IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1167 of 2018

==
HEIRS OF DECEASED GAUTAMBHAI RAMJIBHAI KALARIYA & ORS.
Versus
BHANJIBHAI DHANJIBHAI BARASARA & ANR.
==
Appearance:
JENIL M SHAH(7840) for the Appellants
MR RAMESH K PARMAR(6466) for the Defendant(s) No. 1
MR RATHIN P RAVAL(5013) for the Defendant(s) No. 2
MR Y J PATEL(3985) for the Defendant(s) No. 1
==

CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 07/09/2026

JUDGMENT

1. This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (in short “the Act”) by the appellant/s challenging the judgment and order dated 17.11.2017 passed in MACP No. 985 of 2010, whereby the learned Tribunal granted compensation of Rs. 3,95,500/- with interest at the rate of 8% per annum from the date of the claim petition till realisation.

2. Since the facts are not disputed by either of the parties, this judgment is not burdened by reproducing the facts.

3. The appeal is advanced on two grounds. The first is that the trial court / tribunal did not properly consider the evidence on record and exonerated the insurance company on the footing that the policy was an Act-only policy? Secondly, in view of judgment of the Hon’ble Apex Court in case of **New**

India Assurance Co. Ltd. Vs. Urmila Halder, 2024 JX (SC) 1154, the amendment introduced by Section 164 to the Motor Vehicles Act, being a beneficial piece of legislation, can be given retrospective effect to the case on hand and the claimant would be entitled to claim compensation of Rs.5 lakh with interest?

4. Heard learned advocates appearing for the respective parties.

5. Learned advocate Mr. Jenil Shah for the appellants referred to the deposition of the insurance company, affidavit-in-chief of whom has been placed on record at Exh.44 to submit that the officer in cross-examination, has unequivocally accepted that the premium for giving risk of two passengers is taken and the risk thereby, is covered. The claimant was travelling as pillion rider in the bike and thus, his risk was covered. However, the learned Tribunal, perhaps, on misreading of the title of the policy produced at Exh.26 came to the conclusion that the policy of the vehicle is liability only policy and consequently, exonerated the insurance company.

5.1 Upon such submissions, learned advocate Mr. Shah prays to allow the First Appeal by suitably modifying the impugned judgment and award.

6. Learned advocate Mr. YJ Patel appearing for the owner of the vehicle and learned advocate Mr. Rathin Raval appearing for the respondent insurance company pray to pass

necessary orders.

7. At the outset, the fallacy in the order of the learned Tribunal is conspicuous and noticeable. The learned Tribunal went on to read the title of the policy at Exh.26 to believe that policy giving the risk of the offending vehicle is liability only policy without referring to the evidence relied upon by the Bajaj Allianz General Insurance Co. Ltd. at Exh.44, wherein Mr. Mohit Rana, Junior Executive (Legal) in the office at Mehsana of Bajaj Allianz General Insurance Co. Ltd., in his cross-examination, has accepted that the premium has been accepted for the passenger besides the premium of the owner and driver. Let refer part of the cross-examination by the officer of the Bajaj Allianz General Insurance Co. Ltd. accepting that the risk of the passenger has been covered.

> *"It is true that we are the insured of the said vehicle No. G.J.8.AE.1014. It is true that a proposal form has to be filled before taking insurance. It is true that the details of the risks that the owner wants to take insurance for are mentioned in the proposal form. In this case, a premium of Rs. 100/- has been taken for the personal accident of the owner and the driver and apart from that, we have accepted the risk of two additional passengers and taken a premium. It is not true that in this case, the responsibility to pay compensation arises only in the case of death and total permanent disability."*

8. In view of the aforesaid solemn admission on the part of the officer of the insurance company, the claimant was not required to prove any further to recover the risk of the pillion rider. The title of the policy would not decide the nature of

the policy; it is the break up of the premium. Thus, exoneration of the insurance company from liability to pay compensation is a total erroneous approach on the part of the learned Tribunal and perhaps, misreading of the evidence.

9. As far as second issue is conerned, it is found that the same was fully covered by the judgment of the Hon'ble Apex Court in case of **Urmila Halder (supra)**, which holds that the amendment to a beneficial piece of legislation must be given retrospective effect.

10. Section 163A of the Motor Vehicles Act has been replaced by Section 164, introducing a fixed compensation of Rs. 5,00,000/- in death cases, and that the Hon'ble Apex Court had held that this amendment would apply even where the accident occurred before the amendment came into force. Relevant para of the judgment is 6 to 10, which read as under:-

> *"6. Reliance was placed on the last line of the notification, which indicates that the said amendment would come into force from the date of publication in the official Gazette, which is 22nd May, 2018. It was submitted that as the accident had occurred on 11th December, 2004, the benefit of such amendment could not be granted to the respondent. In support of this contention, learned counsel referred to and relied upon various decisions of this Court in* ***Padma Srinivasan Vs. Premier Insurance Company Limited, [(1982) 1 SCC 613]; Shyam Sunder and Others vs. Ram Kumar and Another, [(2001) 8 SCC 24]; Nasiruddin and Others Vs. Sita Ram Agarwal, [(2003) 2 SCC 577] and Panchi Devi Vs. State of Rajasthan and Others, [(2009) 2 SCC 589]*** *.*

7. It was further contended that the present case is covered by the policy under which the payment is made and the same crystallized on the date the same was entered into and subsequent developments would not alter the rights and liabilities of the parties. Thus, the contention was that the appellant would not be liable to pay any further than what it was obliged to pay under the Act prior to coming of the amendment on 22nd May, 2018.

8. Learned counsel for the respondent submitted that the High Court has rightly taken a view that it is merely a procedural amendment which has to be given retrospective effect and it is nothing substantive so as to affect the merits of the issue.

9. Having considered the matter, we do not find any reason to interfere with the judgment impugned. With regard to the judgments of this Court relied upon by learned counsel for the appellant, having gone through the same we find that they are distinguishable from the facts of the present case and thus, the ratio of those cases would not apply in the present case.

10. The order of the High Court is well discussed and we agree with the view taken. We may, however, add that a beneficial legislation would necessarily entail the benefit to be passed on to the claimant in the absence of any specific bar to the same. In the present case, the liability of the appellant-Insurance Company has not been interfered with. Only the computational mode and the modality have been further clarified, which rightly has been noted by the High Court and accordingly, the claim has been enhanced to Rs. 5,00,000/- (Rupees Five Lakhs). As 50% of the compensation amount was stayed by this Court, the same be paid to the respondent in terms of the impugned judgment within eight weeks."

11. Applying the aforesaid dictum, the following order is passed:

11.1 The appeal filed by the claimants is partly allowed.

11.2 The judgment of the learned Tribunal is modified to the extent that the claimant/s shall be entitled to the fixed compensation of Rs. 5,00,000/-, together with interest at 8% per annum from the date of the claim petition till realization.

11.3 The insurance company is directed to deposit the decretal amount within 12 weeks from today.

11.4 The Tribunal shall disburse the entire awarded amount lying in the FDR and/or with the Tribunal, with accrued interest thereon, if any, to the claimant/s, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.

11.5 While making the payment, the Tribunal shall deduct the courts fees, if not paid, in accordance with rules/law.

12. Registry is directed to return back the R & P, if any, to the concerned Court forthwith.

(J. C. DOSHI,J)

SHEKHAR P. BARVE