

(2000) 08 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1737 of 1998

National Insurance Co. Ltd.

APPELLANT

Vs

Motor Accident Claims Tribunal and Others

RESPONDENT

Date of Decision : 11-08-2000

Acts Referred:

Citation : (2000) 4 RLW 649 : (2000) 4 RLW 208 : (2000) 4 WLC 558 : (2001) 1 WLN 311

Hon'ble Judges : Gyan Sudha Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gyan Sudha Misra, J.—The petitioner-National Insurance Company Ltd. has challenged the order dated 25.11.1997 passed by the Motor Accident Claims Tribunal, Neema-ka-Thana by which the application filed by the petitioner-Insurance Company for its impleadment has been rejected. This application has been filed on the averment that the owner of the vehicle which caused accident and was insured with the petitioner-Company did not appear before the Tribunal and contested the claim as a result of which an ex-parte award was bound to be passed in favour of the claimants and the amount determined therein would be borne by the petitioner-Insurance Company since the vehicle in question is admittedly insured with the petitioner-Company. In the application, the petitioner-Insurance Company clearly stated that since the owner and driver are not interested in contesting the claim for grant of compensation and it is the petitioner- Insurance Company which will have to make the payment which may be finally determined towards compensation it was necessary that the petitioner-Insurance Company be impleaded in the proceeding which was pending for determination of the claim.

2. Learned Member of the Tribunal Neem-Ka-Thana, however was pleased to reject the application without assigning any reason therein by merely stating that a decision reported in RLW 1997, 692 (New India Insurance Company v.

Randheer Singh) is of no assistance to the petitioner. He however further added, that the petitioner cannot be allowed to contest the claim since the issue in the proceeding has already been framed.

3. Learned Member of the Tribunal in the process seems to have completely lost sight of the fact that once the owner and driver of the vehicle lost interest in the matter and according to the allegation of the petitioner-Insurance Company the owner and the driver are also supporting the claim clandestinely, it was most appropriate for the Tribunal in the interest of justice and fairplay to allow the petitioner-Company with whom vehicle in question was insured, to participate in the proceeding as ultimately it is the Insurance Company which will have to bear the thrust of the amount of compensation which would be finally determined. The Tribunal thus instead of taking into consideration the facts and circumstances of the case and the affect of non- appearance of the Insurance Company merely mentioned the inapplicability of the decision, holding therein that the Insurance-Company cannot be allowed to participate in the proceeding as the issues have been framed ignoring that the ultimate cause of justice in the process is bound to be sacrificed. The order of the Tribunal therefore, clearly suffers from miscarriage of justice for if the claim petition is decided ex-parte in absence of the Insurance Company as also the claimant and the driver who have lost interest in the proceeding, the proceeding is likely to be vitiated. Under the circumstances I am clearly of the opinion that the impugned order is fit to be set aside. The impugned order is therefore, quashed and the writ petition is allowed but without any order as to costs; It is expected of the Tribunal Neem-ka-Thana to expedite the proceeding in regard to the claim of the respondents No. 2 to 5 after allowing the Insurance Company to be impleaded as party- respondent.