ultimately, the learned Tribunal, by its judgment and award dated 15.10.1985 directed original opponent Nos.1 and 2 to pay the sum of Rs.27,600/- by way of compensation to the claimant Nos.1 and 2 with proportionate costs and with running interest @12% p.a., from the date of claim petition till the payment.

3. Being aggrieved and dissatisfied with the said order, the appellant – original opponent No.2 has preferred the present first appeal under Section 110-D of the Motor Vehicles Act.

The main contention on behalf of the appellant – original opponent No.2 is that the learned Tribunal has materially erred in coming to the conclusion that the driver of the rickshaw-tempo bearing No.GTT-6069 was holding valid license to drive the tempo vehicle. It is submitted that opponent No.1 was not holding the valid license on the day when the vehicular accident was occurred.

At this stage, reference is required to be made to the decision of the Hon'ble Apex Court in the case of National Insurance Company Ltd., V/s Swaran Singh and others, reported in 2004(1) Supreme 243.

4. It is required to be noted that the learned Tribunal has specifically recorded the finding that there is a clear evidence on record that the driver of the offending vehicle – opponent No.1 was holding valid license to drive the vehicle in question and in support thereof xerox copy of the said license is produced at Exh.27. In that view of the matter, the contention of the learned advocate appearing for the appellant that opponent No.1 was not holding a valid license at the time when the incident in question occurred cannot be accepted. It is true that under

the Motor Vehicles Act, holding of a valid driving license is one of the conditions of contract of insurance and that driving of a vehicle without a valid license is an offence. As stated hereinabove, admittedly, opponent No.1 was holding a valid license, copy of which is at Exh.27.

5. For the reasons stated above, there is no merit in this appeal and the same is dismissed. There shall be no order as to costs.

(SHARAD D DAVE, J)

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