



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.1196 OF 2009

Appellant : M/s. Cholamandalam MS General Insurance Company Limited, Ahmedabad, through it's General Manager, Cholamandalam MS General Insurance Company Limited, Chennai, through it's Manager, having its Office at Plot No.17, Prayag Enclave, Shankar Nagar, Nagpur.

– Versus –

Respondents : (1) Karamsibhai s/o Ratansi Patel, Aged about 48 Years, Occupation : Farmer.

(2) Jagdish s/o Karamsibhai Patel, Aged about 25 Years, Occupation : Not known.

(3) Vasudeo s/o Karamsibhai Patel, Aged about 23 Years, Occupation : Student.

(4) Ghanshyam s/o Karamsibhai Patel, Aged about 20 Years, Occupation : Student.

All r/o Gujarathi Colony, Ganeshpur, Tahsil and Dist. Bhandara.

(5) Arjunbhai Sukhlal Bari, Aged major, Occupation – Owner of Qualise No.GJ-8F-2182, R/o 22, Laxminagar Society, Near Railway Crossing, Palanpur, Gujarat, PIN – 385 001.

(6) Iqbal Hussain Rafiq Husain Pathan, Aged major, Occupation – Driver, R/o Baradpura, Salavato Kat Vas Bhakto Ki Nimboi, Palanpur, Tahsil Palanpur, Dist. Banaskantha (Gujarath) PIN – 385001.

 Mrs. Mrunal Naik, Advocate for the Appellant.
 None for the Respondents.

CORAM : M.W. CHANDWANI, J.
RESERVED ON : 15th JULY, 2024.
PRONOUNCED ON : 8th OCTOBER, 2024.

JUDGMENT :

Heard the learned Counsel for the appellant.

02. Correctness of the award dated 28/04/2009 passed by the Motor Accident Claims Tribunal, Bhandara (*hereinafter referred to as "Tribunal" for short*) in Claim Petition No.103/2006 is questioned in this appeal, whereby the Tribunal granted compensation of Rs.6,44,000/- along with interest at the rate of 8% per annum. The dependents of deceased Gawariben Karamsibhai Patel, who died in a vehicular accident that occurred on 29/11/2005, had filed the claim petition for compensation.

03. The brief facts, which are necessary to decide the appeal, can be summarized as under :

(I) The deceased along with her son and relatives had been to the marriage of her nephew by Toyota Qualis bearing Registration No.GJ-8/F-2182 (*hereinafter referred to as "vehicle" for short*) which was owned by her relative i.e. respondent No.5. When the said vehicle reached near Mailani Shivar, the driver of the vehicle lost control over it and gave a dash to a Truck coming

from the opposite direction, wherein the deceased sustained severe head injury and died on her way to the hospital.

(II) The vehicle was insured with the appellant. Respondent Nos.1 to 4, the dependents of the deceased, filed the claim petition which came to be allowed by the impugned award. The appellant and respondent Nos.5 and 6 i.e. the owner and driver of the vehicle respectively, were directed to pay the compensation jointly and severally. Feeling aggrieved with the impugned award, the present appeal came to be filed by the appellant-Insurance Company.

04. It is contended that the claim against the appellant is not maintainable. The learned Counsel appearing on behalf of the appellant vehemently submitted that the deceased was a gratuitous passenger in the vehicle and being an occupant of the vehicle, she cannot be treated as a third party. The vehicle was a private vehicle and it has been used for commercial purpose and therefore, risk of the occupants of the vehicle is not covered under the insurance policy. It is further contended that the Tribunal has not considered this aspect and fastened the liability on the insurer and therefore, the claim needs to be set aside. It is also contended that the driver of the vehicle was also disqualified from driving any vehicle and therefore, there is a breach of policy.

05. *Per contra*, the learned Counsel appearing on behalf of respondent Nos.1 to 4 submitted that there is no record to suggest that the vehicle was hired by the deceased. Rather, the owner of the vehicle was a relative of the deceased. After attending the marriage, the deceased was travelling in the vehicle, which was owned by her relative. No evidence has been brought on record by the appellant to show that the vehicle was hired by the deceased. According to him, the vehicle is covered by comprehensive package policy and therefore, there is no question of non-coverage of occupants of the vehicle. He, therefore, sought rejection of the appeal.

06. Perusal of the evidence of respondent Nos.1 and 2, the husband and son of the deceased respectively, reveals that the deceased was travelling in the vehicle along with respondent No.3, which was owned by respondent No.5, who is the relative of the deceased. Nothing has been brought on record by way of cross-examination to suggest that the vehicle was hired by the deceased. The Tribunal has, therefore, rightly considered that the deceased was travelling in the vehicle of her relative i.e. respondent No.5 and hence, it cannot be said that the said vehicle was being used for commercial purpose at the relevant time.

07. So far as the submission of the learned Counsel for the appellant that the occupant is not a third party and therefore, the deceased, being an

occupant, is not covered under the insurance policy is concerned, no doubt, the occupant of the vehicle is not a third party to the insurer of the said vehicle, but fact remains that in the present case, the vehicle was covered under a package policy and even the passengers of the vehicle in the event of an accident were covered by paying additional premium. In view of the above, I do not find any substance in the argument of the learned Counsel for the appellant that the occupants of the vehicle were not covered by the insurance policy.

08. Turning to the submission that the driver of the vehicle was disqualified from driving any vehicle, nothing has been brought on record in this regard. Rather, the appellant has not examined anybody, nor brought on record any document showing that the driver was disqualified from driving the vehicle. Therefore, there is no force in this point as well.

09. The sheet-anchor argument of the learned Counsel for the appellant is that in the accident, two vehicles were involved, however, the insurer of the other vehicle, i.e. the Truck, was not joined as a party to the claim petition. Rather, according to her, there was contributory negligence on the part of the said Truck, however, the said fact has not been considered by the Tribunal and erroneously fastened the entire liability on the appellant.

10. I do not find force in the argument of the learned Counsel for the appellant for the reason that when there are two vehicles involved in an accident, the drivers and owners of both the vehicles are jointly and severally liable to the injured/claimant and it is the choice of the claimant to claim compensation against any of them. A reference can be made to the decision of the Supreme Court in the case of **T.O. Anthony vs. Karvarnan and others – (2008) 3 SCC 748**, wherein it has been held in paragraphs 5 to 7 as under :

5. The Tribunal assumed that the extent of negligence of the appellant and the first respondent is fifty:fifty because it was a case of composite negligence. The Tribunal, we find, fell into a common error committed by several Tribunals, in proceeding on the assumption that composite negligence and contributory negligence are the same. In an accident involving two or more vehicles, where a third party (other than the drivers and/or owners of the vehicles involved) claims damages for loss or injuries, it is said that compensation is payable in respect of the composite negligence of the drivers of those vehicles. But in respect of such an accident, if the claim is by one of the drivers himself for personal injuries, or by the legal heirs of one of the drivers for loss on account of his death, or by the owner of one of the vehicles in respect of damages to his vehicle, then the issue that arises is not about the composite negligence of all the drivers, but about the contributory negligence of the driver concerned.

6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result

of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was

50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error.”

11. Put altogether, there is no merit in the appeal. Hence, the appeal fails and accordingly, it is dismissed. There shall be no order as to costs.

(M.W. CHANDWANI, J.)

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