

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1129 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE SANDEEP N. BHATT

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

SONALBEN BHANABHAI TADVI-MINOR THROUGH UNCLE & 2 other(s)
Versus
MADHUBEN BHAGUBHAI TADVI & 1 other(s)

Appearance:

MR MTM HAKIM(1190) for the Appellant(s) No. 1,2,3

MR CHIRAYU A MEHTA(3256) for the Defendant(s) No. 2

RULE SERVED for the Defendant(s) No. 1

CORAM: **HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

Date : 11/02/2022

CAV JUDGMENT

1. The present First Appeal, under Section 173 of Motor Vehicles Act, 1988, is preferred by the present appellants, who are the original claimants, being aggrieved and dissatisfied with the

judgment and award dated 15.11.2011 passed by the Motor Accident Claims Tribunal (Main), Narmada at Rajpipla in Motor Accident Claim Petition No. 18 of 2010, by which the Tribunal has awarded Rs.3,30,900/- with 9% interest per annum to the claimants holding Respondent No. 1 (owner of the vehicle) liable for the same, Respondent No. 2-insurance company is exonerated by the Tribunal.

2. Brief facts of the case are as under:

2.1 On 20.04.2009 at about 7:30 p.m., the deceased who was father of the present appellants-claimants, was returning to his home by driving his tractor bearing registration No. GJ-6-AP-6582 and at the scene of accident, the tractor found turned turtle and deceased Bhanabhai died on the spot. It is the case of the claimants that at the time of accident, deceased was aged about 33 years old and was earning Rs.3,200/- per month by driving tractor, which is in the ownership of opponent No. 1. It is further the case of the claimants that the deceased was possessing valid driving licence. On account of sudden death of father of applicants and also, as the mother has also died prior to the accident, the claim petition is filed through

guardian and best friend of claimants viz., Kamajibhai Naranbhai Tadvi as claimants were minor at that time. Claimants have claimed Rs.4,38,836/- by way of compensation from opponent No. 2-owner and opponent No. 2-insurer of the vehicle. In the claim petition, opponent No. 1 and 2 have served with the notice. Opponent No. 1-owner of the vehicle was not appeared before the Tribunal or filed any written statement and ex parte order is passed to proceed against the opponent No. 1. Opponent No. 2 has filed written statement at Exh. 14.

2.2 The application is filed under Section 163-A of the Motor Vehicles Act, 1988 by the claimants for review of the award. After recording the evidence on behalf of the claimants who is examined at Exh. 12-Kamajibhai Narayanbhai Tadvi and also after considering the documentary evidence like FIR and Panchnama, the Tribunal has come to the conclusion that Rs.3,26,400/- plus funeral expenses and loss to estate under which Rs.2,000/- towards Rs.2,500/- respectively is required to be awarded and total expense is Rs.3,30,900/- which is awarded with 9% per annum interest from the date of application. The Tribunal has also directed to recover it from the opponent No.

1-only and opponent No. 2-Iffco Tokio General Insurance Co. Ltd. is directed to be exonerated from its liability.

2.3. Being aggrieved and dissatisfied with the above finding on the aspect of quantum as well as liability of the Insurance Company, the present First Appeal is preferred by the original claimants, who are appellants before this Court.

3. Learned advocate for the appellants Mr. M.T.M. Hakim has submitted that the Tribunal has erred in exonerating the Insurance Company from its liability as looking to the policy itself, it transpires that policy Exh. 23 that the Insurance Company has collected the premium of Rs.100/- towards personal accident of owner-cum-driver and has also collected Rs.25/- as premium towards legal liability to the driver (IMT-28) and therefore, the Tribunal has not properly appreciated the document of policy at Exh. 23 and in view of various judgments of this Court as well as Hon'ble Supreme Court, more particularly, the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988, the liability of the Insurance Company could be fastened and learned Tribunal has

committed an error in exonerating the insurance company from its legal liability. In support of this contention, learned advocate for the appellants have relied upon the judgments (i) reported in **2014 (1) GLH 212** in the case of **Smt. T.S. Shylaja Vs. Oriental Insurance Co. & Anr.**, (ii) (2020) 7 SCC 386 in the case of **Chandrakanta Tiwari V. New India Assurance Company Ltd. & Anr.**, (iii) 2021 (4) GLH 77 in the case of **Valiben Laxmanbhai Thakore (Koli) Wd/o. Late Laxmanbhai Ramsingbhai Thakore (koli) and others Vs. Kandla Dock Labour Board and Anr.**, and has submitted that in the Full Bench decision of this Court as well as the latest judgment of the Hon'ble Apex Court, the Insurance Company cannot run away from its liability to pay the amount of compensation to the claimants. He has also submitted that the claim is filed to get the compensation of Rs.4,38,836/-. The Tribunal has awarded only Rs.3,30,900/- by erroneously considering the income of the deceased Rs.2,400/- instead of income should be Rs. 3,200/- per month, which is also required to be considered appropriately. It is also the claim of the claimants in the claim petition that they have suffered loss of love and affection and also have loss of future income of the father. It is also case of the claimants that they have incurred huge expenses for

deceased's funeral ceremony. He has also submitted that the Tribunal has further erred in dismissing the application filed under the provisions of Order 47 and Rule 1 of C.P.C. for reviewing its judgment and award by considering that the Tribunal has, in earlier judgment and order in the claim petition, has rightly exonerated the Insurance Company and no apparent error from the face of record is found. It is submitted that, the impugned judgment and award passed by the Tribunal is erroneous and is required to be interfered with by this Court.

4. *Per contra*, the learned advocate Mr. Chirayu A. Mehta for the Insurance Company has submitted that deceased himself was driving the tractor and he is therefore solely negligent. He has further submitted that as per the record of insurance company, the insurance policy of vehicle does not indicate the premium for legal liability to driver (IMT-28) but the policy indicates the personal accident of the driver/cleaner/conductor (IMT-17), Rs.25/-. Therefore, since the extra premium is not received by the insurance company (IMT-28), the insurance company cannot be held liable to pay any amount to the claimants. However, copy of such policy is

not produced on record by insurance company before the Tribunal. He has further submitted that the interest of the claimants is protected as claim is allowed by awarding Rs. 3,30,900/- holding opponent No. 1 liable, who is owner of the tractor and also happens the mother of the deceased. He has further submitted in view of the recent decision of Hon'ble Apex Court rendered in the case of ***Ramkhiladi & Anr. Vs. United India Insurance Company & Anr.***, reported in (2020) 2 SCC 550, the Insurance Company cannot be held liable to pay any amount of compensation, but at the most and at the best, the claimants can get Rs. 1 lakh, lump-sum compensation. It was contended in the written statement by Opponent No. 2 that application is not bonafide, legal and proper and deserves to be dismissed. It is denied by insurance company in written statement about the age, income and nature of the injuries sustained by the deceased. It is averred in the written statement that deceased was not the third party and therefore cannot claim compensation against his own insurance company. It is further contended that claim is not maintainable because the deceased himself was driving the tractor involved in the accident. It is further contended that deceased was not owner-cum-driver but was son of

the owner and was holding valid and effective driving licence at the time of accident. Therefore, the claim petition deserved to be dismissed opponent No. 2 with costs. He has submitted that the liability of the insurance company under Sections 147 and 179 cannot be attributed as the deceased himself was driving the tractor and the tractor turned turtle due to his own negligence and therefore, insurance company cannot be held liable as there is no extra premium is recovered. He has further submitted that the Tribunal has rightly considered the aspect of income and therefore no interference is called for by this Court by exercising powers under Section 173 of the Motor Vehicles Act, 1988.

5. It is noteworthy to mention that the provisions of the Motor Vehicles Act, 1988 which gives paramount importance to the concept of 'just and fair' compensation. It is a beneficial legislation which has been framed with the object of providing relief to the victims or their families. Section 168 of the Motor Vehicles Act deals with the concept of 'just compensation' which ought to be determined on the foundation of fairness, reasonableness and equitability. Although such determination can never be

arithmetically exact or perfect, an endeavor should be made by the Court to award just and fair compensation irrespective of the amount claimed by the claimants.

6.1 I have heard learned advocates for the respective parties and have considered the submissions and also perused the record and proceedings and on re-appreciating and re-examining the entire record, I found that driver was holding valid driving licence as per copy produced at Exh. 32 and copy of the insurance policy Exh. 23 on the record of the Tribunal which clearly indicates the amount of the premium of Rs.25/- is paid under Clause of IMT-28 towards legal liability of driver. Though, the insurance company in its written statement has contended that there is no liability arises of the insurance company as such premium is not paid but in my opinion, the documentary evidence which is not controverted by insurance company, cannot be ignored by considering the pleadings of the parties. Therefore, I found that there is reason to believe that the insurance company has accepted the premium under Clause IMT-28 of Rs.25/- as per the policy available on the record of the Tribunal. The pleadings and proof in motor accidents claims petition should be

considered liberally and more particularly when the documentary evidence produced on the record, was not challenged by the other side and has exhibited by the Tribunal.

6.2 I have also considered the various judgments cited at the Bar. In the recent judgment of this Court which is rendered in the case of ***Valiben Laxmanbhai Thakore (Koli) Wd/o. Late Laxmanbhai Ramsingbhai Thakore (koli) and others Vs. Kandla Dock Labour Board and Anr.***, reported in ***2021 (4) GLH 77*** in the Full Bench of this Court where the relevant paragraphs are reproduced as under:

“13. Thus, when the owner of a vehicle pay additional premium and same is accepted by the Insurance Company, liability of the Insurance Company gets extended under the Motor Vehicles Act. Section 147 of the Act clearly prescribes for statutory liability to cover risk of paid Driver and Conductor under the Insurance Policy, which is a matter of contract. On payment of such additional premium by the owner, the liability of the owner shifts upon the Insurance Company. Thus, the risk of paid Driver and Conductor would be covered under the Insurance Policy. Only when the additional premium is not paid, liability would be as per the Employees Compensation Act, 1923 and in such cases, compensation would be computed as prescribed under the Act which is limited to the extent provided under provisions of the

Act. However, when owner pays additional premium to cover the legal liability of his paid driver and conductor to the Insurance Company, as such, the Insurance Company is enlarging the scope for unlimited liability for payment of compensation, when additional premium is accepted. The liability of the Insurance Company gets extended and it has no right to raise issue of self negligence or otherwise of the such class of the driver of the Insured vehicle. By accepting additional premium as per the IMT 28, the Insurance Company expressed its willingness to extend its liability under the Clause of Legal Liability to the Paid driver and conductor as envisaged under Section 147 of the Act. Thus, in our opinion, Insurance Company has no legal right to avoid its legal liability under the indemnity clause arising from the contract of insurance towards the insured – owner of such classes of vehicles.

14. The judgments relied upon by the learned counsel for the Insurance Company would not be applicable in the instant case and therefore, it is not necessary to be dealt with. The other judgments which are cited by the learned counsels for the respective parties, deal with different facts & situations and are not relevant to the question referred to this Bench and hence they are not dealt with individually.

15. In our opinion, by accepting additional premium, the Insurance Company indemnifies the owners for paid Driver and / or Conductor and risk of Driver / Conductor is covered under it. Upon death or injury

caused to the paid Driver and / or Conductor, the Insurance Company would be liable to satisfy such claim irrespective of the self negligence. Thus, the observations made by the Division Bench in the case of *Saberabibi Hisammiya Umarvmiya & Anr (supra)* lays down the correct law. Reference is thus, answered accordingly. The respective appeals be placed before the Division Bench taking up such appeals for its final disposal in view of the observations made by us.”

6.3 I have also considered in the facts of the present case, the judgment of Hon’ble Supreme Court rendered in the case of ***Smt. T.S. Shylaja Vs. Oriental Insurance Co. & Anr.***, reported in **2014 (1) GLH 212**, and I have also considered the judgment rendered in the case of ***Chandrakanta Tiwari V. New India Assurance Company Ltd. & Anr.***, reported in **(2020) 7 SCC 386**, the relevant paragraphs of the said judgment are reproduced as under:

“10. Section 163-A reads as follows:

163A. Special provisions as to payment of compensation on structured formula basis.— (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as

the case may be.

Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

11. A perusal of this provision would show that Shri Sahoo is correct in stating that the claimant need not plead or establish that the death in respect of which the claim was made, was due to any negligence or default of the owner of the vehicle or of any other person. (emphasis supplied)

12. In this view of the matter, it is not relevant that the person insured must be the driver of the vehicle but may well have been riding with somebody else driving a vehicle which resulted in the death of the person driving the vehicle. The High Court, therefore, is clearly wrong in stating that it was necessary under Section 163A to prove that

somebody else was driving the vehicle rashly and negligently, as a result of which, the death of the victim would take place.

13. Further, it is also clear, as has been pointed out hereinabove, that so far as the driving licence aspect of the case is concerned, it was squarely given up by the insurance company before the MACT, but then utilised by the High Court to disentitle the claimant to relief. On this ground also, the High Court is incorrect.

14. Coming to the argument based on the maximum liability being Rs.1 lakh, this argument was never taken before in all the courts below, as a result of which, we do not allow the insurance company to take up the point for the first time before us at this stage.”

6.4 The decision of the Hon'ble Apex Court in the case of ***Chandrakanta Tiwari V. New India Assurance Company Ltd. & Anr.***, reported in (2020) 7 SCC 386 is very clear on the aspect of the claim petition filed under Section 163A of the Act, therefore, reliance placed by learned advocate for the appellant on the decision in the case of ***Ramkhiladi versus United India Insurance Company Limited reported in (2020) 2 SCC 550*** regarding lump-sum compensation of Rs.1 lakh towards personal accident does not support the case of the appellants - claimants.

6.5. Therefore, in view of the above mentioned decisions, I found

that the insurance company is liable to pay the compensation to the claimants under Section 163-A of the Motor Vehicles Act, 1988 and also in view of Section 147 of the Motor Vehicles Act, 1988, the insurance company is bound to pay the amount of compensation to the claimants. Therefore, on the finding recorded by the Tribunal regarding exonerating the Insurance Company from the liability to pay the compensation is found erroneous and also against the settled position of the law as in the claim petition under Section 163-A of Motor Vehicles Act, 1988, only use of motor vehicle is required to be established and therefore, the finding given in para-7 of the judgment is required to be interfered with by this Court.

6.6 The Tribunal has found that the accident was occurred due to negligent driving of deceased himself and he died on the spot. The Tribunal has also considered income of deceased Rs.2,400/-, by applying multiplier of 17, which is proper.

7. Therefore, in view of the above discussion it is found that respondent No. 2-insurance company is also liable to pay the amount of compensation. Now, the next submission made by learned

advocate Mr. Hakim regarding the insufficient amount of compensation awarded by the Tribunal as the Tribunal has erred in considering the income of deceased only Rs. 2,400/- per month against the averments made in the claim petition as well as averments made in the deposition of the witness for the claimants. There is no reason for the Tribunal to disbelieve the income of the deceased which is Rs. 3,200/- per month, I found no other material in support of the said submission of the claimants about the income of Rs. 3,200/- per month, however, it seems that the Tribunal has made some guess work while considering the income of the deceased Rs.2,400/- p.m. at the time of accident occurred in the year 2009. I found that the said finding of the Tribunal is not required to be interfered with as the Tribunal has rightly considered the income of the deceased Rs.2,400/- per month in the facts and circumstances and also evidence available on the record. Therefore, I found no reason to interfere with that finding of the Tribunal about monthly income of Rs.2,400/- of the deceased. It would meet the end of justice, if the insurance company will be held liable to pay the compensation to the claim alongwith Respondent No. 1, jointly severally.

8. With the above observations, the following order is passed:

8.1 *The present first appeal No. 1129 of 2013 is partly **allowed** to the above extent, no order as to costs.*

8.2 *It is ordered that Respondent No. 2 Iffco Tokio General Insurance Co. Ltd. is also liable to pay the compensation of Rs.3,30,900/- with 9% interest per annum along with Respondent No. 1.*

8.3 *Respondent No. 2-Insurance Company is directed to deposit the awarded amount of Rs.3,30,900/- with 9 % interest per annum from the date of application before the concerned Tribunal within six weeks from the date of receipt of this order.*

8.4 *On receipt of such awarded amount, the Tribunal is directed to pay the amount to the claimants, after following due procedure, by way of account payee cheque.*

8.5 *Record and Proceedings be sent back to the*

concerned Tribunal, forthwith.

DIWAKAR SHUKLA

(SANDEEP N. BHATT,J)

