

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).9320/2006

(From the judgement and order dated 17/11/2005 in FA No. 4783/2001 of The  
HIGH COURT OF GUJARAT AT AHMEDABAD)

ORIENTAL INSURANCE CO. LTD.

Petitioner(s)

VERSUS

JYOTSNABEN VINODBHAI JETALPURIYA & ORS.  
(With prayer for interim relief and office report )  
(for final disposal)

Respondent(s)

Date: 23/11/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA  
HON'BLE MR. JUSTICE G.S. SINGHVI

For Petitioner(s) Mr. M.K. Dua,Adv.  
Mr. Kishore Rawat,Adv.

For Respondent(s)  
Mrs.K. Sarada Devi,Adv.

UPON hearing counsel the Court made the following  
ORDER

Leave granted.

The appeal is dismissed with costs. Counsel's fee is quantified  
at Rs.15,000/-.

(Ganga Thakur)  
P.S. to Registrar

(Pushap Lata Bhardwaj)  
Court Master

Signed reportable order is placed on the file.  
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5553 OF 2007  
(Arising out of SLP(C) No.9320/06)

ORIENTAL INSURANCE CO. LTD.

.. APPELLANT(S)

Versus

JYOTSNABEN VINODBHAI JETALPURIYA & ORS. ..RESPONDENT  
(S)

ORDER

Leave granted.

Oriental Insurance Co. Ltd.,- Appellant herein is before us purported to be aggrieved by and dissatisfied with the judgment and order dated 17.11.2005, passed by the High Court of Gujarat at Ahmedabad in First Appeal No. 4783/01 setting aside the Award dated 5 th July,2001 passed by the Motor Accident Claims Tribunal in Claim Petition No. 187/91 dismissing the claim petition filed by the respondents herein.

Indisputably, an accident took place on 16.5.1999 at about 7.50 a.m. The deceased Vinodbhai Jetalpuria at that time was riding on a moped. He was passing through the corner of the road opposite Tamil School. Allegedly the respondent Bipinbhai Dhulabhai Patel was driving a loading rickshaw in a rash and negligent manner and dashed with the Luna of the deceased. In view of the impact of the said collision, the deceased dashed with some electric pole and amongst others sustained injuries on his head. Bipinbhai Patel, being the driver of the said loading rickshaw, took him to a nearby hospital, where he was declared dead. He also lodged a First Information Report in relation to the said accident. Claimants-respondents herein who are heirs and legal representatives of the said deceased Vinodbhai Jetalpuria, were informed about his death at a later stage. They filed an application before the Tribunal under Section 166 of Motor Vehicles Act, 1988 claiming compensation for a sum of Rs.5,00,000/- (Rupees five lakh).

Bipinbhai Patel, the driver of the said loading rickshaw was impleaded as party respondent therein. In his written statement for all intent and purport he admitted the facts of accident and the mode of manner in which the same was caused stating:

7. "I do not admit the facts of para-9 of the application. In the said para it is informed that the deceased Vinodbhai Ambalal went in the morning at home after relieving from his service. At that time in Khokhara area opposite Chirag Traders, the deceased was going on Luna from Southern direction. When he was going by taking turn towards Kashi Viswanath Mahadev, I the opponent was going by driving my loading rickshaw. Because of collision of loading rickshaw with the luna, the deceased was collided with the electric pole and got injuries on head and body. True facts are that the deceased was going from southern direction on Luna near Methodist Church situated at opposite the shop named Chirag Traders in Maninagar by taking turn towards

Kashi Vishwanath and at that time I was passing from there by riding loading rickshaw. Because of pit on road, which has been filled up at a present by Municipality, my rickshaw was collided with Luna and he was collided strongly with the electric pole situated there and had got injuries."

Before the Tribunal, inter alia the widow of the deceased examined herself. She was of course not an eye witness to the accident. Another witness, who was the brother of the deceased also examined himself and deposed in regard to the manner in which the accident took place on the basis as to what he had heard from the informant.

The learned Tribunal adopted a very technical view opining although that the owner of the loading rickshaw had prevaricated his stand from stage to stage, but as the four witnesses examined on behalf of the claimants respondents did not have any personal knowledge in regard to the manner in which the accident had taken place; the claimants must not have been able to prove involvement of the said vehicle and establish negligence or otherwise on the part of the said Bipinbhai Dhulabhai Patel while driving the said vehicle. The claim petition filed by the claimants on the said basis was dismissed.

On an appeal preferred from the said Judgment and Award, the High Court by reason of the impugned judgment allowed the claim petition inter alia relying on and on the basis of averments made by Bipinbhai Dhulabhai Patel in paragraph 7 of his written statement (supra).

Mr. M.K. Dua, learned counsel appearing on behalf of the appellant, in support of the appeal, submitted that the High Court committed a manifest error in reversing the finding of fact arrived at by the Tribunal, which had been arrived at on proper appreciation of the evidence on record. Learned counsel pointed out that the liability of the insurer would arise provided that insured vehicle was involved in the accident and moreover it is also established that the accident occurred because of rash and negligent driving by the driver of the said vehicle.

A claim petition under Section 166 of the Motor Vehicle Act should not be adjudicated upon on mere technicalities. In a given case the Tribunal would have jurisdiction even to award an amount of compensation more than what has been claimed. It is true that the Bipinbhai Dhulabhai Patel had prevaricated his stand from stage to stage but the evidence led by the parties must be appreciated having regard to the entire facts and circumstances of

this case. The fact that the accident had occurred, stands admitted. It is also not in dispute that immediately after the accident took place, the said Bipinbhai

Dhulabhai Patel took the deceased to a hospital for treatment. It also stands established that he also lodged the First Information Report. However, we have noticed hereinbefore that the involvement of his vehicle was not denied in the written statement filed before the Tribunal. The impact of the accident is also not denied. It is a case where the doctrine of Res Ipso Loquitur should be applied. Conduct on his part must be judged from two broad facts, namely, (1) he did not have a driving licence; and (2) the vehicle was not having any permit.

While appreciating evidence, the human conduct cannot be lost sight of. If for the aforementioned two facts his statement before the Tribunal had not been believed by the High Court and reliance has been placed on the averments made in the written statement, in our opinion no exception thereto can be taken.

If a very technical view of the matter is taken in a case of this nature, social justice which is sought to be achieved by reason of the provisions of the Act would stand defeated. Furthermore the Insurance Company having entered into contact of insurance and having regard to the purport and object of the Motor Vehicle Act, 1988 and particularly Section 2 thereof must be given its full effect, subject of course to determination of factual matrix involved in each case on its own merit.

For the reasons aforementioned, we are of the opinion that it is not a fit case where this Court exercise jurisdiction under Article 136 of the Constitution.

The appeal is dismissed with costs. Counsel's fee is quantified at Rs.15,000/-.

.....J.  
( S.B. SINHA )

.....J.  
( G.S. SINGHVI )

New Delhi,  
November 23, 2007.