
(2015) 03 RAJ CK 0047
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 1852/2005

National Insurance Company Ltd.

APPELLANT

Vs

Anil Kumar and Others

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 171

Workmens Compensation Act, 1923 — Section 30

Citation : (2015) 146 FLR 393

Hon'ble Judges : Atul Kumar Jain, J.

Bench : Single Bench

Advocate : Raj Sharma, for the Appellant; Sandeep Mathur, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Atul Kumar Jain, J.—This civil misc. appeal was filed under Section 30 of the Workmen's Compensation Act, 1923 against the order dated 25.04.2005 passed by the Commissioner (WC) Jhunjhunu in case No. WCC 6/2002 titled as Anil Kumar v. Permanand and Ors. whereby an award for Rs. 2,45,940/- was passed in favour of claimant-Respondent No. 1.

2. I have heard arguments of both the parties. Appellant, during the course of arguments has raised main controversies as follows:-(1) It has been argued that the Insurance Company was not liable for compensation of the worker who was working on thresher. It has also argued by the Insurance Company that it had charged premium only for driver. It has further been argued by the Insurance Company that the tractor was insured for agriculture but it was being used in running thresher and so because of the breach of policy, the Insurance Company should not have been asked to pay the compensation to the injured. In this regard, I have perused the papers. A thresher independently, or as per the definition given in the Motor Vehicle Act 1988, cannot be registered or insured separately. In 2010 RAR 350 (Rajasthan) National Insurance Company v. Meera

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. It is also an equipments used for the purpose of propulsion by the tractor and his 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 in the employee. To my view, the employee working on the tractor or on the thresher attached with the tractor is also covered in the policy, so the appellant of the Insurance Company is liable to pay compensation to the claimants . Thresher is certainly used only for agricultural purposed 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. After perusal of the statements of witnesses Anil Sharma, Sheeshram, Shivalal, Parmanand and Mahaveer Prasad, the order passed by the commissioner appears to be perfectly justified and no legal or factual infirmity appears in the impugned award in this regard.

3. My aforesaid view gets support from the following rulings also:--

"(1) United India Insurance Co. Ltd. v. Shankar Lal and anr. MACD 2014(1) (Raj.) 291

(2) United India Insurance Co. v. Rajendra and ors. 2010(1)

(2)" whether the appellant can be directed to pay the enhanced rate of interest in default of payment of compensation which amounts to penalty in view of judgment of the Apex Court in Keshav Bahadur case."

4. In National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, it was held that Section 110 CC of 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 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.

5. 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 circumstances of the cases before the Tribunal;

"(1) Urmilla Pandey and others Vs. Khalil Ahmad and ohters,

(2) Haji Zainullah Khan (Dead) by Lrs. Vs. Nagar Mahapalika, Allahabad,

(3) United India Fire and General Insurance Co. and Another Vs. Mst. Hoondi Bai and Others,

(4) Vimla Devi v. Laxminarayan 2003 RAR Rajasthan 160.

(5) Kalawati and Ors. v. State of Andra Pradesh 2010 ACJ Supreme Court 1245."

6. In the case in hand it was ordered by the Tribunal in its judgment dated 25.04.2005 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 12% simple annual interest in place of 9% simple annual interest. It has been submitted by the appellant that on 05.07.2005 the award amount has been deposited in the court below but the interest has not been paid.

7. In the circumstances of the case, and in the interest of justice it is hereby ordered that from the date of the award to the date of the payment 10% simple annual interest will also be payable by the appellant to the claimant-Respondent No. 1.

8. Appeal and the stay petition (if any) stand disposed of accordingly.

9. Copy of this order be sent to the court below immediately along with the record of that court.