

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 1092 of 2006
With
R/CROSS OBJECTION NO. 85 of 2008
In
FIRST APPEAL NO. 1092 of 2006

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ORIENTAL INSURANCE CO.LTD.

Versus

SAMUBEN WD/O.BHIKHAJI SENDAJI THAKORE & 10 other(s)

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Appearance:

MR DAKSHESH MEHTA(2430) for the Appellant(s) No. 1

MR SANDIP C SHAH(792) for the Defendant(s) No. 11

MR TEJAS P SATTA(3149) for the Defendant(s) No. 10,2,3,4,5,6,7,8,9

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CORAM: HONOURABLE MR. JUSTICE A.G. URAIZEE

Date : 21/12/2017

ORAL ORDER

1. The present appeal under Section 173 of the Motor Vehicles Act, 1988 at the instance of the Insurance Company and cross-objections arise from the self same judgment and award dated 22.09.2005 passed by the learned MACP (Aux.) 5th Fast Track Court, Mehsana in MACP No.326 of 1997.

2. The brief facts as could be gathered from the impugned judgment and award are that Jivanji Bhikhaji filed Motor Accident Claim Petition No.326 of 1997 in the MAC Tribunal, Mehsana to recover a sum of Rs.1,50,000/- for death of his wife Raiben who died on 17.02.1997 in a vehicular accident. On the fateful day, deceased Raiben was travelling in a jeep bearing registration No.GJ-2A-3419 on Gozaria-Gandhinagar highway which met with an accident with truck by registration No.GTA 3433. The deceased suffered fatal injuries and died. Her husband Jivanji Bhikhaji filed claim petition in the tribunal for compensation. Jivanji Bhikhaji also died during the pendency of the claim petition, and therefore, the respondents being his legal heirs and representatives were

brought on record to prosecute the claim petition. The Tribunal after the conclusion of the trial of the claim petition found respondent No.1 as the legal heirs and representatives of the deceased original claimant Jivanji Bhikhaji and accordingly allowed the claim petition qua respondent No.1 and dismissed the same qua respondent Nos.2 to 8 and directed the appellant and respondent No.9 (owner of the Truck) as well as respondents no.10 (owner of the jeep) and 11 (insurer of jeep) to pay compensation of Rs.1,50,000/- jointly and severally in the ratio of 70:30 to respondent No.1 along with 9% interest.

3. Heard Mr. Dakshesh Mehta, learned advocate for the Insurance Company of the Truck, Mr. Sandeep Shah, learned advocate for Insurance Company of the jeep and Mr. Tejas Setta, learned advocate for original claimant.

4. Mr. Mehta and Mr. Shah, learned advocates for the Insurance Companies have vehemently urged that the Tribunal has committed a serious error in law in considering respondent No.1 mother of original claimant and mother-in-law of the victim of the vehicular accident as the legal heirs and representatives of original claimant Jivanji Bhikhaji. They would further submit that upon the death of original claimant – Jivanji Bhikhaji, the claim petition survives only for the loss of estate and no compensation for loss of dependency could have been awarded by the Tribunal. They, therefore, urged that the impugned judgment and award of the Tribunal may be set aside so far as it relates to the compensation to respondent No.1 for loss of dependency.

5. Mr. Satta, learned advocate for the respondent-original claimant has supported the judgment and award of the Tribunal. He would vehemently submit that the respondent No.1 was solely dependent on her son deceased Jivanji Bhikhaji original claimant of the claim petition. He would submit that after considering the legal position, the Tribunal has rightly awarded the compensation of loss of dependency to the respondent No.1. He, therefore, urged that the appeal as well as the cross-objection are devoid on merits and deserves to be dismissed.

6. The singular issue involved in the appeal and the cross-objection is whether respondent No.1 is rightly held to be legal heir and representative of original claimant – Jivanji Bhikhaji by the Tribunal.

7. As the sequence of events unfold, Raiben, who was the wife of original claimant Jivanji Bhikhaji met with fatal accident on 17.02.1997. Jivanji Bhikhaji Thakor, therefore, filed Claim Petition No.326 of 1997 in the Claims Tribunal, Mehsana to recover compensation of Rs.1,50,000/-. As the fate would have it, the claimant Jivanji Bhikhaji also passed away on 26.01.2001 during the pendency of the Claim Petition. The respondent Nos. 1 to 8 of First Appeal No.1092 of 2006 were brought on record as the legal heirs of original claimant deceased Jivanji Bhikhaji Thakor. Respondent No.1 Samuben happens to be the mother of the deceased original claimant whereas respondent Nos. 2 to 8 are impleaded as children of the deceased original claimant. However, from the discussion in the judgment, it emerges that the deceased original claimant and his wife Raiben who passed away in the

accident had no issue, and therefore, the tribunal has held respondent No.1 Samuben mother of the deceased original claimant who was dependent on the original claimant as his legal heirs to receive the compensation. The Tribunal has threadbare considered the submissions of the learned advocates, the evidence on record and legal position in paragraph No.10 of the impugned judgment to record a conclusion that it is the Samuben wife of Jivanji Thakor and the mother of original claimant deceased Jivanji Bhikhaji Thakor as the sole legal heirs to receive the compensation.

8. In my considered opinion, the reasons recorded by the Tribunal for holding Samuben as the sole legal heirs of deceased original claimant is inconsonance with the prevailing legal principles and does not warrant any interference in the appeal as well as X-objection.

9. For the foregoing reasons, the appeal as well as X-objection fails and are hereby dismissed.

10. Record and Proceedings be remitted to the tribunal.

11. Parties are left to bear their own costs.

(A.G.URAIZEE, J)

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