
(2016) 05 RAJ CK 0099

In the Rajasthan High Court

Case No : Civil Misc. Appeal Nos. 3694, 3703. 3257, 4148-4150 4153 of 2012

Jai Singh

APPELLANT

Vs

Prem Singh

RESPONDENT

Date of Decision : 30-05-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2017) AAC 716 : (2016) 4 DNJ 1525

Hon'ble Judges : Mr. Mahesh Chandra Sharma, J.

Bench : Single Bench

Advocate : Mr. Lokesh Sharma and Mr. Digvijay Mantri, Advocates, for the Appellant/s; Mr. Vizzy Agarwal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mahesh Chandra Sharma, J.—Since these aforesaid appeals arise out of one judgment and award passed by MACT, hence the arguments have been heard together and they are being decided by this common judgment.

2. The brief facts giving rise these appeals are that Smt. Karma, Smt. Ratni Smt. Choti, Gopira, Smt. Puri, Smt. Sajni, Chanta and Channa, Sajna @ Sajni Lali, Smt. Apu, Kumari Kani were going in trolley attached with tractor bearing No. RJ01-R-1927 with bags of Macca and Bazra from Srinagar to Ajmer, Jaisingh tractor driver was driving tractor rashly and negligently overturned, due to that Smt. Apu and Kumari Kani died and others sustained grievous injuries.

3. An F.I.R. was lodged and after investigation challan was submitted against Jai Singh tractor driver. Injured as well as legal representatives of the deceased Smt. Apu and Kumari Kani and injured filed claim petitions separately for compensation under Section 166/140 of the Motor Vehicles Act 1988.

4. The non-claimant No. 3 Insurance Company, being insurer of the tractor filed reply, stating therein that tractor was insured for the agriculture purpose while it was being used for commercial purposes by breaching condition of policy. It was

further stated in the reply that no premium was charged for covering the risk of persons travelling in tractor attached with trolley.

5. On the basis of pleadings of the relevant parties, the learned Tribunal framed as many as 3 issues. The learned Tribunal decided issue No. 1 in favour of the claimants and against non-claimants on the basis of statement of eye-witness as well as documentary evidence such as F.I.R., Post Mortem Report, Injury Report, Challan which was filed against the tractor driver. The issue No. 2 relates to the quantum of compensation, the learned Tribunal while deciding this issue awarded compensation to the claimants and against awarded compensation it the claimants and against non-claimants vide judgment dated 24.7.2002. The learned Tribunal held that the non-claimants are liable for compensation jointly and severally.

6. Learned Counsel for the appellants has contended that the Hon''ble High Court had quashed and set aside the order dated 24.7.2002 on the Issue No.2 and remanded the matter to decide this issue afresh in the light of judgment toiled cited by relevant parties. It is further contended that the Issue No. 2 relates to quantum of compensation therefore the compensation amount may be enhance: or may be reduced but company cannot be exonerated by holding that condition has been breached by driver/owner of the tractor and the Tribunal has exceeded its jurisdiction while deciding this issue. The learned Tribunal has made mistake in holding that no premium was charge covering the risk of persons travelling in trolley attached with tractor therefore Insurance Company is not liable for compensation. He has further contended that company has failed to establish that premium was not charged for covering the risk or persons sitting in the trolley. Evidence available on record shows that the Insurance Company has charged covering the risk of the person sitting in the trolley. Hence judgment and award dated 27.7.2012 passed by the learned Tribunal is liable to be quashed and; set aside.

7. On the other hand, learned Counsel for the respondents has contended that the Tribunal has decided the matter twice and each and every aspect of the matter has been considered by the Tribunal afresh. He further contended that passengers who were travelling in the trolley which is a breach of policy, hence the Insurance Company is not liable to indemnify the award amount. Therefore impugned award deserves to be set aside.

8. I have heard learned Counsel for the parties and perused the impugned judgment and award. I am in agreement with the findings arrived at by the learned Tribunal which reads as under:-

"gLrxr izdj.k esa izFke lwpuK fjiksVZ izn"KZ&1 ds voyksdu ls Li"V gS fd fnukad 07-09-1994 dks Vs~DVj la[;k vkj0ts0 01&1927 esa vizkFkhZ dze&1 ckM+k Jhuxj ls [kqf.M;kl ckck jkenso th ds xsys dh djhc 60 lokfj;ka Hkj dj jokuk gqvK Fkk o 11-15 ,0,e0 ij vizkFkhZ dze&1 pkyd t;flag us Vs~DVj dks rsth o ykijokgh ls pyk;k ftlls Vs~DVj V~ksyh iyVus ls mlesa lokj mijksDr izkFkhZx.k vkgr gq, o e`rdx.k

Jherh vkiwnsoh o ckfydk dkuh dh e`R;q dkfjr gqbZA vFkkZr~ mDr Vs~DVj V~ksyh dk oDr nq?kZVuk [kqf.M;kl ckck jkenso th ds esys esa lokfj;ka <+ksus ds fy, mi;ksx fd;k tk jgk Fkk ,xzhdYpj o QksjsLVjh mi;ksx ugha gks jgk Fkka bl izdkj izkFkhZx.k us viuh ;kfpdkvksa esa feF;k dFku ntZ fd;s gS fd Vs~DVj esa izkFkhZx.k o e`rdx.k d`"kd gksus ds dkj.k cktjs dh cksfj;ka Hkj dj fdjk;k nsdj mldh ns[kjs[k o lqj{kk gsrq jokuk gq, Fks tcfd lHkh izkFkhZx.k us vius vf/kdj.k ds le{k gq, c;kuksa esa Hkh ,d Loj esa Lo;a o e`rdx.k dk Vs~DVj esa cSBdj [kqf.M;kl esys esa tkus dk dFku fd;k gSA ,u0,0 M0&1 t;flag Vs~DVj pkyd us vius eq[; ijh{kk ds "kiFk i= esa rks vkgrx.k o e`rdx.k dk viuh ethZ ls Vs~DVj V~ksyh esa cSBus dk dFku fd;k gS tcfd bl ds foijhr izfrijh{k.k eSa og dFku djrk gS fd Vs~DVj V~ksyh esa cSBs O;fDr 15&16 cksfj;ka [ksr esa iSnk cktjs dks ysdj tk jgs FksA ,d rjQ rks og viuh ethZ ls vkgrx.k o e`rdx.k dk lokj gksus dk dFku dj jgk gS rks nwlj rjQ mudk cktjs dh cksfj;ksa lfgr lokj gksuk crk jgk gS vFkkZr ;g lk{kHh fojks/kkHk"kh dFku dj jgk gSA bl izdkj mijksDrkuqlkj ;g rF; lk{; esa c[kwch izekf.kr gS fd mijksDr vkgrx.k o e`rdx.k nq?kZVuk esa fyIr Vs~DVj V~ksyh esa lokj gksdj oDr nq?kZVuk [kqf.M;kl ckck jkenso th ds esys esa tk jgs Fks u fd cktjs dh cksfj;ka Hkj dj mldh ns[kjs[k o lqj{kk gsrq lokj FksA vFkkZr~ mDr okgu nq?kZVuk ds le; ,xzhdYpj o QksjsLVjh iz;kstufkZ mi;ksx ugha fy;k tk jgk Fkk cfYd lokfj;ka <+ksus ds mi;ksx vk jgk Fkk ftudk chek daiuh }kjk fdLh Hkh izdkj dk izhfe;e chek ikWfylh izn"KZ&,u0,0 2 ds vuqlkj ugha fy;k x;k gSA

vizkFkhZ chek daiuh }kjk is"K U;kf;d n`"Vkar us"ku ba0da0 cuke oh fpUuek okys ekeys esa e`rd O;olk;h Vs~DVj V~ksyh esa lCth Hkj dj cspus ds fy, tk jgk Fkk vFkkZr Vs~DVj V~ksyh dk mi;ksx d`f"K iz;kstufkZ ugha gksus ls ekuuh; loksZPp U;k;ky; us chek daiuh dks {kfriwfrZ vnk;xh ds mRrjnkf;Ro ls mUeksfr fd;kA ;wukbZVsM bf.M;k ba0da0 cuke Jherh dq"rh okys U;kf;d n`"Vkar esa ekuuh; jkt0 mPp U;k;ky; us ;g fof/k izfrikfnr dh fd eksVj ;ku vf/kfu;e] 1988 dh /kkjk 149 chek daiuh dk nkf;Ro e`rd Vs~DVj pkyd ds ikl ikfV;k ij cSBk Fkka Vs~DVj d`f"K mn~ns"; gsrq chfer Fkka e`rd ;k=h Fkka vfHkfu/kkZfjr] vf/kdj.k us chek daiuh dks xyr :i ls mRrjnk;h vfHkfu/kkZfjr fd;k] jkf"K chek daiuh us iwoZ esa gh vnk dj nh Fkh] ekfyd ,oa pkyd ls olwyh dk funsZ"K fn;k x;kA U;w b.fM;k ba0da0 fyfeVsM cuke vk"kkjkuh o vU; ds ekeys esa ekuuh; loksZPp U;k;ky; us ;g fof/k izfrikfnr dh fd eksVj;ku vf/kfu;e] 1988 dh /kkjk 147 la"kk/ku vf/kfu;e] 1994 /kkjk 147 eksVj;ku vf/kfu;e] 1939 /kkjk 95 eky ekfyd ;k mlds izkf/kd`r izfrfuf/k }kjk eky okgu esa ;k=k djrs gq, mls ;k mlds izfrfuf/k dh e`R;q ;k "kkjhfd {kfr gksus ij chekdrkZ dk izfrdj nkf;Ro chekdrkZ dk nkf;Ro ughaA gLrxekeys esa Hkh Vs~DVj V~ksyh dk oDr nq?kZVuk mi;ksx ,xzhdYpj ;k QksjsLVjh iz;kstufkZ ugha gks jgk Fkka cfYd daiuh }kjk fdLh Hkh izdkj dk izhfe;e chek ikWfylh izn"KZ ,u0,0 2 vuqlkj ugha fy;s tkus ls chek ikWfylh dh "krksZa dk mYya? ku gksus ls rFkk chek daiuh }kjk is"K mijksDr U;kf;d n`"Vkarksa dh jks"kuh esa chek daiuh {kfriwfrZ ds izfr mRrjnk;h ugha gS cfYd Vs~DVj V~ksyh pkyd vizkFkhZ dze&1 o ekfyd vizkFkhZ dze&2 dh mRrjnk;h gSA

izkFkhZx.k }kjk is"K U;kf;d n`"Vkar vksfj;saVy Qk;j tuvy ba0da0 fyfe0 cuke Jherh jktdeqejh o vU; esa xky okgd okgu gsrq chxk daiuh dk lhfer mRrjnkf;Ro :0 50]000@& dh lhek rd Fkk ekuuh; jktLFkku mPp U;k;ky; us fu/kZfjr fd;k fd

Dysesav laiw.kZ jkf" k chek daiuh ls izkIr dj ldrs gSa rFkk vkf/kD; Hkqxrku dh xbZ jkf" k chek daiuh okgu ekfyd ls olwy dj ldrh gSA bl izdkj izkFkhZ }kjk is" k U;kf;d n`"Vkar ds rF; o ifjfLFkfr;ka gLrxr ekeys ls fHkUu gksus ls mUgs muds }kjk is" k U;kf;d n`"Vkar ls dksbZ lgk;rk ugha feyrh gSA vr% ;g fook|d izkFkhZx.k o chek daiuh ds i{k esa fo:) vizkFkhZx.k 1 o 2 r; fd;k tkrk gSA"

9. Looking to the facts and circumstances of the case and the findings arrived at by learned Tribunal as quoted herein above, the learned Tribunal is found to have dealt with each and every aspect of the matter, and has rightly passed the impugned judgment and award. I am in unison with the findings arrived at by the learned Tribunal. Hence, I do not think it just and proper to interfere with the impugned award passed by the Tribunal, and thus the appeals having no force, are hereby dismissed after confirming the judgment and award passed by the learned Tribunal.