

(1986) 10 RAJ CK 0015
In the Rajasthan High Court

Jugal Kishore and Another

APPELLANT

Vs

Prabha Mathur and Others

RESPONDENT

Date of Decision : 23-10-1986

Acts Referred:

Evidence Act, 1872 — Section 91, 92

Citation : (1987) 2 ACC 446

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Judgement

G.M. Lodha, J.—This is an appeal against award dated 1-4-1982 in Accident Claims Case No. 83 of 1978 decided by the Motor Accidents Claims Tribunal, Kota. The owner of the truck Jugal Kishore has filed this appeal Mr. Singhvi submits that the insurance company is liable to full extent because the insurance company has failed to prove that the liability was limited to Rs. 50,000/- only.

2. I enquired from learned Counsel for the appellant whether he can show from the policy that the liability was unlimited or it was comprehensive of such a nature that the liability could be more than 50,000/-. Instead of showing a clause from the policy Mr. Singhvi, who appears for the appellant submitted that no evidence has been recorded to this effect. In my view oral evidence is immaterial when a document in the nature of a policy is available and produced in the case. The terms of insurance policy are gathered, construed and interpreted upon and adjudicated upon by reading of the policy and not oral evidence. Oral evidence in such cases is of no avail whatsoever, in view of Sections 91, 92 of Evidence Act, which reads as under :

Section 91

When the terms of a contract or of a grant or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document no evidence shall be given in proof of the terms of such contract, grant or other

disposition of property or of such matter, except the document itself or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1. When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

2. Wills admitted to probate in India may be proved by the probate.

1. This section applies equally to cases in which the contracts grant or dispositions of property referred to are contained in one document and to cases in which they are contained in one document and to cases in which they are contained in more documents than one.

2. Where there are more originals than one, one original only need be proved.

3. The statement, in any document whatever of a fact other than the facts referred to in this Section, shall not preclude the admission of oral evidence as to the same fact.

Section 92

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives-in-interest for the purpose of contradicting, varying adding to, or subtracting from, its term. P. 1-Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contradicting party, want or failure of consideration, or mistake in fact or law.

(2) The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms may be proved. In considering whether or not this proviso, applies, the Court shall have regard the degree or formality of the document.

(3) The existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

(4) The existence of any distinct subsequent on agreement to rescind or modify any such contrary grant or disposition of property may be proved, except in cases in which such contract granted disposition of property is by law required to be in writing or has been registered according to the law in force for the time being as to the registration of documents.

(5) Any usage or custom by which incidents not expressly mentioned in any

contract are usually annexed to contracts of that description may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with the express terms of the contract.

(6) Any fact may be proved which shows in what manner the language of a document is related to existing facts.

3. Since it has not been shown to me that there is any covenant in the policy that the liability is unlimited the finding of the tribunal that the liability was upto Rs. 50,000/- cannot be interfered with. Consequently it is upheld.

4. However, it is made clear that whenever it is established that the vehicle was insured then the duty to produce policy or copy of it is on the insurance company and the victim cannot be deprived of the benefit of insurance or its entire payment, unless the contrary is shown by the insurance company.

5. The next point argued by Mr. Singhvi is that the other truck was also being driven rashly and negligently. On this point I have perused the evidence on record and I find that the finding of the Tribunal is justified that the negligence and rashness was of the truck owned by Jugal Kishore only and not of the other truck.

6. So far as the compensation amount is concerned, it is not excessive. The other finding regarding the distribution and dependency and various heads under which the compensation has been allowed appear to be just and proper and calls for no interference.

7. Consequently, the appeal fails and is dismissed, without any order as to costs.