
(2013) 02 RAJ CK 0076

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 959 of 2012

Birma Ram

APPELLANT

Vs

Smt. Manju and Others

RESPONDENT

Date of Decision : 11-02-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2013) 2 WLN 58 : (2013) 1 WLN 586

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Akshay Tiwari, for the Appellant; Himmat Jagga, Advocate for the Respondents No. 1, 4 and 5 and Mr. Vinay Kothari, Advocate for the Respondent No. 6, for the Respondent

Final Decision : Allowed

Judgement

Arun Bhansali, J.—This appeal has been filed by the owner aggrieved by the award dt. 12.09.2011 passed by the learned Motor Accident Claims Tribunal, Sriganganagar ("the MACT"), whereby the learned MACT while exonerating the Insurance Company has directed payment of compensation in the first instance by the Insurance Company and left it open for the Insurance Company to recover the said amount from the owner-appellant. The Insurance Company was exonerated on account of the fact that the owner failed to produce the permit for running the vehicle at Sriganganagar-Padampur By-pass, Sriganganagar. The appellant has filed an application under Order XLVII, Rule 27 CPC for producing the additional evidence on record. The said application is accompanied by a certificate dt. 08.05.2012 issued by the Secretary, Regional Transport Authority, Bikaner Division, Bikaner verifying the existence of a valid permit on the date of accident i.e. 27.01.2009. It is submitted in the said application that though averments with regard to the existence of permit were made, but the same could not be produced despite due diligence and the MACT has drawn adverse inference for not producing the said permit.

2. Learned counsel for the Insurance Company was supplied with a copy of the application alongwith the copy of the certificate. The same has been got confirmed by the Insurance Company and in fact, such a permit exist.

3. In that view of the matter, the application under Order XLVII, Rule 27 CPC is allowed. The certificate as produced by the appellant is taken on record.

4. The only basis for drawing the adverse inference by the MACT was the absence of a valid permit for plying the vehicle. Once the existence of said permit by way of certificate issued by the Secretary, Regional Transport Authority, Bikaner is taken in to consideration, the said reason given by the MACT no longer exists. It is also pointed out that the award has already been satisfied by the Insurance Company.

5. In that view of the matter, the judgment and award passed by the MACT is modified to the extent that the finding on issue No. 2 is reversed and it is held that the Insurance Company is liable to make payment of the amount of compensation and consequently, the award is also modified and it is held that all the respondents are jointly and severally liable for payment of the compensation and the direction to the extent of Insurance Company recovering the amount, after paying it to the claimants, from the owner stands set-aside. The amount of Rs. 25,000/- deposited in terms of proviso to Section 173 of the M.VS. Act, if lying deposited with the MACT may be refunded back to the appellant. Accordingly, the appeal is allowed. No costs.