IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO.2349 of 2013
With
FIRST APPEAL NO.2350 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE HARSHA DEVANI

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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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ORIENTAL INSURANCE COMPANY LIMITED....Appellant(s)
Versus
HASINABEN HASANALI BHARMAL & 1....Defendant(s)

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Appearance:
MR ANAL S SHAH, ADVOCATE for the Appellant(s) No.1
RULE SERVED for the Defendant(s) No.1 - 2

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CORAM: **HONOURABLE MS. JUSTICE HARSHA DEVANI**

Date : 28/02/2014

COMMON ORAL JUDGMENT

1. Both these appeals under section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”) at the

instance of the insurance company are directed against the common judgment and award dated 31st August, 2012 passed by the Motor Accident Claims Tribunal (Auxiliary) at Jetpur (hereinafter referred to as “the Tribunal”) in Motor Accident Claim Petition No.154/2008 (New No.163/2012) and Motor Accident Claim Petition No.152/2008 (New No.162/2012), respectively.

2. The facts stated briefly are that the respondent No.1 in each of the appeals filed claim petitions before the Tribunal seeking compensation of Rs.2,00,000/- and Rs.75,000/-, respectively, with interest at the rate of 18% per annum. The basis for filing the claim petition was that on 19th March, 2009, both the claimants were travelling in a car No.GJ-4T-5154 belonging to their friend. At about 12:30 p.m. at night when they reached Bhaskarpara village, at that time, the driver of the said car was driving the vehicle in full speed and in a rash and negligent manner so as to endanger human life as a result whereof the car turned turtle. On account of the accident, both the claimants sustained fractures and other serious injuries and sustained permanent disability. Accordingly, they claimed compensation to the extent noted hereinabove under the heads of pain, shock and suffering, medical expenses, attendant charges, loss of income, loss of future income, special diet etc. The Tribunal, after appreciating the evidence on record, held that the accident had occurred on account of the fault on the part of the driver of the offending vehicle and held that the appellant – insurance company was liable to indemnify the respondent No.2 – owner. Being aggrieved, the insurance company is in appeal.

3. Mr. Anal Shah, learned advocate for the appellant in each of the appeals, assailed the impugned award by submitting that the Tribunal has failed to consider that the vehicle in question had been used by way of hire and reward and as such, in the light of the terms and conditions of the insurance policy, the insurer could not be held liable to indemnify the insured. The attention of the court was drawn to the written submissions filed in response to the application made by the claimants under section 140 of the Act, to submit that a specific contention had been raised on behalf of the appellant that the policy of the offending vehicle covers use of the vehicle for any purpose other than: (b) Carriage of goods (other than samples or personal luggage) (c) Organized racing (d) Pace making (e) Speed testing (f) Reliability Trials (g) Any purpose in connection with Motor Trade (a) Hire or Reward other than the purpose of driving tuition. It was submitted that thus, the insurance policy specifically excluded the use of the vehicle for hire and reward. Under the circumstances, when the vehicle was used for the purpose of hire and reward, the Tribunal was not justified in fastening the liability to pay the compensation on the insurance company. It was submitted that in the criminal proceedings, both the claimants had in their statement before the police stated that they had hired the offending vehicle. It was, accordingly, urged that there being a breach of the terms and conditions of the policy, the Tribunal was not justified in holding the appellant - insurance company liable to indemnify the owner of the offending vehicle for payment of the compensation awarded to the claimants.

4. Despite service of notice of rule, there is no appearance on behalf of the respondents.

5. A perusal of the record of the case reveals that in the written statement filed by the appellant - insurance company, it has been contended that the policy is an ‘Act Only’ policy and as such, the insurance company cannot be ordered to pay compensation which exceeds its statutory liability. It has also been contended that the occupants of the motor car, either the owner or any other person travelling in the said car, are not covered by the policy and hence, the insurance company is not at all liable to pay any compensation, whether interim or final, that may be awarded to the claimants in the claim petitions. Thus, in the written statement, no contention has been raised with regard to the vehicle being used for the purpose of hire or reward. However, it is true that in response to the application filed under section 140 of the Act, a contention has been raised that the policy covers use of vehicles for purposes other than those specifically enumerated therein and one of those purposes specifically excluded under the policy is use of the vehicle for hire and reward other than the purpose of driving tuition. Thus, though not in the written submissions, in reply to the application under section 140 of the Act, a contention does appear to have been taken that the vehicle in question was being used for hire and reward purposes and, therefore, the insurance company was not liable to indemnify the owner.

6. It may, however, be pertinent to note that though such contention has been raised on behalf of the insurance company in response to the application under section 140 of the Act, no evidence in support thereof has been led to establish that the vehicle was in fact, being used for hire or

reward and, therefore, there was a breach of the conditions of the insurance policy. Though it has been contended on behalf of the insurance company that in their police statements, both the claimants have stated that the offending vehicle was taken on hire by them, such statements have not been produced on the record of the case. The claimants have produced the first information report lodged by the driver of the offending vehicle in connection with the accident in question wherein he has stated that he was working as a driver in the employment of Sheth Nagjibhai. However, on a plain reading of the first information report, there is no material to establish that the offending vehicle was being used for hire or reward. Therefore, though it has been contended on behalf of the insurance company that at the time when the accident took place, the offending vehicle was being used for hire or reward, no evidence in support thereof has been led to establish such fact. Under the circumstances, in the absence of any evidence in support of such contention, such contention cannot be accepted. Besides, both the claimants have stated that the offending car belonged to the friend of the claimant-Hasanali Mahmadali Bharmal and in the cross-examination at the instance of the insurance company, they have specifically denied that the offending car had been taken on hire. Therefore, the contention that there was a breach of the conditions of the policy, inasmuch as, the vehicle had been given on hire, does not merit acceptance.

7. It may be pertinent to note that though in the written statement, a contention has been raised that the policy in question is an ‘Act Only’ policy, however, a perusal of the insurance policy reveals that the same is a package policy and

hence, the said contention raised in the written statement appears to contrary to the record.

8. Since the award has been challenged only on the ground of the liability of the insurance company to indemnify the owner of the offending vehicle, in the light of the above discussion, no case has been made out so as to warrant interference.

9. For the foregoing reasons, the appeals fail and are accordingly dismissed.

10. The Registry shall forthwith send back the record and proceedings of the case.

(Harsha Devani, J.)

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