

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3769 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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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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NEW INDIA ASSURANCE CO.LTD. - Appellant(s)

Versus

SUDHIR @ GANESH BAPULAL PATEL & 2 - Defendant(s)

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Appearance :

MS LILU K BHAYA for Appellant(s) : 1,

MR CJ VIN for Defendant(s) : 1,

None for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 29/02/2012

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and award dated 28.01.1999 passed by the learned Motor accident Claims Tribunal

(Main), Bharuch in Motor accident Claim Petition No. 2 of 1987 wherein the Tribunal has awarded a sum of Rs.3,64,000/- along with interest at the rate of 12% per annum from the date of petition till payment.

2.0 One Sudhir alias Ganesh Patel was driving a Maruti Car on 22.9.1986. One Mr. Anang A. Desai was also traveling along with him. When they reached on N.H.No.8, a jeep car came and dashed with the Car as a result of which Sudhir and Anang sustained serious injuries. Sudhir has therefore filed the aforesaid claim petition wherein the aforesaid award came to be passed.

3.0 Learned Advocate for the appellant submitted that the Tribunal has erred in deciding the negligence that the appellant was negligent; that the liability of the Insurance Company is limited to the extent of Rs.1,50,000/- and that no additional premium was paid by the respondent for the unlimited liability of third party claim.

4.0 Learned Advocate for the respondent submitted that if the contention that it is limited liability is accepted, the policy being a contract policy, it is difficult to recover the amount. He therefore submitted that in the peculiar facts and circumstances of the case, the appeal may be dismissed.

5.0 Heard the learned Advocates for the parties. As regards the claim

is concerned, the Tribunal has considered the negligence part in para 14 of the judgement. Considering the fact that the driver of the Maruti Car deposed that there was no chance for him to take his vehicle further on the left and that there was no chance for applying brakes. The Tribunal has rightly held that no negligence can be attributed to the driver of the driver.

6.0 It is pointed out that Exh.67 is the policy. A perusal of the same discloses that the liability of the Insurance Company is limited to Rs.1,50,000/- only. This position could not be controverted by the learned counsel for the respondent. In view of the terms of the policy, the contention of the respondent cannot be accepted inasmuch as even if it is a contract policy the Court has to decide the issue according to the terms of the policy.

7.0 I have also gone through the award passed by the Tribunal under various heads. Learned Advocate for the appellant is not in a position to assail such finding on any ground.

8.0 In the premises aforesaid it is held that the Insurance Company is liable to pay the compensation only limited to Rs.1,50,000/-. The rest of the amount, if deposited by the Tribunal, shall be refunded to the Insurance Company. However, if the amount is already withdrawn by the claimant the same shall not be recovered from the claimant. The appeal

is allowed to the aforesaid extent with no order as to costs.

(K.S.JHAVERI, J.)

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