(2005) 07 RAJ CK 0065

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1635 of 2003

National Insurance Co. Ltd. APPELLANT

Vs

Om Prakash and Others RESPONDENT

Date of Decision : 14-07-2005

Acts Referred:

Citation : (2006) 4 ACC 324 : (2006) ACJ 1334 : (2005) WLC 694

Hon'ble Judges : J.R. Goyal, J

Bench : Single Bench

Advocate : Praveen Jain, for the Appellant; Rohan Jain and Tarun Jain, for the Respondent

Final Decision : Allowed

Judgement

J.R. Goyal, J.—Instant appeal has been preferred by the appellant National Insurance Co. Ltd. against the judgment and award dated 10.4.2003 passed by Motor Accidents Claims Tribunal, Aklera in Claim Petition No. 34 of 2000 whereby the claim petition of the claimant has been allowed and an award of compensation of Rs. 60,000 with interest at the rate of 9 per cent per annum from the date of filing the claim petition, i.e., 29.5.2000 has been passed.

2. Facts is brief giving rise to this appeal are that claimant Om Prakash sustained grievous injuries while he was going to his village in a tractor No. RJ 17 R 2692 and trolley No. RJ 17 E 0994 which was overturned due to rash and negligent driving of its driver Banwari Lal.

3. Owner and driver of the tractor filed reply denying their liability, while National Insurance Co. Ltd. also filed separate reply stating therein that tractor was insured for the agriculture purposes but it was being used for carrying the passengers against the terms and conditions of the policy.

4. Learned Tribunal while determining the amount of compensation on account of injuries also determined the liability of compensation on the National Insurance Co. Ltd.

5. Heard learned Counsel for the parties and perused the impugned judgment. It is not disputed that involved tractor in the accident was insured for agricultural purposes and not for carrying the passengers in the trolley attached to the tractor and further no extra premium has been paid for covering the risk of the passengers travelling in the tractor or the trolley. Thus, it is a clear case of violation/breach of the conditions of the insurance policy. The Tribunal while deciding issue No. 3 pertaining to liability of insurer has held on the basis of the judgment delivered in the case of New India Assurance Co. Ltd. v. Bhanwari Devi RLW 2001 (3) Raj 1430 that the insurer cannot escape its liability to make the payment of compensation to the third party even in the event of breach of conditions of the insurance policy but now this legal position has been settled by the judgments delivered in the cases of New India Assurance Co. Ltd. Vs. Asha Rani and Others, ; Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy and Others etc. etc. and Jogi Subbamma and Others etc. etc., ; National Insurance Co. Ltd. Vs. V. Chinnamma and Others, that the insurer and insured are bound by the conditions described in the insurance policy and insurer is not liable to the insured if there is violation of any breach of conditions. In this view of the matter, the view taken by the Claims Tribunal below cannot be sustained and, therefore, in the present case the insurance company deserves to be absolved of its liability to make the payment of compensation as awarded by the Tribunal but the claimant would be entitled to recover the amount of compensation as awarded by the Tribunal from the driver and owner of the tractor-trolley.

6. The net result of the aforesaid discussion is that the findings recorded by the Tribunal on the question of liability of the appellant National Insurance Co. Ltd. cannot be sustained and are required to be set aside.

7. Accordingly, the present appeal is allowed. The impugned judgment and the award is modified in the manner that while maintaining the award of compensation to the claimant, it is held that the appellant National Insurance Co. Ltd. is not liable for payment of compensation. However, it is made clear that whatever amount may have so far been paid by the appellant, it shall be entitled to recover from the owner and driver. The parties are left to bear their own costs.

