HIGH COURT OF GUJARAT

MEHTA ARVINDBHAI BHOGILAL

Versus

CHANDUBHAI DANABHAI CHAUHAN AND ANR

Date of Decision: 23 September 2014

Citation: 2014 LawSuit(Guj) 1367

Hon'ble Judges: Bhaskar Bhattacharya

Case Type: First Appeal

Case No: 5867 of 2008

Subject: Motor Vehicle

Acts Referred:
Motor Vehicles Act, 1988 Sec 166, Sec 147, Sec 173, Sec 146, Sec 147(1)(B)(II)

Final Decision: Appeal allowed

Advocates: R C Jani, Vasavdatta Bhatt

Cases Referred in (+): 2

Bhaskar Bhattacharya, C.J.

[1] This First Appeal under section 173 of the Motor Vehicles Act, 1988 [the MV Act, hereafter] is at the instance of a claimant in a proceedings under section 166 of the MV Act and is directed against an award dated 5th April 2007 passed by Motor Accident Claims Tribunal [Aux.], 7th Fast Track Court, Modasa, District Sabarkantha, in M.A.C.P. No. 74 of 1996 thereby awarding 50% of Rs.1,45,994-00 in favour of the claimant with a direction upon the opponents No.1 and 2 to pay the amount and refusing the balance 50% of the award on the ground that although the other vehicle involved in the selfsame accident was also responsible yet the owner, driver and insurer of the said vehicle not having been made parties to the proceeding under section 166 of the MV Act, the claimant is not entitled to the balance 50% amount. In other words, the Tribunal, after holding that the claimant was entitled to compensation of Rs.1,45,994/- due to the accident, held that the claimant will be entitled to only half of the compensation awarded for non-impleading the other joint tortfeasor.

[2] Being dissatisfied, the claimant has come up with the present appeal.

[3] Mr. Jani, the learned advocate appearing on behalf of the appellant, strenuously contended before this court that in the case of recovery of amount of compensation in an action for tort, the victim is entitled to sue any of the joint-tortfeasors and recover the amount from one of such joint-tortfeasor, and it is for the said tortfeasor to recover the sum from the other one in accordance with law. Mr. Jani, therefore, contends that the Tribunal below committed substantial error of law in denying 50% of the assessed compensation on the ground of not impleading the other joint tortfeasor.

[4] Mrs. Bhatt, the learned advocate appearing on behalf of the respondents No.1 and 2, has, however, opposed the aforesaid contention of Mr. Jani and has contended that the Tribunal rightly refused the balance 50% because of not impleading the owner, driver and insurer of the truck which fled away. Ms. Bhatt even contended that in the absence of the owner, driver and insurer of the truck, the proceedings should have been dismissed. However, as her clients have not filed any cross objection or separate appeal, her clients are ready to pay the 50% of the amount awarded by the Tribunal.

[5] After hearing the learned counsel for the parties and after going through the materials on record, I find that there is no dispute that the claimant was a passenger in the ST bus owned by the respondent No.2 and driven by the respondent No.1. While he was travelling in the said vehicle, according to him, due to rash and negligent driving of the driver of the ST bus, there was an accident where another truck coming from the opposite direction was involved, and as a result of rubbing between the two vehicles, the claimant being a passenger sitting on the side of the window, suffered the injuries and the truck spade away after causing the accident.

[6] I have already pointed out that the driver, owner and the insurer of the said truck were not made parties and the claimant made allegation of 100% negligence against the driver of the ST bus.

[7] The learned Tribunal below, however, was of the view that the driver of the ST bus alone cannot be blamed as both the vehicles were running on the middle of the road, and, therefore, the Tribunal was of the opinion that the driver of the ST bus as well as that of the truck were equally responsible, and after arriving at the findings that the claimant was entitled to Rs.1,45,994/- as compensation, decided to award only half of it on the ground of non-impleading the driver, owner and insurer of the truck involved in the accident.

[8] Therefore, the sole question that arises for determination in this appeal is whether in the facts of the present case, the appellant is entitled to recover the entire amount from the owner of the bus in which he was travelling.

[9] After hearing the learned counsel for the parties and after going through the above materials on record, I find that there is no dispute that there was at least no contributory negligence on the part of the appellant-claimant and he was a bona fide passenger having purchased a ticket. There is also no dispute that although the Gujarat State Road Transport Corporation is the owner of the vehicle, it has not insured the bus because of exemption granted to it by the State Government in terms of section 146 of the MV Act, although third-party insurance is compulsory under the Act. In view of the exemption granted by the State Government from taking third-party insurance, GSRTC, after complying with the requirements of section 146 of the MV Act, steps into the shoes of the Insurance Company, and all the liability of the Insurance Company in respect of act policy will devolve upon the GSRTC. According to section 147 (1)(b)(ii), in case of death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place, the Insurance Company is liable to pay the compensation. In the case before us, there is no dispute that the claimant was a passenger in a public service vehicle and the accident occurred arising out of the use of the vehicle in a public place. Such being the position, the insurer of the public passenger vehicle, and in the case before us, by virtue of the provisions of section 146 of the Act, the owner of the bus, who has taken exemption by complying with its requirement, cannot evade its responsibility to fully compensate the injured on the plea that other vehicle involved was not made party. I find substance in the contention of Mr. Jani, the learned advocate for the appellant, that a bona fide passenger in a public service vehicle, who had no negligence of his own for the accident, is entitled to claim compensation from the owner of the public service vehicle in which he was a passenger, and he is not liable to implead the other vehicle which is involved in the accident. In terms of section 147 of the Act, it is the full liability of the insurer of the public service vehicle to pay the compensation although another vehicle was also involved in the accident and in a case where the owner of the vehicle by complying with the requirements of Section 146 of the Act has got exemption from insuring the vehicle will take the entire responsibility as if it is the insurer. It is needless to mention that the GSRTC will be entitled to recover the balance amount from the owner or insurer of the other vehicle.

[10] I also do not find any substance in the contention of Mrs. Bhatt that in the absence of the owner, driver and insurer of the other truck involved in the accident, the proceeding under section 166 is not maintainable. In this connection, I rely upon a decision of the Supreme Court in the case of T.O. ANTHONY v. KARVARNAN, 2008 3 SCC 748wherein the Supreme Court made the following observations distinguishing 'contributory negligence' from 'composite negligence' and its effect:-

"5. The Tribunal assumed that the extent of negligence of the appellant and the first respondent is fifty:fifty because it was a case of composite negligence. The Tribunal, we find, fell into a common error committed by several Tribunals, in proceeding on the assumption that composite negligence and con tributary negligence are the same. In an accident involving two or more vehicles, where a third party (other than the drivers and/or owners of the vehicles involved) claims damages for loss or injuries, it is said that compensation is payable in respect of the composite negligence of the drivers of those vehicles. But in respect of such an accident, if the claim is by one of the drivers himself for personal injuries, or by the legal heirs of one of the drivers for loss on account of his death, or by the owner of one of the vehicles in respect of damages to his vehicle, then the issue that arises is not about the composite negligence of all the drivers, but about the contributory negligence of the driver concerned.

6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of

contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."

10.1 In this connection, reference can also be made to the decision of a Division Bench of this court in the case of KUSUMBEN V SHAH v. ARVINDBHAI N RAVAL, 2007 1 GLH 601where a Division Bench of this court has taken the same view holding that the liability of the joint-tortfeasor is joint and several and in the absence of the other vehicle involved, the proceeding is maintainable.

[11] On consideration of the entire materials on record, I, thus, hold that the Tribunal committed substantial error of law in not granting 50% of the compensation assessed for not impleading the owner, driver and insurer of the truck. I, thus, modify the award impugned and hold that the respondent No.2, GSRTC, is liable to pay the entire compensation assessed by the Tribunal, i.e. Rs.1,45,994/-. The respondent No.2 is directed to deposit the balance amount of 50% of the award before the Tribunal positively within two months from today, with proportionate costs and interest at the rate awarded by the Tribunal in the impugned award, with liberty to the respondent No.2 to recover the same from the owner and insurer of the other truck involved in the accident, by suing under due process of law.

[12] The appeal is, thus, allowed. No order as to costs.

[13] The record and proceedings be sent out immediately to the Tribunal.