
(2016) 08 RAJ CK 0063

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 22 of 2000

National Insurance Company

APPELLANT

Vs

Om Metals and Minerals Ltd.

RESPONDENT

Date of Decision : 09-08-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Motor Vehicles Act, 1988 — Section 147(2)(b)

Citation : (2016) 4 DNJ 1496

Hon'ble Judges : Mr. Arun Bhansali, J.

Bench : Single Bench

Advocate : Mr. Sanjeev Johari, Advocate, for the Appellant/s; Mr. Usman Gani and Mr. Bharat Singh, Advocates, for the Respondent/s

Final Decision : Dismissed

Judgement

Mr. Arun Bhansali, J.—This appeal & cross-objection is directed against the judgment and award dated 16.9.1999 passed by the Motor Accident Claims Tribunal, Udaipur ("the Tribunal"), whereby the Tribunal has awarded a sum of Rs. 58,000/- as compensation to the claimant for damage to the Jeep and has held appellant - Insurance Company liable along with the driver and owner of the offending truck.

2. Cross-objection has been filed by the owner of the truck regarding the finding of negligence recorded by the Tribunal.

3. The facts in brief may be noticed thus : the application for compensation was filed by the claimant that on 31.5.1994 at about 11:00 p.m. the jeep of the claimant was plying from Udaipur to Salumber when truck RRY-9413, which was plying from Salumber to Udaipur, came on the wrong side and struck the jeep, resulting in the employees travelling in the jeep getting killed there itself and the jeep being damaged. The present claim pertains to jeep where the compensation was sought to the tune of Rs. 2,50,000/-.

4. The application was opposed by the respondents and the Tribunal after hearing the parties came to the conclusion that the accident occurred on account of rash and negligent driving by the truck. Based on the material available on record, the Tribunal came to the conclusion that the claimant was entitled to a sum of Rs. 58,000/- as compensation.

5. Regarding the liability of the appellant ? Insurance Company, it was found that as the document Ex.-A/1 and Ex.-A/2 did not disclose the bifurcation of the amount of premium as claimed by the Insurance Company, the liability of the Insurance Company was unlimited and consequently, the award as indicated herein-before was passed.

6. It is submitted by learned counsel for the appellant - Insurance Company that the finding of the Tribunal in so far as the limit of liability of the appellant - Insurance Company is concerned, is perverse, inasmuch as, the Tribunal has failed to consider the document available on record in true perspective and the provisions of Section 147(2)(b) of the Motor Vehicles Act, 1988 ("the Act") have been ignored and therefore, the award impugned deserves to be modified.

7. Learned counsel appearing for the owner of the truck submitted that the award in so far as the liability of the appellant ? Insurance Company is concerned does not call for any interference, inasmuch as, the appellant ? Insurance Company has failed to lead evidence in support of its contention and the documents Ex.-A/1 and Ex.-A/2 does not support the case of the appellant.

8. It was submitted that the finding on issue No. 1 pertaining to the negligence is also perverse, inasmuch as, the evidence led by the parties has not been properly considered and therefore, the award deserves to be set-aside, in any case the appeal filed by the appellant ? Insurance Company deserves to be rejected.

9. Reliance was placed on judgment in the case of Uma Ram & Anr. v. Union of India & Ors., 2003 R.A.R. 256 (Raj.) and National Insurance Company v. Maharashtra State Road Transport Corporation & Ors., MACD 2008(2) (M.P.) 608.

10. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

11. A bare look at the document Ex.-A/2 produced by the appellant - Insurance Company indicates that the bifurcation of the amount of premium i.e. Rs. 1,335/- has been indicated under the heading premium calculation and same has been indicated as under:-

Act

:

Rs. 1245/-

Labour

:

Rs. 60/-

Driver

:

Rs. 30/-

Rs.1335/-

12. Despite the said specific indication made in the document Ex.-A/2, the Tribunal has recorded the finding that no bifurcation pertaining to the amount of premium has been indicated and therefore, the liability shall have to be unlimited, the said finding is on its face perverse.

Section 147(2) of the Act reads as under:-

"Section 147. Requirements of policies and limits of liability.- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -

.....

.....

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely :-

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier."

13. A bare look at the provision indicates that the limit of liability indicated in the Act in respect of damage to any property of third party is Rs. 6,000/-.

14. It is true that it is open for the Insurance Company to extend the limit of its liability beyond the provisions of the Act. However, as from the document Ex.-A/2, it is apparent that the Insurance Company has taken liability only to the extent as provided for in the Act, the Insurance Company cannot be saddled with liability beyond Rs. 6,000/-.

15. So far as the judgment cited by learned counsel for the respondent is concerned, in the case of Uma Ram (supra), admittedly, the Insurance Company had accepted an additional premium of Rs. 75/- for the purpose of unlimited

liability for the property damage and therefore, it was held that the liability of the Insurance Company was unlimited, which aspect is not available in the present case.

16. In the case of National Insurance Company (supra), the insurance policy itself was not produced and therefore, the Court came to the conclusion that in absence of policy, it cannot be said that the liability of the Insurance Company was limited and consequently, the Insurance Company was held liable for the entire amount. However, in the present case, documents Ex.- A/1 and Ex.-A/2 have been produced to indicate the limit of liability and therefore, the said judgment also has no application to the facts of the present case.

17. In view of the above discussion, the finding of the Tribunal regarding the liability of the appellant ? Insurance Company is reversed and it is held that the appellant ? Insurance Company is liable only for payment of compensation to the extent of Rs. 6,000/-.

18. So far as the cross-objection of the respondent regarding negligence of the vehicles involved is concerned, a bare look at the site map prepared by the police filed as Ex.-A/4, clearly indicates that the offending truck was plying on wrong side of the road i.e. on the extreme right side and the jeep which was plying on the correct side of the road i.e. on the left side, the accident has taken place and therefore, it cannot be said that the accident did not occur on account of rash and negligent driving by the driver of the truck. The finding on issue No. 1 does not call for any interference.

19. In view of the above discussion, the appeal filed by the appellant - Insurance Company is allowed to the extent that the liability of the appellant-Insurance Company would be only to the extent of Rs. 6,000/- and interest.

20. The cross-objection filed by the respondent is dismissed.

21. During the pendency of the appeal, the amount deposited by the appellant ? Insurance Company was disbursed to the claimant. The appellant ? Insurance Company would be entitled to recover the amount in excess of Rs. 6,000/- from the owner of the vehicle.

22. Appeal No. 22/2000 partly allowed and Cross-objection No. 4/2002 dismissed.