

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 2010 of 2024****With****R/SPECIAL CIVIL APPLICATION NO. 2080 of 2024****With****R/SPECIAL CIVIL APPLICATION NO. 2083 of 2024****With****R/SPECIAL CIVIL APPLICATION NO. 2099 of 2024**=====
RELIANCE GENERAL INSURANCE CO. LTD.**Versus****MANSINH BHINSINH BAGER (GADERIYA)**
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Appearance:

MASUMI V NANAVATY(9321) for the Petitioner(s) No. 1

MR VIBHUTI NANAVATI(513) for the Petitioner(s) No. 1

for the Respondent(s) No. 1,2,3,4,5,6,7
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CORAM:HONOURABLE MS. JUSTICE GITA GOPI**Date : 08/02/2024****COMMON ORAL ORDER**

1. Learned advocate Mr. Tirth Nayak states of having instructions to appear on behalf of the original claimants. Let his Vakalatnama be accepted.
2. Learned advocate Mr. Vibhuti Nanavati for the petitioner states that common order below Exh.154 was passed in MACPs no.707, 708, 734 and 735/2011 which were the applications given by the insurance company – opponent no.3 making a prayer to join driver Mansinh Bhinsinh Bajar (Gaderiya) as

opponent and a prayer was also made to issue summons to Investigating Officer – Anopsinh Ajitsinh Rajput. Advocate Mr. Nanavati submitted that both the prayers were rejected on 24.1.2024 by MACT (Aux), City Civil Court, Ahmedabad.

3. Referring to the common judgment of this Court dated 27.9.2023 passed in First Appeals no.351 to 354 of 2023, Advocate Mr. Nanavati submitted that the appeals were raised by the claimants challenging the common judgment and award dated 21.11.2022 passed in MACPs mentioned hereinbefore on the ground that the learned Tribunal has erred in holding the driver of Indica car negligent for the vehicular accident and that the negligence aspect is not considered in accordance to the proof and on that basis, challenge was given to the Tribunal's judgment stating to be incorrect, improper, unjust and without any conclusive proof attributing negligence on the part of the car driver. It is further stated that on hearing both the sides, the judgment and award was quashed and all the MACPs were ordered to be restored on the

file of the learned Tribunal to decide the matter on merits and further a direction was given to grant opportunity to all the parties to provide further evidence on record and the learned Tribunal was directed to consider the further evidence that may be provided by the parties. Advocate Mr. Nanavati submitted that since the driver was deleted from one matter being MACP no.733/2011, prayer was made to rejoin him since he is opponent in other three claim petitions.

4. Advocate Mr. Nanavati further submitted that a prayer was made for issuance of the summons to the Investigating Officer, since earlier when he was examined as witness no.1 on behalf of opponent no.3, Investigating Officer had not brought the original final report nor had brought the FIR. Advocate Mr. Nanavati submitted that now in the change circumstances of the matter being remanded back for reconsideration on the negligence aspect, copy of the final report and the FIR along with the further evidence of the witness would be necessary, to be recorded as the original judgment

and award was quashed only on this aspect, where the claimants had raised a specific contention of incorrect observation of the Tribunal contending that the respondent no.1, truck driver had not given a rebuttal evidence nor there was any independent witness to prove the fact of sole negligence of the car driver.

5. Countering the arguments and supporting the order of the Tribunal below Exh.154, learned advocate Mr. Tirth Nayak for the original claimants submitted that the order below Exh.154 cannot be subjected to challenge since the power exercised is discretionary in nature and the discretion exercised by the Tribunal is sound and since the driver is already party respondent in the matter, there was no necessity of further joining him in all the matters and therefore, stated that the application was rightly rejected since the insurance company cannot be allowed to fill in the lacuna. Advocate Mr. Nayak has relied upon the judgment in the case of **Smt. Shashi Sehdev v. Sh. Narender Kumar Sharma** passed by the High Court of

Delhi on 6.7.2022 to submit that exercise of powers under Article 227 of the Constitution of India would become very limited since the Court under such jurisdiction is not concerned much with the correctness of the order impugned, as the discretion is exercised by the original Court. Thus, Mr. Nayak urged to state that since the jurisdiction under Article 227 of the Constitution of India does not call for the supervisory correction, this Court should restrain itself, and should not unsettle the order of original Court under assumption of any such jurisdiction.

6. The matters have put to challenge the order which has rejected the prayer, under Order 1 Rule 10 and Order 18 Rule 17 of the Code of Civil Procedure, 1908 read with Section 151 of the Code of Civil Procedure, 1908. The order impugned is in connection with the Motor Accident Claim Petition governed under the Motor Vehicles Act, 1988. Article 227 of the Constitution of India gives superintendence powers to the High Court over all Courts and Tribunals throughout the territories in

relation to which it exercises the jurisdiction. The superintendence power of the High Court is both administrative and judicial, but such powers are to be exercised sparingly and only in appropriate cases to keep the subordinate Courts within the bounce of the authority. It is clear that such powers of superintendence cannot be exercised to influence subordinate judiciary to pass any order/judgment in a particular manner. Section 115 of the CPC gives authority to the High Court to exercise the jurisdiction in case where no appeal lies, where additional powers can also be exercised when the Court/Tribunal fails to exercise the jurisdiction so vested or have acted in exercise of its jurisdiction illegally or with material irregularity.

7. The order impugned is not appealable and when any orders are brought to the notice of the Court which stands contrary to any observation or order made by this Court earlier, then this Court would have all the powers to supervise such orders for correction. It is required to be noticed that the

application Exh.154 was moved by the insurance company to join the driver as opponent in the matters. All the four MACPs have been consolidated. In all the four MACPs, driver is respondent no.1, but in MACP no.733 of 2011, he came to be deleted by an order below Exh.31 and therefore, as per the record, driver is already respondent no.1 as joined in the connected matters. Thus, in view of this fact, the prayer of the insurance company ought to have been allowed since the only order which was necessary was to revive him as opponent no.1 in MACP no.733 of 2011.

8. The judgment and award passed by the Tribunal on 21.11.2022 in MACPs no.707, 708, 734 and 735 of 2011 was challenged by the appellant by way of filing First Appeal, where the contention with regard to the decision of negligence was raised and on detail observations, the judgment and award was quashed for reconsideration. Liberty was granted to any parties to provide further evidence on record and the learned Tribunal was directed to

consider the same. In the change circumstances of the judgment and award being quashed and when the issue of negligence was ordered to be reconsidered, the application moved by the insurance company for recalling the Investigating Officer was required to be allowed. The investigating officer, at the relevant time when was examined before the Tribunal earlier, had failed to produce a copy of the FIR as well as the report.

9. The accident as has been noted had occurred between the Indica car bearing registration no. GJ-1 KD-6432 and a truck bearing registration no. RJ-05 GA-6432 and after considering the negligence aspect, all the MACPs came to be dismissed. The complaint at Exh.62 was referred by the Tribunal in the earlier round of proceedings. The FIR was given by the respondent no.1, driver of the truck. According to him, after loading the potatoes in the truck, he was going from Agra towards Bhavnagar. He was accompanied by Bhagwansinh Parmaram Modi as a Conductor and when he reached

Laxmi Highway Hotel at about 4.00 a.m., the tyre got burst and therefore, he had parked his truck on the side of the road opposite the hotel and according to him, after parking his truck, when he was changing the tyre, one Indica car came from the side of Sirohi in rash and negligent manner, collided with the truck and on account of the accident, the driver and the person sitting besides the driver of the car died, while three persons sitting in the rear side of the Indica car sustained grievous injuries. Respondent no.1 being the complainant of the FIR and a driver of the truck is a necessary party to the proceedings. The claimant had disputed the observations of the Tribunal. The fact has come on record that the Investigating Officer has noted certain statements. The summary report at Exh.127 was produced by the insurance company. However, on the date of examination of the Investigating Officer, he failed to bring copy of the FIR and the report and thus, necessary evidence could not be brought by the insurance company on record. Now in the changed circumstances of reappraisal of the

evidence and when liberty has been granted, the learned Tribunal ought to have exercised its own power as was granted under Section 169 of the M.V. Act, where procedure and power to the Claims Tribunal has been laid down and in such circumstances, where a specific direction has been given by this Court for the Tribunal to allow the parties to adduce further evidence, the Tribunal ought to have exercised the power under Section 169(2) of the M.V. Act, which reads as under:-

"169(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

10. Thus, to the reasons given hereinabove to the position of law, Mansinh Bhinsinh Bajar (Gaderiya) who was earlier respondent no.1 deleted by order below Exh.31 in MACP no.733/2011 be joined as party respondent no.1. Since he is respondent in

other proceedings, there would be no necessity to again issue summons to him.

11. The prayer for recalling the Investigating Officer—Anopsinh Ajitsinh Rajput is thus allowed. Accordingly, the present petitions are allowed in the above terms. Registry is directed to place a copy of this order in connected matters.

Maulik

(GITA GOPI,J)