

(2011) 08 GUJ CK 0003
Gujarat High Court
Case No: First Appeal No. 2230 of 2011

Royal Sundaram
Alliance Insurance
Company Ltd.

APPELLANT

Vs

Ranjanben Rasikbhai
Patel and 4 Ors.

RESPONDENT

Date of Decision: Aug. 9, 2011

Hon'ble Judges: R.M. Chhaya, J; Jayant M. Patel, J

Bench: Division Bench

Advocate: Sandip C. Shah, for the Appellant; Mehul M. Mehta, Harshalm Shah and
Kanjibhai M. Bhut, Defendants 1 - 4, for the Respondent

Final Decision: Allowed

Judgement

Jayant Patel, J.

Admit. Mr. Bhut, learnedcounsel appears for the original claimants and waives notice. So far as Respondent No. 5 is concerned, he was owner of the vehicle and his presence would not be required at this stage.

2. The present appeal arises against the judgement and award passed by the Tribunal dated 07.05.2010 in MACP No. 58/09, whereby the Tribunal has awarded compensation of Rs. 10,25,000/- with interest at the rate of 8% p.a.

3. The relevant facts are that on 14.08.2009, when the deceased Rasikbhai Hirjibhai was going in luxury bus No. GJ-13B-1217 at about 7.00 clock, near village Sokli, the driver lost the control of the bus and the bus was turtled and the deceased Rasikbhai Hirjibhai Patel sustained injury. Ultimately, he succumbed to the injury. The claim petition was filed for the compensation of Rs. 15,00,000/-with the Tribunal. The Tribunal proceeded ex parte against the original Respondent No. 2 Insurance Company Appellant herein since after service of notice, none appeared on its behalf. Thereafter, the Tribunal passed the aforesaid judgement and the award. It may also be recorded that as the Appellant came to know about the aforesaid ex

parte judgement and award, it had preferred review application to set aside the ex parte judgement and award and there was delay also in the application for review. The Tribunal vide order dated 01.02.2001, dismissed the said application for condonation of delay in review. Under the circumstances, the present appeal before this Court against the judgement and award passed by the tribunal.

4. We have heard Mr. Sandeep Shah for the Appellant and Mr. Bhut for the original claimants who are the main contesting party.

5. It is an admitted fact that the Appellant insurance company had no opportunity to defend the case inasmuch as after the service of the notice, they could not defend the case. The explanation submitted is that Ahmedabad Branch was joined as party and the Head Office at Chennai was not impleaded as party. It has also been submitted that Head Office is looking after the court litigation cases and therefore, as observed earlier, the application for review was filed, but as there was delay, such delay was not condoned. Hence, the appeal.

6. Mr. Shah, learned Counsel appearing for the Appellant submitted that the Appellant is ready to abide by any terms and conditions which may be imposed by this Court in the event this Court is inclined to remand the matter to the Tribunal.

7. Whereas Mr. Bhut, learned Counsel appearing for the Respondents-claimants submitted that he is leaving the matter to the Court, but Court may direct the Appellant to deposit 50% of the amount and Court may also direct the Appellant to pay the cost since it is on account of the default on the part of the Appellant, the Tribunal proceeded ex parte and the present litigation before this Court.

8. We find that the Appellant was the main contesting party in the claim petition. If we consider the reasons recorded in the judgement, it prima facie appears that had the opportunity given to the insurance company, the matter could have been further examined on the aspect of income of the deceased. Further, the insurance company was the main contesting Respondent since the liability was to be borne by it in place of the insured after the award. Under the circumstances, we are inclined to accept the explanation that the litigation was being looked after by the Head Office by taking lenient view of the matter. We are inclined to take such lenient view in view of the peculiar circumstance that the Appellant has agreed to abide by any condition which may be imposed by this Court for deposit of the amount as well as the cost to the original claimants.

9. We find that even if the matter is to be remanded back to the Tribunal for adjudication, the Appellant must deposit 25% of the awarded amount with interest. The awarded amount would come to Rs. 11 lakh and more, hence the Appellant shall deposit the amount of Rs. 3 lakh with the Tribunal. Further, the Appellant should also bear the cost of the litigation of the original claimants and considering the facts and circumstances, such cost can be quantified at Rs. 10,000/-.

10. Mr. Bhut, learned Counsel appearing for the Respondents submitted that the Head Office of the Appellant Company was not joined as party before the Tribunal and the policy was issued by the Ahmedabad office and therefore, Ahmedabad office of the Appellant company was rightly impleaded as party and therefore, it was submitted that this Court may not remand the matter.

11. It is true that one of the mode could be of joining Ahmedabad office as party, but as it has been submitted on behalf of the Appellant that the Court cases and litigations were being looked after by Head Office and because of communication gap between Ahmedabad and Head Office, the matter could not be defended well in time, we find that the discretion can be exercised but that too after deposit of a reasonable amount and to further pay cost to the original claimants who cannot be faulted by way of condonation of the default of the Appellant.

12. Hence, the impugned judgement and award of the Tribunal is set aside on the condition that the Appellant deposits the amount of Rs. 3 lakh with the Tribunal within four weeks from today and pays the cost of Rs. 10,000/-to the claimants within the said period. After the amount is deposited and the cost is paid, main claim petition shall stand restored to the Tribunal. The Tribunal shall give an opportunity of leading evidence to the parties concerned and thereafter, shall pass the appropriate orders afresh preferably within a period of six months from taking up of the matter for fresh consideration. It is also observed that if the conditions are not complied with, appeal shall stand dismissed.

13. The amount of Rs. 25,000/-which is already deposited pending the appeal shall be given set off and the amount so deposited as per the present judgement shall be subject to the final outcome of the order which may be passed by the Tribunal.

14. Appeal is allowed to the aforesaid extent. No. order as to costs.