

(2005) 01 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 34, 98 and 677 of 1994

National Insurance Co. Ltd.

APPELLANT

Vs

Rukmani and Others

RESPONDENT

Date of Decision : 29-01-2005

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)
Motor Vehicles Act, 1988 — Section 173

Citation : (2005) 2 ACC 334 : (2006) ACJ 2641 : (2004) WLC 310

Hon'ble Judges : Dalip Singh, J

Bench : Single Bench

Advocate : Vizzy Agarwal, for the Appellant; Reenesh Gupta, Virendra Agarwal and Sandeep Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Dalip Singh, J.—These appeals have been filed by the appellants National Insurance Co. Ltd., Jaipur and Rajasthan State Road Transport Corporation, Jaipur u/s 173 of Motor Vehicles Act, 1988 against the award dated 15.10.1993 passed by learned Judge, Motor Accidents Claims Tribunal, Ajmer, in M.A.C.T. Case Nos. 135 and 188 of 1987.

S.B. Civil Misc. Appeal No. 677 of 1994:

2. This appeal has been filed by National Insurance Co. Ltd. against the award passed by the M.A.C.T., Ajmer in Claim Petition No. 135 of 1987 filed by respondent Nos. 1 to 4. On account of death of Bholu, who met with an accident involving bus No. RNM 7284 which was owned by respondent No. 6 and was given on contract to Rajasthan State Road Transport Corporation, Jaipur, respondent No. 7 and insured with appellant National Insurance Co. Ltd. Learned Tribunal had awarded an amount of Rs. 4,25,000 by way of compensation to the claimants-respondents.

3. The submission of learned Counsel for the appellant is that learned Tribunal

has erred in directing that the liability of the owner, i.e., the insured, the insurance company and the respondent No. 7, i.e., R.S.R.T.C. would be joint and several. The further submission of the appellant is that the liability of the insurance company ought to have been made limited in view of the statutory provisions of Section 95(2)(b) of the Motor Vehicles Act, 1939.

4. I have considered the rival submissions made by the learned Counsel for the parties and perused the record including the cover note issued by the appellant National Insurance Co. Ltd. which is at page 90 of the record of the Tribunal. A perusal of the said cover note shows that by charging additional premium the insurance company had contracted for additional liability amounting to Rs. 3,00,000. The appellant has also made an averment to this effect in ground J of memo of appeal and contended that in view of the aforesaid contractual liability of the amount of Rs. 3,00,000 learned Tribunal could not have fastened the liability of the insurance company over and above the contractual liability.

I have heard and considered the aforesaid submissions made by learned Counsel for the appellants in the light of material on record particularly, the cover note of the policy of insurance. It is no doubt true that the liability of the insurance company is limited as per the contract of Rs. 3,00,000. In this view of the matter, in the case of C.M.A. No. 677 of 1994 where the Tribunal had passed an award of Rs. 4,25,000 (rupees four lakh twenty-five thousand only), it is made clear that the liability of the insurance company and the R.S.R.T.C. is joint and several as held by the Claims Tribunal, however, liability of insurance company would be limited to Rs. 3,00,000 in terms of the contract of the insurance. Further, it is made clear that if insurance company has paid any amount over and above the aforesaid contractual liability of Rs. 3,00,000, appellant would be entitled to recover the aforesaid excess amount from the owner Shyam Lal Sharma, respondent No. 6 and the Corporation, respondent No. 7, in the said appeal to this limited extent. The award passed by learned Tribunal in Claim Case No. 135 of 1987 is modified as aforesaid and the appeal stands disposed of.

S.B. Civil Misc. Appeal No. 98 of 1994:

5. The aforesaid appeal arises out of the aforesaid award in Claim Case No. 188 of 1997 filed by the claimant Rampyari and others for compensation on account of death of one Gajanand, pillion rider, who was going on scooter No. 9906 who met with an accident with bus No. RNM 7284 owned by Shyamlal Sharma, respondent No. 9 and which was on contract with the R.S.R.T.C. The said bus was also insured with the insurance company. The learned Claims Tribunal has passed an award of Rs. 1,92,944.

6. Learned Counsel for the appellants submits that National Insurance Co. Ltd. could not have been saddled with the liability over and above the statutory liability in view of the provisions contained in Section 95(2)(b) of the Motor Vehicles Act, 1939 and if at all the insurance company is made liable to pay the over and above liability the insurance company should be made free to recover

any such amount so paid over and above the statutory liability in view of the judgment of Hon''ble Apex Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, .

7. I am inclined to accept the submission of learned Counsel for the appellant that in case, the appellant insurance company is saddled with any liability over and above the statutory/contractual liability as per the premium paid, it shall be free to recover the excess so paid. This appeal is accordingly disposed of.

S.B. Civil Misc. Appeal No. 34 of 1994:

8. This appeal arises out of the same award dated 15.10.1993 passed by the M.A.C. Tribunal, Ajmer in Claim Petition No. 135 of 1987 Rajasthan State Road Trans. Corporation v. Rukmani Devi and has been filed by the appellant for the death of one Bholu who met with an accident involving bus No. RNM 7284.

9. Learned Counsel for appellant Rajasthan State Road Transport Corporation has stated that so far as the question with regard to the liability of the Corporation is concerned, R.S.R.T.C. had taken the bus on contract from the registered owner for its purpose. The Hon''ble Apex Court in the case of Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari and other etc., , has already held that the liability of the registered owner, the Corporation and the insurance company would be joint and several. Learned Counsel for the appellant Corporation has further submitted that the learned Tribunal has committed an error in awarding compensation of Rs. 4,25,000 on account of death of Bholu and in view of the provisions contained in Second Schedule to Motor Vehicles Act, 1988, the multiplier of 33 ought not to have been applied and as per the aforesaid provisions, the multiplier of 17 has been prescribed, ought to be applied,

10. I have considered the aforesaid submissions made by the learned Counsel for the appellant R.S.R.T.C. It is true, that the multiplier of 17 has been prescribed under the provisions of Second Schedule to the Motor Vehicles Act, 1988 in the case of deceased in the age group of 30 to 35 years however, it cannot be lost sight of that the accident was of a period prior to coming into force the Act, i.e., 1.7.1989 and the Schedule in 1994. It is also to be taken into account that the provisions of the Second Schedule to the Motor Vehicles Act, are the guiding principles nonetheless where the deceased was engaged in the business of selling milk and the learned Tribunal has not committed any error in taking the span of life as 65 years and applied the multiplier of 33 in the instant case. Claimants had led evidence that the deceased was earning Rs. 3,000 per month which has been reduced by Tribunal to Rs. 1,500 per month and from that also the 1/3rd of the amount has been further deducted towards the personal expenses as Rs. 1,000 towards the dependency of the family. No evidence was led by the non-claimants on account of which the aforesaid evidence led by the claimants could be disbelieved and the learned Tribunal unilaterally on its own account reduced the income to Rs. 1,500 and took the dependency as Rs. 1,000

for personal expenses. In this view of the matter, the award passed by Claims Tribunal concerned, for compensation amounting to Rs. 4,25,000 is just and proper and I am not inclined to interfere with the said quantum of compensation as if the income is taken as Rs. 3,000 per month and multiplier of 17 is applied the gross compensation would come to Rs. 6,12,000 (rupees six lakh twelve thousand only) and if 1/3rd amount is deducted for personal expenses the amount for loss of income to the family comes to about Rs. 4,08,000 (rupees four lakh and eight thousand only). In the facts and circumstances of the present case, I am not inclined to interfere with the award passed by the Tribunal.

11. Consequently, these three appeals are dismissed.

There shall be no order as to costs.