

(2013) 09 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 2700/2013

I.C.I.C.I. Lombard General Insurance Co. Ltd.

APPELLANT

Vs

Smt. Bhuri and Others

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Citation : (2014) 2 WLN 23

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The ICICI Lombard General Insurance Company, the appellant, is aggrieved by the award dt. 13.06.2013 passed by the Motor Accident Claims Tribunal, Malpura (Tonk), whereby the learned Tribunal has granted a compensation of Rs. 3,13,000/- along with an interest @ 6% per annum from the date of the filing of the claim petition i.e. from 10.06.2008, to the claimant respondents. The brief facts of the case are that on 10.06.2008 Mahaveer, who is the grandson of claimant respondent No. 1, and the brother of claimant respondent Nos. 2 and 4, was travelling in a pick-up truck from Alwar to Jaipur. In the pick-up truck, he along with Raju, Sanwariya and Duda Ram were carrying 60 bags of thermoplastic and a machine. Around two o'clock, when the said pick-up truck was being driven in a rash and negligent manner, near Thanagazi, the same turned turtle. Mahaveer came under the pick-up truck. Consequently, he sustained grievous injuries. During his treatment at the Thanagazi Hospital, he expired. Since he was the bread earner of the family, the claimant respondents filed a claim petition before the learned Tribunal. In order to substantiate their case, they examined two witnesses including Duda Ram, an eyewitness of the accident, and submitted twenty documents. In turn, the Insurance Company examined a single witness, but did not submit any document. After going through the oral and documentary evidence, the learned Tribunal granted the compensation as aforementioned.

2. Since the Tribunal has directed the Insurance Company to pay the compensation amount this appeal has been filed by the Insurance Company,

3. The learned counsel for the Insurance Company has vehemently contended that the Insurance Company had raised a few contentions before the learned Tribunal, namely that Mahaveer was not the owner of the goods but instead was travelling as a gratuitous passenger on the pick-up truck. Secondly, that instead of sitting within the cabin, he was sitting in the back of the pick-up truck. Therefore, the Insurance Company is not liable for the payment of the compensation amount. However, according to the learned counsel, the learned Tribunal has failed to appreciate both these contentions. Instead it has imagined that there would not be any space available for a person in the cabin of the pick-up truck, and has passed the impugned award on the basis of whim and caprice. Lastly, that since the claimant respondent Nos. 2 and 3 are brothers and are major, they were not dependant upon the deceased. Therefore, the award needs to be interfered with.

4. Heard learned counsel for the appellant, perused the impugned award and also considered the testimony of Duda Ram (A.W. 2), which has been submitted before this Court by the learned counsel for the appellant.

5. A bare perusal of Duda Ram's testimony reveals that according to him on 17.04.2008 he along with Mahaveer (the deceased), Raju and Sanwariya, were travelling in the pick-up truck. They were carrying 60 bags of thermoplastic and a machine. While he and Raju were sitting with the driver in the cabin of the pick-up truck, Mahaveer and Sanwariya were sitting in the back of the pick-up truck along with the goods.

6. In his cross-examination, he claims that they had left on 10.04.2008 for Alwar; they were supposed to draw the white streak on the roads. They were sent by their Contractor, Neeraj Aswal. The contract was for the bags of thermoplastic. According to him, they receive about Rs. 2000/- per bag. Most importantly, in his cross-examination, he points out that they were carrying both 60 thermoplastic bags and a machine. He further emphatically states that "the machine belonged to Mahaveer". Thus, it is obvious that Mahaveer was owner of the machine, and he was travelling with the machine while carrying his own goods. Therefore, the stand taken by the Insurance Company that Mahaveer is a gratuitous passenger and is not the owner of the goods being carried in the pick-up truck, this stand is patently belied by the testimony of Duda Ram (A.W. 2).

7. Moreover, from the testimony of Duda Ram it is clear that in the cabin of the pick-up truck there were three persons, namely the driver, Duda Ram himself and Raju. Since there was lack of space in the cabin, and since the goods had to be carried, especially the machine which belonged to Mahaveer, Mahaveer and Sanwariya had no other option, but to sit in the back of the pick-up truck along with their goods. Thus, the finding given by the learned Tribunal that since the cabin of the pick-up truck is a small one, since there was not ample space for

Mahaveer to sit therein, Mahaveer could not be faulted for sitting in the back of the pick-up truck. This finding cannot be said to be imaginary, but instead is based on the testimony of Duda Ram, an eyewitness to the accident. Thus the contention raised by the learned counsel is unacceptable. The learned counsel has also pleaded that respondent Nos. 2 and 3 happens to be the elder brothers, therefore, they were not financially dependant on the deceased. However, this plea has been raised for the first time before the Appellant Court. Needless to say, a plea of fact cannot be raised at the Appellate stage which has not been raised in the original proceeding. Thus the contention is unacceptable. For the reasons stated above, this Court does not find any illegality or perversity in the impugned award. This appeal being devoid of any merit, is hereby dismissed.