
(2015) 06 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 2355 of 2005

National Insurance Company Limited

APPELLANT

Vs

Bhebhha Ram and Others

RESPONDENT

Date of Decision : 15-06-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 171

Workmens Compensation Act, 1923 — Section 30

Citation : (2015) 147 FLR 337 : (2015) 3 LLJ 363

Hon'ble Judges : Atul Kumar Jain, J

Bench : Single Bench

Advocate : Raj Sharma and Arti Goyal, for the Appellant; Manoj Sharma and Pramod Kumar Gaur, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Atul Kumar Jain, J. (V.J.)

1. This appeal has been filed under Section 30 of the Workmen Compensation Act, 1923 (for short the Act of 1923) against the award dated 17.6.2005 passed by the Commissioner, W.C. Act, Sikar in Case No. WCC/N.F.-8/2004 titled as Bhebhha Ram v. Navran Singh and Anr. Whereby an award of Rs. 2,12,824 was passed in favour of claimant/respondent No. 1.

2. Claimant had filed claim against the appellant and the respondent No. 2 for compensation on account of loss suffered by him due to serious injury resulting into amputation of his right hand above the wrist. It was mentioned in the claim that claimant was an employee as a labourer on a tractor bearing No. R.J.-23 R-6695 and on 17.04.2003 at 2:30 A.M., when as per direction of respondent No. 2, he was separating the wheat from chauff with the help of a thrasher attached with that tractor, his right hand was seriously injured resulting into amputation.

3. Insurance Company of the tractor, who is appellant before us had pleaded in the Tribunal that thrasher was not insured nor any premium was charged for the

insurance of the thrasher and premium only for the driver of the tractor had been taken by the Insurance Company, so the Insurance Company cannot be held liable for the Khalasi or any other labourer working with the tractor. It was further pleaded by the Insurance Company that the claimant claimed compensation in the capacity of a third party and so he could have filed claim, if any, only under the provisions of the M.V. Act and not under the provisions of the Act of 1923. It was further pleaded by the Insurance Company that tractor was insured for agriculture purposes only, but it was being used for commercial use, so the Insurance Company could not be made liable.

4. It was further pleaded by the Insurance Company that the Tribunal has also ordered that award amount along with interest at the rate of 9% per annum and directed it to pay the amount within thirty days from the date of the award and in default the enhanced rate of interest payable has been mentioned as 12% per annum. It has been argued that penal interest could not have been imposed on the appellant Insurance Company.

5. I have heard arguments of both the parties and perused the impugned award.

6. In National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, (2004) 1 ACC 581 : (2004) ACJ 648 : AIR 2004 SC 1581 : (2004) 118 CompCas 500 : (2004) 2 JT 282 : (2004) 137 PLR 47 : (2004) 2 SCALE 126 : (2004) 2 SCC 370 : (2004) 1 SCR 861 : (2004) AIRSCW 7409 : (2004) AIRSCW 737 : (2004) 1 Supreme 749 : (2004) 7 Supreme 102 it was held that Section 110 CCof the MV Act 1939 which corresponds to Section 171 of MV Act 1988 confers a discretion on the Tribunal to award interest but a stipulation for higher rate of interest in case of default virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. The stipulation for higher rate on interest provided by the Tribunal was set aside by the Apex Court in the aforesaid case. The said judgment of the Apex Court was followed by a coordinate Bench of this court also in S.B. Civil Misc. Appeal No. 2356/2005 titled as National Insurance Company v. Smt. Geeta Devi and Ors. decided on 11.12.2014.

7. On the other hand, in the following cases, it has been held that no such order should be passed by the Tribunal or Court, which cannot be enforced. It has also been held that an order which is not enforceable, is like a cheque which is likely to be bounced. To enforce the timely payment of the award amount if penalty is proposed by the Tribunal in the award itself then that will be perfectly justified looking to the circumstance of the case before the Tribunal;

"(1) Urmilla Pandey and others Vs. Khalil Ahmad and others, (1994) 2 ACC 431 : (1994) ACJ 805 : AIR 1994 SC 2405 : (1994) 81 CompCas 555 : (1994) 4 JT 55 : (1995) 109 PLR 145 : (1994) 2 SCALE 989 : (1994) 4 SCC 207 : (1994) 3 SCR 1001 : (1994) 2 UJ 333

(2) Haji Jenullah Khan v. Nagar Mahapalika 1994 (2) ACJ (SC) 493

(3) Manam Saraswathi Sampoorana Kalavathi and Others Vs. The Manager

APSRTC, Tadepalligudem A.P. and Another, (2010) ACJ 1245 : AIR 2010 SC 1609 : (2010) 126 FLR 59 : (2010) 3 JT 335 : (2010) 2 LLJ 604 : (2010) 159 PLR 294 : (2010) 2 SCALE 193 : (2010) 5 SCC 785 : (2010) 3 SCR 872

(4) 1986 (2) WLN Rajasthan 336 United India Insurance Company v. Ms. Hundi Bai

(5) Vimla Devi v. Laxminarayan 2003 RAR Rajasthan 160."

8. In the case in hand it was ordered by the Tribunal in award dated 17.6.2005 that within thirty days from the date of award the award amount should be deposited along with 9% simple annual interest or else the Insurance Company and owner of the vehicle will have to pay to the claimants 12% simple annual interest in place of 9% simple annual interest.

9. Thus, looking to the latest view of the Apex Court in Kalawati case (supra), this Court is also of the opinion that the Commissioner was well within its powers to impose enhanced rate of interest in case default in timely payment is made by the Insurance Company.

10. Regarding other arguments raised by the parties in this appeal following rulings may be of some help to us for reaching to the correct conclusion:--

"(1) Mallamma (Dead) by L.Rs. Vs. National Insurance Company Ltd. and Others, (2014) 2 ACC 268 : (2014) ACJ 1266 : (2014) 5 JT 47 : (2014) 3 LLJ 622 : (2014) 4 SCALE 627 "

11. In this case, it was held that if the deceased workman was in the course of employment of owner of the tractor and the vehicle was covered under a valid insurance policy then the Insurance Company cannot escape from its liability to pay compensation in case workman suffered an accident.

"(2) Ramashray Singh Vs. New India Assurance Co. Ltd. and Others, (2003) 2 ACC 706 : (2003) ACJ 1550 : AIR 2003 SC 2877 : (2003) 116 CompCas 643 : (2003) 3 CTC 380 : (2003) 6 JT 97 : (2003) 3 LLJ 740 : (2003) 135 PLR 796 : (2003) 5 SCALE 377 : (2003) 10 SCC 664 : (2003) 1 SCR 666 Supp : (2003) 2 UJ 1263 "

12. In this case, there was a clause in the policy that "except so far as is necessary to meet the requirements of the Motor Vehicles Act, the company shall not be liable in respect of death of or bodily injury to any person in the employment of the insured arising out of and in the course of such employment". The Apex Court held that since the deceased was not engaged in the capacity of driver in respect of whom along premium was paid apart from the passenger, his claim is unsustainable.

"(3) United India Insurance Company Ltd. Vs. Shankar Lal and Another, (2013) 1 ACC 308 : (2013) ACJ 1878

(4) National Insurance Company v. Meera reported in 2010 RAR 350 (Raj.)

(5) United India Insurance Co. Ltd. Vs. Rajendra and others, (2011) ACJ 782

13. In the above mentioned three cases, it has been held that the tractor includes equipments used for the purpose of propulsion and the thresher which was being propelled/operated by the tractor, is also an equipment used for the purpose of propulsion by the tractor and is contemplated to be carried by the tractor. Thresher attached to a tractor does not require independent registration and insurance. In this case record shows that the premium was received by the appellant for one employee under the provisions of the Act, the amount was received only for the driver of the tractor and not for any other employee. Thresher is certainly used only for agricultural purpose and so it cannot be said that the tractor was being used for commercial purposes and so it cannot be said that there was breach of policy conditions by the owner of the tractor. The employee working on the tractor or on the thresher attached with the tractor is also covered in the policy, so the appellant Insurance Company is liable to pay compensation to the claimants.

"(6) Nagashetty Vs. United India Insurance Co. Ltd. and Others, (2001) ACJ 1441 : (2001) 6 AD 407 : AIR 2001 SC 3356 : (2001) 106 CompCas 732 : (2001) 6 JT 482 : (2001) 5 SCALE 322 : (2001) 8 SCC 56 : (2001) AIRSCW 3099 : (2001) AIRSCW 2447 : (2001) AIRSCW 2539 : (2001) 6 Supreme 171

14. In this case, the Apex Court has held that a licence to drive a tractor does not become ineffective when a Trolley is attached to the tractor for carrying goods. In such cases when accident happens, Insurance Company would be liable because driver was having valid licence to drive tractor.

"(7) Rebati Gantayat Vs. Haguru Sethi and Others, (1986) 1 ACC 497 : (1986) ACJ 248 : (1986) 61 CLT 137

15. In this case employee was doing a job of plucking tamarind for employer. Death occurred during course of the plucking tamarind. Claimants could not prove that the deceased was employee in the trade or business of the employer. It was held that he was not a workman and so the employer was not liable to pay any compensation to his legal representatives under Workmen Compensation Act, 1923.

16. I have heard arguments of both the parties and perused the record. Insurance Company has levelled charges of breach of policy against the owner of tractor in this case. Insurance policy was neither given to the insured nor it was exhibited during the course of hearing before the Commissioner. Only an interim protection note was exhibited as Ex.5 and a certificate of insurance was exhibited as Ex.NA1. These two documents do not contain material terms of the policy. These documents nowhere mention that an employee of a registered owner of the tractor if met with an accident while working on a thrasher attached with the tractor then Insurance Company will not be liable to pay any compensation to his legal representatives.

17. In the opinion of this Court, the Insurance Company cannot be allowed to play the game of "hide and seek" with the Commissioner or the court and also with the consumers. A general experience of the consumers is that when they pay the premium for insurance of their vehicle, only a protection note is handed over by the Insurance Company to them and they are usually given an assurance only that the Insurance policy will be sent to them by post within a fortnight. The fortnight never ends and the consumer keeps on waiting for the whole year that an envelope containing insurance company policy will come to him. In such circumstances, this Court can not take a liberal view un-necessarily in favour of the Insurance Company and hence the arguments of appellant Insurance Company regarding breach of policy conditions are not acceptable to this Court. Appellant Insurance Company has not been able to substantiate its grounds of appeal at all before this Court.

18. I have perused the statements of A.W.1 Bhebha Ram, A.W.2 Ashok Kumar and also of Norang Singh and Asha Ram Singh. Asha Ram Singh was Senior Assistant of appellant Insurance Company and he has also admitted in his cross examination that the Insurance Company has not submitted any document in which it was mentioned that employee of registered owner of the tractor, who was working with thrasher will not be entitled to any compensation for any injury caused to him during the course of use of tractor/thrasher.

19. In the circumstances of the case, this appeal being bereft of any force deserves dismissal and is hereby dismissed accordingly and the award dated 17.6.2005 of Commissioner, W.C. Act, Sikar is upheld as such, Award amount of Rs. 2,12,824/- along with proposed interest if has not been paid to the claimant/respondent No. 1 till date then it should be immediately paid to him within one month from today. Stay petition also stands disposed off accordingly. Copy of this Judgment be sent to the Commissioner (W.C.) along with its record immediately.