(1983) 06 GUJ CK 0006

Gujarat High Court

Case No: None

R.J. Solanki — APPELLANT

Vs

Gita Transport Co. — RESPONDENT

Date of Decision: June 24, 1983

Acts Referred:

- Central Motor Vehicles Rules, 1989 - Rule 110
- Constitution of India, 1950 - Article 133
- Motor Vehicles Act, 1988 - Section 5(3), 94, 95, 95(1)(b)(ii), 96

Citation: (1984) 2 ACC 119

Hon'ble Judges: N.H. Bhatt, J; J.P. Desai, J

Bench: Division Bench

Judgement

N.H. Bhatt, J.

These appeals arise out of the respective Motor Accident Claim Petition Nos. 149/76,191/76, 212/76, 248/76, 249/77 26/77 & 97/77 decided by the common judgment by the learned Motor Accident Claims Tribunal of Kheda at Nadiad. In these respective claim petitions Rs. 46,000/- Rs. 21,000/-, Rs. 57,000/-, Rs. 25,500/- Rs. 15,000/- Rs. 15,000/- and Rs. 4,050/- were awarded by the learned Tribunal as compensation. The first six out of these . seven claim petitions were filed by the unfortunate heirs of the victims of the fatal accident whereas the last claim petition being the Claim Petition No 97/77 was filed by Ranchhodbhai Janabhai Solanki, who fortunately survived that mishap. The accident in question had taken place on 30th April 1976 at about 7.45 p.m. in which the Truck bearing No. GTG 1979 driven by the common opponent No. 1 in all those claim petitions and belonging to the common owner the Gita Transport Company, the common opponent No. 2 in those claim petitions, had met with the mishap between Umreth and Dakore, about 2 kms. away from Umreth to be evact. The accident occured because the truck in question suddenly moved towards the right-hand side of the driver and violently dashed with a mango tree on that side resulting into serious injuries to six passengers carried in

that truck, who ultimately succumbed to those injuries shortly thereafter. These passengers were taken by the truck by the driver from Umreth where he had halted break during his journey from Nadiad to Sevalia. The passengers requested the driver to give them lift and after initial reluctance the driver obliged them and as stated by Ranchhodbhai Solanki, the common witness of the claimants of these claim petitions tried together, by charging the hire charges. Even the common opponent No. 1 examined on behalf of the opponents, his evidence being Ex. 104 on the record of the Claim Petition No. 191/76 with which the six other claim petitions were consolidated, also stated in examination-in-chief itself that he had charged these passengers 45 paise each presumably because the passengers had boarded the vehicle at Umreth and were to get down at the nearest destination Dakore. We take judicial notice of the fact that Dakore is the next ordinary stage of carriages playing between Umreth and Dakore.

2. The learned Tribunal passed the above mentioned Award in favour of the claimants, but exonerated the opponent No. 3, the Insurance Company on the ground that the Tribunal believed the passengers to be gratutious passengers, who were gracefully offered a lift by the driver on their persistant demands. Being aggrieved by the exoneration of the insurance company from the liability, the owner the original opponent No. 2 in these claim petitions have preferred the above mentioned First Appeals. On in the First Appeal No. 1203/77 arising out of the Claim Petition No. 191/76 the claimants have filed cross-objections praying for Rs. 19,000/- by way of compensation. The other claimants remained content with the amounts awarded to them by the learned Tribunal, though in all the claim petitions except the claim petition No. 249/76 the full claims put-forth in the claim petitions were not granted.

3. Mr. G.N. Desai, the learned Counsel appearing for the common-appellant of all these first appeals firstly contended that there was no acceptable evidence to prove the negligence of the driver and according to him this was a case of pure accident where the unfortunate collision of the truck with the mango tree on the right side was almost inevitable. Reliance in this connection was placed on the driver''s evidence, who said that at that time and placed there had come from the opposite direction i.e. from Dakore side a truck with headlights on and finding that truck was rushing towards the truck in question moving on the correct side and at most moderate speed, the driver had no alternative, but to alter his truck towards the right-hand side and while he was in this process of steering towards right, the on-coming truck had dashed on the near side with the result the driver sustained some injury on the head, consequently lost control over the steering wheel and the truck dashed with the mangos tree and ultimately landed into the nearby ditch. The Tribunal disbelieved this whole story depicted by the driver firstly because it rested in the interested testimony of the driver, who had showed his interest to support his masters and secondly because the injured witness Ranchhodbhai, who had put forth a modest claim only of Rs. 9990/- flatly denied the suggestion put to him. The

Panchnama Exh. 37 on the record of this case which was taken on the record of other claim petition and which was summoned by us, shows that this truck had practically a frontal collision with the tree so much so that the front cabin had been totally smashed and its left side of the body also was considerably damaged. Had the initial impact been on the back left side of the truck in question, the extensive damage would have been on that side, but we find in the Panchnama Exh. 37 that all damages is noted to the front side of the truck. Had the truck in question been tossed because of the on-coming truck, the collision with the two mangos trees, not one, and almost total smashing of the entire front portion would not have been there. The learned Judge, therefore rightly held that this particular defence version was nothing but the figment of the imagination of the opponent No. 1. We would add by saying that this is one of those uncommon cases where circumstances speak for themselves. We do not think any more arguments can be advanced or entertained on this point.

4. This brings up to the major point of law canvassed by the appellants and attempted to be set by Mr. B.R. Shah for the Insurance Company. The ground that weighed with the learned Tribunal in exonerating the Insurance Company is that the persons who met with the unfortunate deaths were gratutious passengers. We find ourselves unable to agree with this conclusion reached by the learned Tribunal. No doubt, there is no mention in the claim petitions that the passengers had paid hire charges or they were gratutious passengers, but this non-mention is innacuous by itself. From that we cannot deduce a one-side inference that story about payment of charges deposed to by Ranchhodlal and the driver must a belated thought on their part. Not only Ranchhodlal, but even the driver categorically stated that each of those persons was charged 45 paise for the lift from Umreth to Dakore. Mr. B.R. Shah for the Insurance Company urged that some of the claimants had not boarded from Umreth. He said, one Mr. Ramanlal, the deceased, had hearded the truck from Nadiad in his capacity ask the repairer of the owners of the truck required to be transmitted to Sevalia to repair some machine of the truck owner''s sister concern. No doubt, in the petition the case was put forth to that effect, but there is no evidence which can be acceptable by even the preponderance of possibility which would support this part of the story. The driver disclaims that Ramanlal had boarded the truck from Nadiad. The widow of the deceased Bai Kantaban, Exb. 77 obviously cannot have any personal knowledge. Similarly, the employee of the deceased, Jivansing Babu Singh, Exh. 91 also does not seem to be speaking of the deceased''s departure from Nadiad for Sevaliay, by the truck. He has no personal knowledge about it. All he says in that the deceased has gone to Sevaliya, but when the driver, who has personal knowledge speaks otherwise, it is not possible for us to accept that statement. Similar is the case about deceased Lalitbbai, whose Widow Jadiben and her children who had filed the Motor Accident Claim Petition No. 26/77. So about Rancbhodbhai, who does not specifically state that he had boarded the truck from his village. It is well-neigh possible that he might have come to the Umreth Bus

Stand to catch the bus to Dakore and finding that buses were not available, he along-with other passengers took an opportunity to travel upto Dakore by the ill-fated truck.

5. In above view of the matter and particularly the absence of any reason for the driver to permit all those strangers to have the gratutious lift and when we find from our contact with such cases frequently that more often than not the truck drivers make it their point to take out some money out of such offers, we see no reason to doubt the evidence on the record without any contrary evidence existing there and we conclude that all those passengers were passengers for hire and were not gratutious passengers. So, the ground that weighed with the learned Tribunal does not appeal to us and we, therefore, set aside his finding on that count.

6. Mr. G.N. Desai invited our pointed attention to the judgment of the Full Beach of this Court in the case of the New India Insurance Co. Ltd. and Anr. v. Smt. Nathiban Chaturbhai and Ors. 1982 23(1) G.L.R 411. The Full Bench was constituted to deal with the question referred to it by the Division Bench consisting of myself and S.L. Talati, J. The question that was referred to was as follows:

Where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, whether a passenger on payment will get the benefit of the statutory insurance.

The facts of the case from which the reference had arisen are set out in para 2 of the judgment of the Full Bench. The Insurance Company of the Public Carrier, namely Leyland Goods Truck disclaimed the liability to satisfy the awards made in three different, but connected Motor Accident Claim cases on the ground that the vehicle in question was on the date of the contract of insurance, a vehicle not covered by a permit to carry passengers for hire or reward and that it was, at the time of the accident, stated to have been actually used to carry three passengers for hire or reward and that therefore, the Insurance Company was not liable to satisfy the awards made. The question that was referred to was in this context and the Full Bench has examined it also in that context specifically. The elaborate discussion of the Full Bench amply bears that out. After examining the provisions of Section 94, 95 and 96 of the Motor Vehicles Act in the light of Sakinabibi''s case and the 15 G.L.R. 420 Supreme Court''s judgment in the case of Pushpabai AIR 1577 S.C. 1735, the learned judges held in paragraph-21 of the reported judgment that if a person owned a motor vehicle and used it or permitted its user for carrying passengers for hire or reward even occasionally, the motor vehicle must be regarded, when so used, as a public service vehicle, and, therefore, a transport vehicle and when the owner so used it or permitted it to be so used, he was required to obtain a permit u/s 42, Sub-section (1) of the Motor Vehicle Act. Mr. Shah''s submission that u/s 95 (1)(b)(ii) of the Motor Vehicles Act the statutory, insurance is only for a public service vehicle as contradicted with a goods vehicle, is difficult to be accepted in view of the categorical finding of the Full Bench. The definition of the term "public service

vehicle" is to be found in Section 2(25) of the Act, where a motor vehicle if it is used (fractually) or adopted to be used for the carriage of passengers for hire or reward, it is to be treated as a public service vehicle. The entire emphasis of Mr. Shah, however, was on the permit Exh. 51 which provided that the permit was for a public carrier and the policy of insurance limited the use of that vehicle as a public carrier only. This emphasis withers into thin air, when we refer to this judgment resting in its turn on the Supreme Court''s judgment that a goods vehicle also, when used for carriage of passengers for hire or reward is to be treated as a public service vehicle and if if be so, the statutory liability u/s 95(1)(b)(ii) of the Act shall stand atracted. Mr. Shah''s submission was that the Supreme Court''s view was based on the applicability for Rule 118 and Section 42 of the Act in the matter of a criminal offence, but the Full Bench of this Court has extended that import to the accident cases themselves. Had the Full Bench not laid down the law as we have elaborated above, the reference made by the Division Bench of this Court would have been answered negatively.

7. The principles deduced by the Full Bench are summarised by the learned Judge speaking for the Full Bench in paragraph-23 of the judgment. The learned Judge also shown that defences are open to be taken by the Insurance Company in the light of Section 96(2) of the Act. Mr. Shah, however, in this connection very vehemently urged before us that what the Full Bench had laid down was with reference to that defence u/s (96)(b)(i)(a) of the Act. Technically speaking it is so, but as far as the present case is concerned, it makes little difference. Paragraph 27 of the Full Bench''s Judgment says that in order to disclaim the liability to satisfy the award that may be passed in the favour of the claimant u/s 110A of the Act, the insurer has to establish:

1. that on the date of the contract of insurance, the insured vehicle was expressly or implicitly not covered by a permit to ply for hire or reward, that is, by a permit to carry any passenger for hire or reward.

2. that there was a specified condition in the policy which excluded the use of the insured vehicle for the carriage of passengers for hire or reward, and.

3. that the vehicle was, in fact, used in the breach of such specified condition on the occasion giving rise to the claim.

Mr. Shah''s submission was that even without reference to this judgment, the Insurance company in this case is in a position to have recourse to Clause (c) of Sub-section (2) of Section 96 of the Act, by showing that the vehicle was used for a purpose now allowed by the permit. This part of the argument shall be examined later for its ultimate rejection. In our view, the Full Bench decision arising out the identical facts is a clear reply to the various contentions urged by Mr. Shah. Equally unacceptable is argument that the truck in question not being treated as a public service vehicle and therefore not liable for the statutory insurance, the Parliament

would not have by Section 96(2) carved those exceptions in Clauses (a) to (c) of Sub-section (2) of Section 96. We find nothing innocuous about this situation. After having provided for a statutory insurance in general terms, the Legislature in the subsequent Section can well provide for certain exceptional situations in which the general pro- visions of Section 96 would not stand attracted.

8. This brings us to the consideration of the factual aspect of the case. Mr. Shah in this connection submitted that the permit Ex. 51 and the Insurance policy Ex. 52 put together showed that there was a specific restriction or limitation as to the use of the truck in question. The limitation referred to in the Policy Ex. P. 52 is ''Public Carrier only''. Mr. Shah''s submission in this connection that a public arrier can be used and is assumed to be used only for the carriage of goods and not for the carriage of passengers other than situation envisaged by Rule 110 of the Motor Vehicles Rules. The Full Bench has examined this question and has negatived the similar argument on the ground that they general words regarding limitation that the vehicle is to be used as a public carrier only do not specifically exclude the user of the vehicle for passengers. As held by the Full Bench that such a vehicle also in certain contingencies can be lawfully used even for carriage of passengers. So the term public vehicle is to be used only as a public carrier occurring in the policy Ex. 52 cannot be interpreted to mean that there is a specific condition prohibiting the use of the vehicle for carriage of passengers. Similarly, the general exceptions and particularly, exception 3(a) providing that the Insurance company shall not be liable under that policy in respect of any accident, loss, damage and or liability caused, sustained or incurred while the motor car is being used otherwse in accordance with the limitations as to use stand summarily repealied. The permit Ex. 51 also does not mend the matter in any way for the Insurance company. Clause-B provides that the permit shall be subject to the conditions specified below in addition to the conditions laid down in Sub-section (3) of Section 5 of the Act. It is difficult to understand that Section is referred to there. There are no conditions absolutely prohibiting the carriage of the passengers by the goods vehicle. So, permit Ex. 51 also does not change the situation in any way.

9. Mr. Shah''s argument is that Clause (c) of Sub-section (2) of Section 96 of the Act also can be said to have been attracted here. The said clause provides that an insurer shall be entitled to defend action on the ground that condition excluding use of the vehicle for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, we have already held above that the permit under which the vehicle is used does not specifically or by necessary implication prohibit the use of the vehicle for transport of passengers and so, Clause (d) cannot be said to have been attracted.

10. Lastly, Mr. Shah submitted that u/s 96(2)(a) of the Act, the extent of liability of the Insurance company cannot exceed Rs. 50,000/- We upheld that argument. Mr. Shah, however, in this connection urged the Clauses (a) gives limit to goods vehicle

whereas for the purpose of the statutory liability, we treat it as a public service vehicle and, therefore, the liability should be further reduced. The definition of the term ''goods vehicle'' occurring in Clause (a) of Section 96Z(2) is the general one whereas attraction of the term ''public service vehicle'' by necassary implication is not to be imported here for interpreting Clause (a) Section 96 (2) From the very nature of the text, the general cannotation given in the interpretation clause of the Statute is always subject to anything repugnant to the subject or context.

11. This brings us to the cross objections filed on behalf of the original claimants of the claim petition No. 191 of 1976. Though the original claim put forth in the claim petition was Rs. 1 lakh, the claimants have now reduced it to Rs. 40,000/- with the result that cross objections are for Rs. 19,000/- only The deceased was a businessman, whose net income as per the evidence Ex. 32 was. Rs. 5,000/- per year. Even if we take his income at the rate of Rs. 300/- per month and deduct 1/3rd of the amount for his unit, the dependency benefit would come to Rs. 200/- per month i.e. Rs. 2400/- per annum. The multiplier of 15 was applied by the learned Tribunal, we also do so. So, the amount of compensation would come to Rs. 36,000/- to which a conventional figure of Rs. 3,000/- is required to be added. This would bring the claim even at this modest rate to Rs. 41,000/- whereas the claimants'' claim now stand restricted to Rs. 40,000/-. There is, therefore, no reason for use for not allowing the cross objections.

12. The result is that all the First Appeals filed by the owner of the truck are allowed to the above extent by declaring that the Insurance company would be liable to make good the awards made by the learned Tribunal against the owner with this clarification that in the Claim Petition No. 212 of 1976 from which the First Appeal No. 1201/77 has arisen, the liability of the Insurance company will be limited to Rs. 30,000/- and the liability for the remaining amount of Rs. 7,000/- is only of the owner. Cross-objections filed by the claimants in the First Appeal No. 1203/77 are allowed with the result that the total amount of compensation awarded would be Rs. 40,000/- instead of Rs. 21,000/- awarded by the learned Tribunal. The additional amount of Rs. 19,000/- will be paid to the claimants with 6% running interest from the date of the application till realisation with costs, both of the Tribunal and the High Court. The Insurance company obviously will be liable to answer this total claim. The appeals thus stand accordingly allowed, but with no order as to costs. The cross-objections, as stated above stand fully allowed with costs.

13. At this stage Mr. B.B. Shah applies for leave to appeal to the Supreme Court under Article 133 of who Constitution of India. We are told at the Bar by Mr. Soparkar on behalf of Mr. S.B. Vakil that this very question is on the anvil of the Supreme Court because of the contrary view taken by the Karnataka High Court and also in view of various appeals preferred by the New India Assurance Company in some of the similar cases. We grant the certificate. We are also satisfied that the questions involved in this group of appeals are substantional questions of law and

are of general public importance and they require to be decided by the Supreme Court. To enable this applicant to have suitable orders from the Supreme Court, the operation of this judgment is stayed for a period of two months from today.