
(2019) 05 RAJ CK 0160

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1269 Of 2019

Divisional Manager

APPELLANT

Vs

Nirmala Devi And Ors

RESPONDENT

Date of Decision : 20-05-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166, 173

Citation : (2019) 05 RAJ CK 0160

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : Aditya Singhi

Final Decision : Dismissed

Judgement

Appellant-Insurer has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'Act') to challenge judgment and award dated 31.01.2019, passed by Motor Accident Claims Tribunal, Jaitaran, District Pali (for short, 'learned Tribunal'). Learned Tribunal, by the impugned judgment and award, while adjudicating claim of the claimant-respondents under Section 166 read with Section 140 of the Act, has quantified and awarded compensation to the tune of Rs.9,98,740/- under different heads.

The facts, opposite for the purpose of this appeal, are that respondent-claimants preferred the claim petition, inter-alia, on the ground that on the fateful day of 30.10.2014, at about 7.30 PM, when deceased Surens Chandra was plying his motorcycle No.RJ-22/ST-8975 for undertaking journey from Barr to Raipur, the same met with accident and due to the accident Suresh Chandra suffered grave and serious injuries. Thereafter, Suresh Chandra was taken to local Government Hospital, Barr however referred to Beawar hospital but on the way succumbed to the injuries. In the claim petition, it is also, inter-alia, averred that the accident was caused by vehicle Tata Truck 407 bearing registration No. RJ-22/GA-7035 due to rash and negligent driving. Besides owner and driver of the vehicle, appellant being Insurer of the vehicle was also impleaded as non-applicant.

Appellant as well as driver and owner of the vehicle contested the claim petition. In its return, the appellant raised many objections seeking its absolvment from liability to pay the compensation. Essentially, it was averred in the reply that the Insured violated the terms of insurance and the vehicle in question was having no valid permit to ply on highway.

Learned Tribunal, on the basis of pleadings of rival parties, settled four issues for determination. For substantiating their claim, respondent-claimants examined five witnesses and also produced twenty six documents, which were exhibited. In defence, no evidence was tendered either by the appellant-Insurer or by driver and owner of the vehicle.

Upon conclusion of the evidence, learned Tribunal proceeded to hear final arguments and decided Issue No.1 relating to rash and negligent driving in favour of respondent-claimants. Likewise, Issue No.2 was also decided in favour of respondent-claimants. Adverting to Issue No.3, which was settled on the basis of objections raised by the appellant-Insurer, learned Tribunal has found that the insured vehicle was having no valid permit to ply on highway and, consequently, found it a case of violation of insurance policy. This sort of finding resulted in exoneration of the Insurer from its liability. However, relying on the judgment of Supreme Court, learned Tribunal directed the appellant-Insurer to first pay compensation to the respondent-claimants and then recover the same from the insured as well as driver of the vehicle.

Arguing on this appeal, learned counsel for the appellant has essentially assailed the impugned judgment and award on Issue No.4, i.e. quantum of compensation. It is submitted by learned counsel that multiplier applied by learned Tribunal was erroneous, inasmuch as, claimants have not been able to prove age of the deceased.

Upon hearing learned counsel for the appellant, in my opinion, the argument of learned counsel cannot be sustained because learned Tribunal has decided the claim petition on the basis of material available on record in absence of any contrary evidence produced by the Insurer. If the quantum of compensation is examined with pragmatic approach, then, it would ipsofacto reveal that the learned Tribunal, while considering age of the deceased as 38 years has applied multiplier of 15 for quantifying the amount of compensation for loss of dependency. Besides under other heads learned Tribunal has awarded compensation by relying on a decision of Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi [2017 (13) Scale 12].

In my view, the amount of compensation determined by learned Tribunal cannot be categorized as excessive or exorbitant in the backdrop of facts and circumstances of the case. Moreover, the learned Tribunal has simply directed the Insurer to first pay compensation to the respondent-claimants and then recover the same from the insured as well as driver of the vehicle. Therefore, in that backdrop also, no interference with the impugned judgment and award is

warranted.

Resultantly, appeal fails and the same is hereby dismissed summarily.