

(1985) 07 GUJ CK 0019

Gujarat High Court

Case No: None

Jina Meru and Another

APPELLANT

Vs

Narshinhbhai
Mathurbhai and
Others

RESPONDENT

Date of Decision: July 11, 1985

Acts Referred:

- Central Motor Vehicles Rules, 1989 - Rule 118, 118(2)
- Motor Vehicles Act, 1939 - Section 2(8), 2(8)

Citation: (1985) 2 ACC 543

Hon'ble Judges: R.J. Shah, J; A.M. Ahmadi, J

Bench: Division Bench

Judgement

A.M. Ahmadi, J.

This group of appeals arisen out of the decision of the Claims Tribunal, Bhavnagar, dated 6th March 1951 in Claim Applications Nos. 19 to 28, 23 to 48 61 to 74, 91 and 131 to 134 all of 1980 and 12 of 1981. A motor truck No. GIG 1498 met with an accident on the morning of 18th October 1979 at about 10.00 A.M. approximately 80 feet from the railway crossing on the New Port Road, Bhavnagar. At the time when the said truck set with the accident, 75 persons were travelling therein four of them died as a result of injuries sustained in the accident, several others were injured and some escaped unhurt. The said accident gave rise to 46 claim petitions and the Claims Tribunal made 46 awards for varying amounts in favour of the claimants. Against the said 46 awards the present 34 First Appeals and 12 Revision Applications were preferred in this Court. Since the Revision Applications concerned awards of less than Rs. 2,000/- they were rejected on 18th February 1982 without prejudice to the right of the present appellants to contest these appeals on merits.

2. The claims were made before the Tribunal on the ground that Motor Truck GIG 1498 carrying 75 passengers met with the accident in question on being brushed by

another motor truck bearing No. GTS 6141 driven by the third opponent, passed by the fourth opponent and insured with the fifth opponent at the relevant time. The claimants contended that on the 22'6" wide road, motor truck No. GTS 6141 driven by the third opponent while attempting to overtake GTG 1498 carrying 75 passengers dashed against the latter vehicle as a result whereof the latter vehicle overturned and fell to its left causing injuries to the inmates of the vehicle. As stated earlier, four persons died as a result of the accident and several others were injured. The motor truck GTG 1498 was driven by the first opponent and was owned by the second opponent and was insured with the sixth opponent at the date of the accident. The Claims Tribunal came to the conclusion that the accident occurred because the other truck GTS 6141 dashed against the vehicle carrying 75 passengers and therefore, the driver, owner and insurance company of the offending vehicle were liable in damages. The Tribunal also came to the conclusion that the driver of truck No. GTG 1498 and also partly responsible for the accident and accordingly held the driver and owner of that vehicle also liable in damages. The insurance company of that vehicle, sixth opponent, was however absolved from liability on the ground that the vehicle being a goods vehicle it was not open to opponent No. 1 to permit passengers to travel on payment of Re. 1/- per head as alleged by the claimants and admitted by the driver of the said vehicle. So far as the quantum of damages is concerned, that is not the matter in challenge before this Court. The driver, owner and insurance company of the vehicle GTS 6141 have, however, preferred these appeals mainly on two grounds, namely (i) the Claims Tribunal was in error in concluding that the Vehicle GTS 6141 was in any way concerned with or involved in the accident in question and (ii) the Claims Tribunal was in error exonerating the insurance company, sixth opponent (United India Insurance Co. Ltd.) from liability to pay the award money to the claimants.

3. So far as the first contention is concerned it is necessary to bear in mind that the accident occurred on a 22'6" wider road on the morning of 18th October 1979 approximately 80 feet away from the railway crossing on the New Port Road, Bhavnagar. On the very same day, the panchnama of the scene of occurrence was drawn up between 11.30 A.M. and 12.00 noon by P.S.I. Shaikh of Bhavnagar Division, Bhavnagar. The panchnama shows that the road was running from East to West between Bhavnagar and New Port and the motor truck GTG 1498 was lying at a distance of 80 feet from the railway crossing facing South. It may here be mentioned that soon after the accident, as some of the passengers travelling in the truck were trapped under-neath the truck after it fell to its left, with the help of another vehicle the truck was again put on its wheels to rescue the passengers. At the time when the panchnama of the scene of occurrence was prepared, the truck was, therefore, on its wheels and was facing South on the East-West Road. The exact position of the truck on the road is not very relevant for our purpose but it may be advantageous to note that as the truck had fallen to the left, the body of the vehicle on that side damaged. The left headlight had come out from the socket and the front windscreen

panes had broken. It is pertinent to note that so far as the right side of the vehicle is concerned, the driver's door had come out from the hinges and there was a dent on that side of the body. This would indicate that something had obliged with the right side of the body of the vehicle as a result whereof a dent was caused and the door towards the driver's seat had come off. These are preliminary facts which emerge on a plain reading of the panchnama drawn up without loss of time.

4. The oral evidence on record is of victims of the accident. We do not propose to go through the evidence of all the victims but we think it would suffice to refer to the oral evidence of a few of them. Babu Mohan deposes that before the accident the driver of GTS 6141 tried to overtake their vehicle and while doing so, dashed against the same as a result whereof it turned and fell to its left. It was suggested to this witness in cross examination that the vehicle dashed against the guardstone to the left and fell on its side, a suggestion which was denied by the witness. He also deposes that his statement was not recorded by the police after the accident. Ghela Ghida also denied that the accident occurred because the driver of the vehicle suddenly applied the brakes and dashed against the guardstone. He was contradicted by his earlier police statement recorded by P.S.I. Shaikh wherein he appeared to have made such a statement. Gabha Shamji after initially stating that he did not recollect if the police had recorded his statement in this connection, denied to have stated that the accident occurred as the driver suddenly applied the brakes and the truck dashed against the guardstone and fell on its side. Jayanti Popat who pointed out the scene of accident to the police also denied to have stated to the police that because of the sudden application of brakes and dashing of the truck with the left guardstone, it fell on its side resulting in injuries to several passengers.

5. From the evidence of the aforesaid witnesses it was urged by Mr. Mehta, the learned advocate for the appellants, that some of the witnesses whose statements were recorded by the police in the course of investigation had stated that the accident occurred because the driver of the truck GTG 1498 suddenly applied the brakes and dashed against the left side guardstone. The contradiction pointed out to the witnesses from their statements recorded by the police have been proved through the evidence of P.S.I. Shaikh. Mr. Mehta, therefore, submitted that the initial story given out to the police by these witnesses did not disclose the involvement of truck GTS 6141. According to him the witnesses had subsequently tried to throw the blame on the driver of the said truck presumably because it was realised that the insurance company of truck No. GTG 1498 may not be liable to indemnify the injured in damages.

6. The Claims Tribunal has after closely examining the evidence, both oral and documentary, come to the conclusion that the accident occurred because the two vehicles were running parallel on the 22'6" wide road and while the vehicle GTS 6141 was in the process of overtaking the other vehicle GTG 1498, it dashed on its

right as a result where of the driver of GTG 1498 lost his balance, dashed against the guardstone and turned on its side. We are inclined to think that this finding of fact recorded by the Claims Tribunal is correct. The ocular evidence of some of the claimants to which we have made a reference in the preceding paragraph does show that GTG 1498 was carrying as many as 75 labourers. Many of these labourers were sealed in the body of the truck at the time when the accident in question occurred. The evidence on record gives the impression that the drivers of both the vehicles were running parallel, each trying to pass the other, and when it occurred to the driver of GTG 1498 that the other vehicle was proceeding ahead and had come dangerously close to his vehicle, he may have applied his brakes and shifted towards the left. The damage to the right of that vehicle does indicate that the other vehicle had dashed against it in the process of overtaking it. On the right side of the vehicle there was a dent and the door on the driver's side had come off the hinges. This does indicate that some other vehicle had dashed with this vehicle before it fell to its left. It is quite possible that in the process the driver of GTG 1498 may have applied his brakes and dashed against the guardstone before falling to its left but that does not rule out the possibility of a collision with truck No. GTS 6141. On a careful perusal of the evidence on record we are inclined to think that the finding of fact recorded by the Claims Tribunal in paragraphs 50 and 51 of its judgment is correct. The driver of GTG 1498 also deposes that before he fell on his side the vehicle GTS 6141 has dashed with his vehicle. No doubt the driver of GTS 6141 Jinabhai Maru has taken the stand that he knew nothing about the accident and that at the relevant point of time he was with his vehicle at New Port when he was informed about the incident. However, if we turn to his evidence he deposes that while he was near the gate of New Port some persons stopped him and told him that the truck to his rear had met with an accident. He also deposes that leaving the truck at the New Port Gate, he went running at the place where the accident occurred and helped in placing the truck on its wheels. From these statements two facts clearly emerge, namely, that some persons stopped him at the New Port Gate and did not permit him to go ahead. They also told him that the truck to his rear had fallen down on its side and he too admits to have gone to the scene of occurrence immediately thereafter. If he was not involved in the accident, there was no reason for others to stop him from going ahead and of informing him that the truck to his rear had met with an accident. These circumstances also support the version that this vehicle was involved in the accident. Taking an overall view of the evidence on record, we are therefore disinclined to think that the truck GTS 6141 was not involved in the accident and the driver, owner and Insurance Company of that vehicle have been wrongly roped in with a view to recovering damages from them.

7. Admittedly the vehicle in question was a "goods vehicle" as defined in Section 2(8) of the Motor Vehicles Act, 1939 (hereinafter called "the Act"). According to the definition of "transport vehicle" in Section 2(33) of the act, the goods vehicle stands included. Under Rule 118 of the rules framed under the act, no person can be

carried in the goods vehicle, except the owner or the hirer or a bona fide employee of the owner or the hirer of the vehicle carried free of charge, or a police officer in uniform travelling on duty subject to the maximum of seven persons. Under Clause (2) of Rule 118 notwithstanding the above, a Regional Transport Authority may by an order in writing permit that a larger number of persons may be carried in the vehicle on condition that no goods at all are carried in addition to such persons and such persons are carried free of charge in connection with the work for which the vehicle is used. While granting the written permission the Regional Transport Authority may impose such other conditions as he may deem fit and where the vehicle is required to be covered by a permit, the condition of the permission shall also be made conditions of the permit. Under Clause (3) of Rule 118 notwithstanding anything contained in the earlier Clauses, a goods vehicle can be used for the purpose of celebrations in connection with the Public Day or Independence Day, if the Regional Transport Authority permits by general or special order such use for the carriage of persons subject to such conditions as may be specified in the order. On the date of the incident, there was no question of the vehicle being used for celebrations in connection with the Republic Day or Independence Day. From Sub-rules (1) and (2) of Rule 118 it become obvious that the goods vehicle can never be used for carriage of passengers on hire. Under the contract of insurance, the policy did not cover use of the vehicle for the conveyance of passengers for hire or reward. Therefore, under Rule 118(1) of the rules, a maximum of seven persons could be carried free of charge in a goods vehicle. In the instant case the evidence on record is to be effect that the driver of the vehicle bearing No GTG 1498 had charged Re. 1/- per head from the passengers who were to board the vehicle. It is, therefore, obvious that the Full Bench decision in the case of New India Assurance Co. v. Smt. Nathiben (1982) 23(1) G.L.R. 411 cannot be used for the purpose of saddling liability on sixth opponent, the United Indian Insurance Company Ltd. In the decision on which Mr. Mehta placed reliance, the Full Bench after referring to Rule 118 and the definition of the expression "goods vehicle, observed that if the owner of a motor vehicle uses or permits its user for carrying passengers for hire or reward, even occasionally, he must obtain a permit u/s 42 of the Act. In the background of these observations the Full Bench held that an insurer in order to successfully disclaim his liability must 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, (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 1 and (3) that the vehicle was, in fact, used in breach of such specified condition on the occasion giving rise to the claim by reason of the carriage of the passenger therein for hire or reward", in the present case all the three conditions are satisfied by the sixth opponent Insurance Company and therefore, the view taken by the claims Tribunal that the said Insurance company is not liable to answer judgment must be upheld. In the first place, as pointed out by us, under Rule 118 a goods vehicle can never be used or permitted to be used for carriage of passengers

on hire and therefore, could be no possibility of the owner holding a permit in that behalf. Secandly, Clause (3) of the Insurance Policy in terms states that the vehicle in question shall not be used for the conveyance of passengers for hire or reward. Therefore, the second condition is satisfied. Since the vehicle in question was in fact used for conveyance of passengers on hire (Re. 1 per head) there was a clear violation of condition (3) of the insurance policy. That means that the third condition called out by the Full Bench was also satisfied. There was, therefore, no question of foisting the liability for payment of compensation on the sixth opponent, the United India Insurance Co. Ltd. We are, therefore, of the view that the decision of the Full Bench does not in the circumstances of the present case help that appellants. The second contention urged before us must, therefore, be rejected.

8. These were the only contentions urged at the hearing of this appeal and since we do not find any merit in either of them, the appeals fail and are dismissed with costs.