IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 634 of 2009
With
R/FIRST APPEAL NO. 635 of 2009

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
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

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NEW INDIA ASSURANCE CO. LTD THROUGH
Versus
RAMRUL @ MUNNA LOKANE MINA & ORS.

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Appearance:
MR VIBHUTI NANAVATI(513) for the Appellant(s) No. 1
MR RITURAJ M MEENA(3224) for the Defendant(s) No. 3
NOTICE ISSUED BY PUBLICATION for the Defendant(s) No. 1
RULE UNSERVED for the Defendant(s) No. 4
SERVED BY PUBLICATION IN NEWS for the Defendant(s) No. 2

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

Date : 01/10/2024
COMMON CAV JUDGMENT

1. As the common judgment is delivered in M.A.C.P. No.1614 of 1991 and M.A.C.P. No.1732 of 1991 by the learned Tribunal, I propose to dispose of two appeals preferred under Section 173 of the Motor Vehicle Act by the Insurance Company by this common judgment.

2. M.A.C.P. No.1614 of 1991 and M.A.C.P. No.1732 of 1991 filed under Section 166 of the Motor Vehicle Act, 1988 are partly-allowed by the Motor Accident Claim Tribunal (Aux.) and F.T.C. No.2, Vadodara by judgment and award dated 13.10.2008 and granted compensation of Rs.2,36,000/- and Rs.56,000/- with interest at the rate of 7.5% per annum from the date of the petition till realization jointly and severally from the defendants. The appeal at the behest of the Insurance Company challenges this judgment and award.

3. The brief facts of the case are as under.

3.1 The facts are that on 07.01.1991 at relevant time, mauje Tarshali bypass, on national Highway No.8, Nala No.128/1, deceased Bharatsih Joresinh Mina was driver and other Badami Sukalal Mina was cleaner on truck. When they reached near on National Highway No.8, at that time wheel of the truck No.UP-80-9890 ran over deceased Bharatsinh Mina and Badami Sukalal Mina and both were died on the spot. The opponent No.1 ran away from the spot. An FIR was filed bearing No.I-1 of 1991 at Makarpura Police Station. Thereafter, both claim petitions were filed before Motor Accident Claim Tribunal, Vadodara which partly allowed the said petitions. Hence, the present appeals.

4. Heard learned advocate Mr.Vibhuti Nanavati appearing for the Insurance Company and learned advocate Mr.Yash Jain appearing for the claimants.

5. Learned advocate Mr.Vibhuti Nanavati assails the impugned judgment and award by submitting that learned

Tribunal has committed serious error in believing that deceased Bharat Mina and Badami Mina were died due to road accident. He would further submit that though the death of both persons was shown to be happened through road accident, in fact *a priori* they have been under the wheels of truck bearing Registration No.UP-80-9890, they have been administered poison mixed with cup of tea by Ramfal. He would further submit that on consumption of such tea, both the deceased lost their consciousness and never gained it. They were kept on road and then the truck driver ran truck over them to kill them. He would submit that it is a case of murder simpliciter. He would further submit that learned Tribunal failed to notice the documents produced along with Exhibit-53 which indicates that on the statement of Ramfal, the Police being investigating agency discovered that Ramfal had administered poison to kill both the deceased. He would further submit that even in the investigation papers the offence under Section 302 is added. Thus, he submits that this is a clear case of murder simpliciter. The death of both the deceased was never turned out of the road accident. The road accident is a camouflage to show killing of two persons by administering poison.

6. Learned advocate Mr.Vibhuti Nanavati also submits that learned Tribunal has committed serious error in taking up statement from the Postmortem Report to establish cause of death without noticing that viscera of the deceased was sent for FSL which demonstrates that even as per the belief of the doctor conducting autopsy, the death of the deceased was due to administring of poison. The issue is established by the finding of

report by I.O. submitted to learned JMFC to add the offence of murder. He would submit that all these issues have been kept aside by the learned Tribunal while granting compensation.

7. He would further submit that deceased were killed due to personal vendetta by hired killer Ramfal so it is not a death of the deceased out of dispute arose for the vehicles which could termed as accidental murder.

8. Learned advocate Mr.Vibhuti Nanavati lastly submitted that learned Tribunal has not properly appreciated the documentary evidence produced along with Exhibit-56 and it does not seem that the learned Tribunal has glanced the report of I.O. submitted to the learned JMFC adding the offence of Section 302 into the offence registered for rash and negligent driving. Therefore, he would submit that since the death of both deceased does not arise from road accident and being consequence of rash and negligent driving, learned Tribunal firstly erred to hold the jurisdiction to decide compensation under Section 166 of the Motor Vehicle Act and secondly learned Tribunal committed serious error in granting compensation to the claimant considered to be victim of the road accident. Upon above submissions, learned advocate Mr.Vibhuti Nanavati submits to allow this appeal and to exonerate the Insurance Company from liability to pay the compensation.

9. On the other hand, learned advocate Mr.Yash Jain stressing upon Section 165 of the Motor Vehicle Act, 1988 submits that use of motor vehicle and the accident arose out of it is sufficient to cover the issue argued by the Insurance

Company. He would submit that undeniably in the present case the truck is involved in the road accident. He would submit that unquestionably the wheels of the truck ran over both deceased which crush them to death. He would further submit that in these circumstances it could be considered as road accident resulted into death of two persons. He would further submit that even if the theory propounded by the Insurance Company is considered to be correct, at the most it would prove accidental murder and not murder simpliciter on the ground that the Insurance Company failed to establish on record that deceased were died due to poison administered to them prior to the wheels of the truck ran over them. He would submit that in view of above, learned Tribunal has rightly allowed the claim petition. He would further submit that though certain documents are produced at Exhibit-53 onward by the Insurance Company, they are investigation papers and they cannot be held to be proved documents till I.O. is examined. The I.O. is the maker of those documents. The Insurance Company has not examined the I.O. to prove the documents to hold that it was case of murder simpliciter and not the case of accidental murder. In view of above submissions, learned advocate Mr.Jain submits that since learned Tribunal has not committed any error in arriving at the conclusion and passing the impugned judgment and award, the present appeals may be dismissed.

10. I have heard learned advocates for both sides extensively. I have also perused the record and proceedings of the claim petition and paid anxious thoughts and consideration to the rival submissions.

11. At the outset, it is apt to note that the Motor Vehicle Act, 1988 is a beneficial piece of Legislation. The concept of just and fair compensation is integral and seminal to the MV Act. The compensation to be awarded under the principle of just and fair compensation to the injured of the road accident or the legal representative/s of the deceased person is based on the principle of fairness, reasonableness and equability. Anguish of the heart or for mental turbulence being consequential result of the road accident cannot be actually compensated, but the quint essentially lies in adopting holistic and pragmatic view to the computation of the compensation for the loss sustained, which is to be in the realm of realistic approximation. Although exact or perfect arithmetical calculation of compensation for reparation of the loss arrived from the road accident is almost impossible. The Tribunal is bestowed with duty to make an endevour to award just compensation regardless of the amount claimed by the claimant. The determination of the quantum of compensation therefore, must be liberal and not niggardly since the law values life and limb in a free country in generous scale. Needless to state that money may be awarded, so that something tangible may be procured to reach something else of the like nature, which has been destroyed or lost, but money cannot renew physical frame that has been battered and shattered being a result of the road accident. Yet Tribunal to endavour to bring back victim to stage of pre-road accident as far as possible Thus, the award must be reasonable and cannot be assessed with moderation though it cannot at the same time be pity and what could be granted must be just, fair and equitable compensation.

12. The FIR on record at Exhibit-43 demonstrates that the truck ran over both deceased near Tarshali by-pass on National Highway No.8 where the construction of expressway was going on. This FIR was lodged against unknown vehicle and unidentified persons but it reveals that the vehicle ran over two persons resulting into death of both of them and as such, FIR for the offence under Section 304A read with Section 279 of IPC was registered as *Akasmat Maut* No.1 of 1991 before the Makarpura Police Station. Panchnama on the record at Exhibit-144 reveals and indicates that how the road accident took place resulting into death of two persons. The Panchnama of the truck lying in the police station is produced at Exhibit-45.

13. The Postmortem report of both persons indicate cause of death as *"due to cranio-celebral damage following trauma."* The viscera was kept pending for chemical analysis. Column No.17 of the Postmortem demonstrates multiple injuries on the body of the deceased which was noted to be a reason for cause of death. All the injuries noted in Column No.17 were *ante mortem*. The case of the Insurance Company is that both deceased were administered poison by mixing it in a cup of tea by one Ramfal and therefore, it is the case of murder simpliciter. The base for such submission is the report of the I.O. submitted to learned JMFC at Exhibit-56. But notably the investigating officer has not been examined by the Insurance Company. Even Mr.Ramfal is not examined to establish the case pleaded by the Insurance Company. The Insurance Company merely placing reliance upon Exhibit-56 - report filed by I.O. to the learned JMFC for adding of offence pleaded the case of murder simpliciter. However, filing of

such report alone could not be considered as gospel evidence or proof to believe that it is a case of murder simpliciter. *Per contra,* on record by multiple evidence, it is established that the truck ran over two persons and both of them died due to receiving multiple injuries. Evidence, to the extent, that at the time of wheels of truck ran over two victims, whether they were conscious or unconscious. In fact Insurance Company except pleading murder simpliciter and relying upon Exhibit-56 report, has not produced any evidence.

14. The meaning of the word 'accident' as per Oxford Dictionary is *"an unpleasant event that happens incidentally and causes damage, injury etc."*. It is true that the basis of the claim petition arising out of the use of motor vehicle is essentially 'negligence'. The Winfield and Jolowicz have defined 'negligence' as "*a breach of legal duty to take care which result in damage, undesired by the defendant to the plaintiff*".

15. At this juncture, reference to Section 165 of the Motor Vehicles Act, 1988 can be made with profit as under :

> "***165. Claims Tribunals.*** *- (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.*

Explanation. For the removal of doubts, it is hereby declared that the expression claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles includes claims for compensation under [section 164].

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he(a)is, or has been, a Judge of a High Court, or(b)is, or has been, a District Judge, or(c)is qualified for appointment as a High Court Judge [or as a District Judge.]

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them."

16. The above provision of law unveils that the phrase 'arising out of the use of motor vehicle' is important. The statute does not require that for claiming compensation, the rash and negligent driving resulted into damage is always required to be proved. Use of motor vehicle and the damage, injury arise out of the use of motor vehicle is sufficient to claim compensation under the provisions of the Motor Vehicles Act, 1988. This Court in case of **National Insurance Company Limited vs. Gitaben Saitansinh Rajput and others- 2010 ACJ 784** held that the expression 'use of vehicle' covers driven, repaired, parked, kept stationary or left unattended condition of the vehicle in question or involved in the accident.

17. This Court in case of **National Insurance Company Limited vs. Ashaben Darshansinh Vaghela, in First Appeal No.2174 of 2011,** after surveying the previous judgments on the issue, reached to the conclusion that in absence of proof that incident of vehicular accident was intentional murder by the driver, the Claims Tribunal is under obligation to grant just compensation.

18. After referring to the judgment of Hon'ble Apex Court in case of **Rita Devi and others vs. New India Assurance Company Limited - 2000 ACJ 801** as well as in case of **Shivaji Dayanu Patil and another vs. Smt. Vatschala Uttam More – AIR 1991 SC 1769**, this Court in case of **New India Assurance Company Limited vs. Heirs of Decd. Sarfuddin @ Harun Shamruddin Shaikh and others,** being **First Appeal No.2789 of 2012,** in para 8 held as under :

> *"8. Applying the principles laid down in the aforesaid decisions to the facts of the present case on hand, it is an undisputed fact that the deceased was requested to ferry some injured persons to VS hospital in a car earing registration No.GJ1 V 4676 belonging to respondent no.5 herein. It is also an undisputed fact that en route the aforesaid car was stopped by the unruly mob and the deceased was pulled out from the car and was attacked as a result thereof the deceased died during the treatment at the hospital. In the background of these undisputed facts can it be said that the incident of the death of deceased – Sarfuddin @ Harun Shamruddin Shaikh did not happen out of use of motor vehicle? The answer is emphatically in negative in view of the aforesaid principles and by no stretch of imagination it can be said that the incident had not happened out of use of motor vehicle."*

19. In case of **Kalim Khan and others vs. Fimidabee and others, being Civil Appeal No.8785-8786 of 2015**, Hon'ble Apex Court after surveying its previous judgments observed in para 24 as under :

> *"24. It may be reiterated here that the causal relationship should exist between violation and the accident caused. There has to be some act done by the person concerned in causing the accident. The commission or omission must have some nexus with the accident. The word 'use' as has been explained by the authorities of this Court need not have an intimate and direct nexus with the accident. The Court has to bear in mind that the phraseology used by the legislature is "accident arising out of use of the motor vehicle". The scope has been enlarged by such use of the phraseology and this Court taking note of the beneficial provision has placed a wider meaning on the same. There has to be some causal relation or the incident must relate to it. It should not be totally unconnected. Therefore, in each case what is required to be seen is whether there has been some causal relation or the event is related to the act."*

20. In the present case the Insurance Company though propounded a theory of murder simpliciter could not bring on record as evidence anything more than a report forwarded by the I.O. to the learned JMFC. The Insurance Company has not examined Mr.Ramfal, the person against whom the allegations are made to administer poison to both the deceased as well as not produced on record copy of the report of viscera which was sent for FSL to buttress that both deceased were rather killed and not died in the road accident. In **United India Insurance Company Limited vs. Thankamma - 2011 (3) KLT 466**, the Division Bench of the Kerala High Court observed that only if the dominant intention of the act of felony is to kill any particular

person then alone such killing can be termed as murder simpliciter otherwise it is an accidental murder. In the present case though the Insurance Company tried to put the case of murder simpliciter, it could not successfully take out the case from the fact that two persons were died because the wheels of the truck ran over them. Merely filing of some report for adding offence of murder would not *ipso facto* take over the case that both deceased have died out of use of motor vehicle. Apt to note the predominant purpose of felony failed to be established as such did not sustain in contrast, use of vehicle resulted in death of two persons is proved by overwhelming and profound evidence. In nutshell and for the foregoing reasons, according to this Court, the Insurance Company has failed to establish its case.

21. So far as the quantification of the compensation arrived at by the learned Tribunal is concerned, learned advocate Mr.Vibhuti Nanavati fairly submitted that Insurance Company does not dispute said quantification. In result, the appeals are dismissed. Learned Tribunal to disburse the amount of compensation to the claimants, if not already disbursed. Record and proceedings be sent back to the concerned Tribunal.

(J. C. DOSHI, J)

GAURAV J THAKER