

Kokilaben Wd/O Laxman Jatriya Vasava & Ors. Versus Vs Raysingbhai @ Rajeshbhai & Ors.

Court: Gujarat High Court

Date of Decision: Jan. 10, 2025

Acts Referred: Motor Vehicles Act, 1988 " Section 2(28), 2(39), 2(44), 2(46), 39, 41(4), 173

Hon'ble Judges: J. C. Doshi, J

Bench: Single Bench

Advocate: Mtm Hakim, Ninad Shah, M S Aditi S Raol

Final Decision: Partly Allowed

Judgement

J. C. Doshi, j",

1. The present First Appeal, under Section 173 of Motor Vehicles Act, 1988 (for short "the Act"), is preferred by the appellants " original",

claimants being aggrieved and dissatisfied with the judgment and award dated 5.1.2010 passed by the Motor Accident Claims Tribunal, Narmada at",

Rajpipla in Motor Accident Claim Petition No.862 of 2006 (Old No.390 of 2005), whereby, the learned Tribunal has exonerated the insurance",

company from paying the amount of compensation. The learned Tribunal has awarded Rs.4,48,000/- together with proportionate cost and interest at",

7.5% from the date of filing the claim petition till realization.,

2. Brief facts of the case are as under:-,

2.1 That the unfortunate accident took place on 28/05/05 at about 6.30 p.m. near patiya of village Kankala on Dediapada-Sagbara road within the,

jurisdiction of Dediapada police station. That the deceased Laxmanbhai was working as a labour in Sitaram Builds of Manubhai Patel who was a,

contractor for making roads in Maharashtra. That on the day of accident when contractor was going towards Val Amba village by tractor no. GJ16-,

R-8032 which attached with water tank and when the deceased was filling the water at that time the driver lost control over the steering and the,

deceased fell down and came under the wheel of the tractor which resulted into accident and he sustained serious injuries and died on the spot.,

2.2 Thereafter, the legal heirs of the deceased have filed claim petition before the learned Tribunal claiming compensation of Rs.5 lakh and the learned",

Tribunal vide its impugned judgment and award granted compensation as stated herein above.,

3. Learned advocate Mr. Hakim for the appellants "original claimants assailed the impugned judgment and award on two counts. Firstly, he would",

submit that the learned Tribunal has committed serious error in exonerating the insurance company from specifying the liability to pay compensation,

for and on behalf of the owner of the offending vehicle and secondly, the learned Tribunal granted compensation on lower side ignoring the",

compensation for loss of future prospect as well as compensation for consortium etc. He would further submit that 1/4th towards personal and pocket,

expenses is required to be deducted as the deceased is survived by 5 dependents.,

3.1 Learned advocate Mr. Hakim would submit that the FIR has not been given by the eye witness to the incident and therefore, statement made in",

the FIR can be relied upon only to the extent that the deceased has lost life in the road accident. He would further submit that the statement made in,

the FIR filed by the first informant that the deceased was standing on the tanker attached with the tractor and fell while watering on the road cannot,

be believed in absence of any evidence. He would further submit that the learned Tribunal in absence of any evidence on record believed that the,

deceased fell on the road while standing on the water tanker attached with the tractor and was crushed under the wheel of the tractor at the time of,

the accident. He would further submit that there is possibility that the deceased was standing on the road and dashed by the tractor, which resulted",

into the death. He would further submit that on perusing the policy of the tractor involved in the road accident, the insurance company has also",

purchased risk of the trailer attached with the tractor. Unquestionably, the deceased was employee of Sitaram Builds and was working as a labourer",

and was engaged in the work of watering the road constructed near village Val Amba in Maharashtra state.,

3.2 Taking this Court through the policy produced on record, learned advocate Mr. Hakim would submit that risk of the employee has been purchased",

and the premium is also obtained to that extent and therefore, the insurance company is liable to pay compensation of the employee as per Workmen",

Compensation Act and can also be saddled to pay extra amount which arises from the tortuous liability and can recover the same from the owner. He,

would further submit that terms and conditions of the policy produced on record indicates that the policy of the tractor was not a simple "farmer",

package policy", but it is a standard "commercial vehicle package policy", as by the impugned policy, the insurance company has also taken up the risk",

of the tanker.,

3.3 Learned advocate Mr. Hakim referring to the definition of trailer given in section 2(46) of the Act read with section 2(39) for the definition of,

semi-trailer would argue that the water tanker fall in the definition of trailer or semi-trailer and it was attached and mounted along with the tractor,

policy produced on record so also charged premium of commercial use of the trailer attached with the tractor. The risk of the employee standing on,

the water tanker, which fell in the definition of trailer is covered and therefore, the insurance company is liable to pay compensation. However, the",

learned Tribunal has committed serious error in negating to fasten liability upon the insurance company to pay compensation.,

3.4 Alternatively, learned advocate Mr. Hakim would argue that in a case if it is believed that the risk of the deceased is not covered, the learned",

Tribunal in view of judgment in cases of (1) V. Renganathan and another Vs. Branch Manager, United Insurance Company Limited and another",

2023 (0) ACJ 623 (2) Tahirbhai Ismailbhai Ansari Vs. Valjibhai Lakhabhai Rathod, 2024 (0) ACJ 402 (3) Shivaraj Versus Rajendra, 2018 (10) SCC",

432 (4) Ramchandra Versus Regional Manager United India Insurance Company Limited, 2013 (12) SCC 84 (5) Shamanna Versus Divisional",

Manager The Oriental Insurance Co.Ltd., 2018 (9) SCC 650 and (7) Shivawwa Versus Branch Manager, National India Insurance Company Limited,",

2018 (5) SCC 762. should pass order of "pay and recover" and the insurance company may not be held liable to pay compensation, but be",

directed to deposit the amount of compensation at the first instance and permitted to recover the same from the owner of the offending vehicle.,

3.5 Learned advocate Mr. Hakim would also argue that the learned Tribunal has not granted compensation for loss of future prospect. He would,

further submit that at the time of the road accident, the deceased was 27 years old and in view of judgment of the Hon'ble Apex Court in case of",

National Insurance Company Limited Vs. Pranay Sethi reported in 2017 (16) SCC 680, 40% rise in the income of the deceased has to be assessed for",

the purpose of granting loss of future prospect. He would further submit that the deceased was survived by his widow and two minor children and,

parents, in total five dependants. Yet, the learned Tribunal deducted 1/3 of the income of the deceased towards personal and pocket expenses, which",

ought to have been 1/4 in view of judgment of Pranay Sethi (supra). He would further submit that the learned Tribunal has committed serious error in,

granting compensation under the head of loss of consortium, loss of estate etc., which needs to be rationalized in view of judgment of Pranay Sethi",

(supra).,

3.6 Mainly on above submissions, learned advocate Mr. Hakim prays to allow this First Appeal and to fasten the liability of insurance company besides",

enhancing the compensation.,

4. On the other hand, learned advocate Mr. Ninad Shah appearing for the insurance company vehemently argued that at the time of the road accident,"

the deceased was standing on the water tanker, which was attached with the tractor. He would further submit that the deceased lost balance and fell",

on the road and died due to the injuries he has received as tractor ran over him. He would further submit that the policy of the tractor is ""farmer",

package policy"". He would further submit that along with purchasing risk of the tractor in road accident, the insurance company has also purchased",

the risk of the trailer having registration No.GJ 16 V 8639. The policy of the tractor was ""farmer package policy"" and the risk of the trailer attached",

with the tractor may be purchased as a commercial policy, but it was limited to the third party and liability only policy. He would further submit that at",

the time of road accident, the trailer was not attached with the tractor insured by the insurance company, but unregistered water tanker was attached",

and the deceased while was standing on the unregistered water tanker, fell on the road due to uncontrolled driving of the tractor driver and crushed",

beneath tyre of the tractor. In such circumstances, since the water tanker is not registered with the RTO authority nor his risk has been purchased by",

issuing proper policy, the deceased, who was travelling on such unregistered vehicle, having not been insured risk of him, cannot be covered under the",

Particulars,Amount (Rs.)

Future dependency Loss,"Rs.6,42,600/- Rs.3000/- + 40% rise =Rs. 4200/- -

Ã,Â¼ deduction =Rs.3150/- x 12 x 17

Loss of Estate,"20,000/-

Funeral & Transportation charges,"18,150/-

Loss of consortium,"2,42,000/- (Rs,48,400 x 5)

TotalÃ¢,~Â!, "9,22,750/-

Less: compensation to be awarded,"4,48,000/-

Additional amount which is awarded,"4,74,750/-

both require registration.,

11. Section 2(46) of the MV Act defines word Ã¢,~Â! "trailerÃ¢,~Â! , which reads as under:-",

Ã¢,~Â! "trailer"" means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle;Ã¢,~Â! ,

11.1 Word Ã¢,~Â! "semi-trailerÃ¢,~Â! is defined in section 2(39) of the MV Act, which reads as under:-",

Ã¢,~Â! "semi-trailer"" means a vehicle not mechanically propelled (other than a trailer), which is intended to be connected to a motor vehicle",

and which is so constructed that a portion of it is super-imposed on, and a part of whose weight is borne by that motor vehicle; "tractor" is defined in section 2(44) of the MV Act, which reads as under:-

11.2 Word "tractor" is defined in section 2(44) of the MV Act, which reads as under:-

"tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion);

but excludes a road-roller;

11.3 I may also refer to the word "motor vehicle" defined in section 2(28) of the MV Act, which reads as under:-

"motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is

transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not

include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed

premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 8 [twenty-five cubic centimetres];

12. Combined reading of all the definitions, what could be noticed that the tractor is independent motor vehicle, trailer means any other vehicle other than

semi-trailer and side car drawn or intended to be drawn by a motor vehicle and semi-trailer is the vehicle, which is a part and super-imposed upon

motor vehicle and its weight is borne by that motor vehicle. Water tanker is not covered under the definition of "trailer" or "semi-trailer",

Water tanker is independent motor vehicle.

13. On perusal of the policy of the vehicle Exh.34/1, the policy is combined for Mahindra & Mahindra tractor having registration No.GJ 16 R 8032 and

trailer bearing registration No.GJ 16 V 8639. The policy of the tractor is "farmer package policy" and the policy of the trailer is "commercial vehicle",

package policy". Had the trailer attached with the tractor and the deceased was travelling as employee in the said trailer, the insurance company is

certainly liable to pay compensation, but in the case on hand, the trailer was not attached with the tractor at the time of the road accident, it was the

water tanker, which was attached with the tractor. The water tanker attached with the tractor was unregistered vehicle. Section 39 of the Act

specifies necessity for registration of motor vehicle. Section 41(4) of the Act prescribes various types of motor vehicle for registration. In the present

case, the water tanker attached with the tractor was unregistered. No insurance policy of water tanker was purchased. The tractor's policy, at

the cost of repetition is only "farmer package policy". The tractor had no sitting capacity except for driver. At the time of road accident, the deceased

was riding on the water tanker being unregistered one and was fallen on the road and received fatal injuries, as he was crushed under the wheel of the",

tractor. In these facts and circumstances, since the water tanker is unregistered vehicle, the insurance company of the tractor having no risk covered",

in the policy purchased by the owner, cannot be held liable for the death of the deceased standing on the water tanker at the time of road accident and",

watering newly constructed road.,

14. The argument of learned advocate Mr. Hakim that risk of the tractor purchased through the insurance policy should be traded towards the water,

tanker attached with the tractor is un-discernible argument. In Dhondubai (supra), the Hon'ble Apex Court observed that both the tractor and",

trailer are required to be insured as they are separate vehicles and separately registered. To fasten liability upon the insurance company where the,

claimant was travelling in the trailer, the Hon'ble Apex Court in exercise of power under Article 142 of the Constitution of India, directed the",

insurance company to pay the amount and recover the same from the owner of the vehicle. In the present case, the tractor is registered with the",

RTO, but the water tanker attached with the tractor was not registered nor insured.",

15. The judgment relied upon by learned advocate Mr. Hakim in case of Shivraj (supra), along with driver of the tractor, two other persons were",

travelling on the tractor and the Hon'ble Apex Court held that conclusion arrived at by the High Court to exonerate the insurance company is,

unexceptionable in fact situation of the case, but directed to pay and recover. The fact situation of the present case does not call for any effect of the",

ration laid down therein. In the present case, the deceased was travelling on water tanker having no cover or risk. Therefore, ratio laid down in case",

of Shivraj (supra) does not render any assistance to the case on hand.,

15.1 In case of Tahirbhai Ismailbhai (supra), this Court exercised the principle of pay and recover, where the deceased being cleaner on the JCB lost",

life as JCB turned turtle. The fact is similar to the fact of case of Shivraj (supra) and does not avail any assistance to the appellants of present case.,

15.2 In V. Renganathan (supra), the deceased was travelling in tractor by sitting on Mudguard which met with an accident. The Hon'ble Apex",

Court referring its earlier decision in case of Shivraj (supra), held the insurance company liable to pay at the first instance and to recover the same",

from the owner. Thus, this ratio rendered no help to the appellants.",

15.3 In Shamanna (supra), the Hon'ble Apex Court recognized the principle that even the Tribunal can pass the order of pay and recover.",

15.4 In Ramchandra (supra), the Hon'ble Apex Court held that liability of the insurance company to pay compensation in respect of death or",

bodily injury to an employee should not be restricted to that under the Workmen's Compensation Act but should be more or unlimited and should be,

granted in terms of MV Act. It is also held by the Hon'ble Apex Court that if the insurance company is held liable to pay compensation higher,

than the liability assessed under the Workmen's Compensation Act, the same is permitted to be recovered from the owner. In the fact situation of",

this case, where the deceased was travelling in an unregistered water tanker attached with the tractor, whereby the risk of the water tanker has not",

been purchased by the owner of the tractor by way of purchasing the policy and therefore, the insurance company of the tractor cannot be held liable",

for the deceased travelling on the water tanker as employee of Sitaram Builds being owner of the tractor. In other words, since the deceased was",

travelling on unregistered and uninsured water tanker, which was attached with the tractor, the insurance company of the tractor cannot be held liable",

to pay compensation.,

16. In wake of above submissions, this Court finds no error in the impugned judgment and award passed by the learned Tribunal as far as exonerating",

the insurance company from the liability of paying the compensation to the appellants " claimants.,

17. For the reasons recorded above, the following order is passed.",

17.1 The present appeal is partly allowed. The impugned judgment and award of the learned Tribunal exonerating the insurance company from the,

liability of paying compensation to the appellants " claimants is maintained.,

17.2 The claimants would be entitled to enhanced amount of Rs.4,74,750/- with 7.5% interest as stated in para 7 of this judgment from the date of",

filing the claim petition till realization jointly from the driver and owner of the tractor i.e. respondent Nos.1 and 2 herein.,

17.3 Upon deposit of decretal amount including interest and cost, 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 claimants, by account payee cheque / NEFT / RTGS, after proper verification and after",

following due procedure.,

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

17.5 Record and proceedings be sent back to the concerned Tribunal, forthwith.",