(2020) 03 MP CK 0199

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 919 Of 2011

Bhawar Lal APPELLANT

Vs

Lokendra Rathore And Others RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Citation : (2020) 03 MP CK 0199

Hon'ble Judges : Rohit Arya, J

Bench : Single Bench

Advocate : Kapil Patwardhan, Sharad Punj

Final Decision : Disposed Of

Judgement

This appeal is by the claimant against the award dated 07.12.2010 passed in MCC No.68/2009. The Claims Tribunal by the impugned award though has determined the compensation to the tune of Rs.5,31,000/-however, exonerated the insurance company of its liability for payment on the premise that the accident so occurred was not covered under the policy.

Mr. Kapil Patwardhan inter alia contended that undisputedly the tractor bearing registration No. MP 04 B 6913 was used as a motor connected to thresher machine with pulley with coil for providing electrical energy thereto for rotation. The thresher was used for separating grains from chaff. During course of the operation, accidentally the hand of the claimant got coiled into the thresher resulting into grievous injury and ultimately the right hand of the claimant was amputated. Relying on the judgment rendered by this Court in National Insurance Company Ltd. v. Brijesh Jatav, (MA No.275/2014), judgment of Delhi High Court in Sh. Narinder Jit Singh Dhillon v. Sardar Mamu, (FAO App. No.90/2003) and the judgment of the Rajasthan High Court in the case of Smt. Babi and Others v. Laxman and Others, (Civil M.A. No.91/2001), learned counsel for the appellant contended that the tractor by itself is not a unit for either ploughing the field or harvesting crops but invariably it has to be attached with apparatus for cultivation. Thresher itself cannot run except with the help of motor providing it mechanical energy by a tractor and hence, if such an attachment to the tractor, caused injury to the claimant, the risk is liable to be covered under the policy. It is further submitted that the speed of the thresher is controlled by the driver of the tractor providing electrical energy. Due to negligence of the driver, (who was not sitting in driver seat) the machine could not be stopped immediately and the handof the claimant got coiled into it. Therefore, the risk is covered and the insurance company is liable to pay the compensation.

Per contra, while combating the aforesaid contentions, learned counsel for the respondent/insurance company submitted that the tractor was insured for agricultural purposes whereas the owner thereof had rented it out to one Shri Devendra for Rs.400/- per hour for running thresher machine. Therefore, the accident occurred is not covered under the policy. He referred to paragraph 23 of the award to bolster his submission. Learned counsel for the insurance company further submitted that if there is violation of insurance policy, the insurance company cannot be saddled with the liability of payment of compensation.

Upon hearing learned counsel for the parties, it is apparent that undisputedly thresher was connected to the tractor with a pulley providing electrical energy for mechanical operation of the thresher. Engine of the thresher was directly connected with pulley and the same was under the control of the tractor. Therefore, the occurrence of the accident was due to mechanical energy supplied to the thresher and since the same could not be stopped for the reason driver of the tractor was not on the driving seat, resulting into grievous injury on the right hand of the claimant. Hence, it cannot be said that the tractor had nothing to do with the threshing operation causing injury to the claimant. Albeit, it is true that the tractor was not used in the field of the owner and, therefore, there is breach of insurance policy. Nevertheless, when the accident occurred due to negligence in the operation of the tractor, insurance company though not saddled with the liability of payment, it is directed that the insurance company shall make payment of compensation awarded by the Claims Tribunal and recover it from the driver and the owner of the tractor in question.

Before parting with the case, it is apposite to observe that the amount of compensation determined by the Claims Tribunal shall carry interest at the rate of 6% per annum from the date of application.

Accordingly, the appeal is disposed of.

