

(2012) 10 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 2591, 2592, 2595 and 2596 of 2005

Amar Singh and Others

APPELLANT

Vs

Munesh and Another

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Citation : (2013) 2 CDR 787

Hon'ble Judges : M.C. Sharma, J

Bench : Single Bench

Advocate : D.K. Garg, for the Appellant; G.S. Rathore, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Sharma, J.—Since all the aforesaid four appeals arise out of the judgment and award dt. 26.2.2005 passed by MACT, Dholpur, hence the arguments have been heard together and they are being decided by this common judgment. Brief facts of the case are that on 19.5.2002 claimants/deceased persons were going to their village Tighra in Tractor No. RJ-11/R 4491. The driver of the tractor drove the tractor rashly and negligently and over-turned the same, as a result of which Girraj Singh and Banwari died and Munesh, Karuna and others persons sustained injuries.

2. Thereafter, First Information Report was lodged. Claim petitions were filed. Notices were issued, written statement was filed, issues were framed, evidence was submitted and after hearing the arguments of both the sides, the learned Tribunal has passed the impugned award awarding different amount of compensations in different claim petitions. However, liberty has been given to the Insurance company to recover the amount of compensation from the owner of the offending vehicle.

3. Being aggrieved by the aforesaid award, the owners of the offending vehicle have filed the aforesaid appeals

4. At the out-set, learned counsel for appellants contended that even if it is presumed that there was breach of condition of the Insurance Policy, then the burden of proof was upon the insurer to prove the fact that such violation was in the knowledge of insured and it was willful on his part but in the present case the insurer of offending vehicle has miserably failed to prove that there was breach of any condition of the insurance policy and it was willful on the part of the insured and it is well settled proposition of law that if there is no willful breach on the part of insured, then the insurer cannot escape from its liability. He has further contended that the officer of the Insurance company specifically admitted in his cross examination that agricultural policy included all the agricultural works related to the agriculture, but whether the work of carrying agriculture produce is covered in the agricultural work or not, is not clear from the terms and conditions of the policy. In this way, the tribunal has committed material illegality while passing the impugned award. He further contended that the amount of compensation given by the learned Tribunal is also excessive as the income of the deceased has been assessed at Rs. 2400/- per month, whereas there was no proof of income produced by the claimants and the multiplier of 8 adopted by the learned Tribunal is also on higher side. Hence, the impugned award to the extent of giving recovery right to the Insurance Company from the appellants be quashed and set-aside.

5. E Converso, the learned counsel for the Insurance Company defended the impugned award and stated the same to be just and apposite.

6. Considering the entire facts and circumstances of the case and also the evidence emerging on record, I do not think it proper to interfere in the impugned award dt. 26.2.2005 passed by the learned Tribunal. Hence, all the aforesaid four appeals fail and the same being bereft of any merit deserve to be dismissed, which stand dismissed accordingly. Consequent upon the dismissal of appeals, the stay applications, filed herewith, do not survive and they also stand dismissed.