

(2013) 11 RAJ CK 0141

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1549 of 2011

National Insurance Company Ltd.

APPELLANT

Vs

Banarsi Devi and Others

RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Citation : (2013) 11 RAJ CK 0141

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Advocate : Om Prakash Gupta, for the Appellant; Sangeeta Vashishth for Mr. Anoop Dhand and Mr. Amit Singh Shekhawat, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The National Insurance Company Ltd. is aggrieved by the award dated 13.4.2009 passed by Additional District Judge (Fast Track) No. 1 and Judge, Motor Accident Claims Tribunal, Sikar whereby the learned Judge has granted a compensation of Rs. 7,34,064/- to the claimant-respondent Nos. 1 to 4. The brief facts of the case are that on 4.1.2007 around 7:00 - 8:00 P.M. Rameshwar and his brother Girdhari Lal were walking on the road. When they reached near the farms belonging to Birju Singh and Hanuman Jangid, suddenly a Mahendra tractor bearing registration No. RJ23 RA 1747, being driven rashly and negligently, came and hit Rameshwar. Consequently, he suffered grave injuries; he expired on his way to the hospital. Since the claimant-respondents lost their bread earner, they filed a claim petition before the learned Tribunal. In order to support their case they examined three witnesses and submitted few documents. The Court also called two witnesses on its own. However, the Insurance Company neither examined any witness nor submitted any document. After going through the oral and documentary evidence, the learned Tribunal granted the compensation as aforementioned. Hence this appeal before this Court.

2. Mr. Gupta, the learned counsel for Insurance Company, has raised the

following contentions before this Court: firstly, that there is no evidence to prove that the negligence was of the driver of the tractor. Therefore, the learned Tribunal has erred in holding the Insurance Company liable for payment of the compensation. Secondly, there is no evidence to prove that Rameshwar had worked as a Supervisor under Mohan Lal (A.W.2). According to the learned counsel, Mohan Lal (A.W.2) is an unreliable witness as he has failed to prove the fact that he was registered as a Contractor with the Public Works Department. Moreover, he has failed to reveal the Rameshwar's qualification for working on the post of Supervisor. Thirdly, the claimants have claimed that besides working as Supervisor, Rameshwar was also working as an agriculturist. However, it is impossible for the person to work simultaneously both as a Supervisor and as an Agriculturist. Fourthly the assessment of Rameshwar's income as Rs. 5,500/- is unjustified. In fact, as his job was not clearly revealed to the Tribunal, the Tribunal should have taken his income, on notional basis, as merely Rs. 15,000/- per annum; it should have assessed the loss of dependency upon the basis of the said notional income.

3. On the other hand Ms. Sangeeta Vashishth, learned counsel for the claimant-respondents has raised the following counter contentions: firstly, Girdhari Lal (A.W.3) was an eye-witness to the accident. According to his testimony, while he and his brother Rameshwar were walking on the road and while both of them saw the tractor from far away, they stepped on the side of the road. Yet the tractor being driven rashly and negligently still came and hit Rameshwar. Thus according to the testimony of Girdhari Lal (A.W.3), the negligence of driver of the tractor stands proven. Secondly, Mohan Lal (A.W.2) has clearly claimed that he is a registered contractor with the Public Works Department. Further he not only claimed that Rameshwar was working with him on the post of Supervisor, but has also proven the salary certificate (Ex.17) issued by him. According to the salary certificate (Ex.17) Rameshwar was paid Rs. 5,500/-. Although the claimants have claimed his monthly salary to be Rs. 10,000/-, the learned Tribunal has taken his salary merely as Rs. 5,500/- on the basis of said salary certificate (Ex.17). Therefore, the learned Tribunal was justified in not taking his income on a notional basis. Hence, the learned counsel has supported the impugned award.

4. Mr. Amit Singh Shekhawat, the learned counsel for respondent Nos. 5 to 8, has merely claimed that at the relevant time the driver of the tractor did have a valid license. Therefore, the learned Tribunal was justified in imposing the liability for payment of the compensation upon the Insurance Company. Thus he, too, has supported the impugned award.

5. Heard learned counsel for the parties, perused the impugned award, and examined the testimony of Mohan Lal (A.W.2) and Girdhari Lal (A.W.3).

6. A bare perusal of the testimony of Girdhari Lal (A.W.3) clearly reveals that he was an eyewitness to the alleged accident. According to him on 4.1.2007, he and his brother were walking on the side of the road around 7:00 - 8:00 P.M. when they saw a tractor coming from far away. Just to be on the safer side, they got

off the road and were walking on the "kachcha" part near the road. Even then, the tractor being driven rashly and negligently, came and hit Rameshwar who sustained serious injuries. Thus, from the testimony of Girdhari Lal (A.W.3) it is apparent that the negligence lay on the shoulder of the driver of the tractor. Hence the first contention raised by the learned counsel for appellant, that negligence of the driver has not been established, is clearly untenable.

7. Although the learned counsel for appellant has made much about the testimony of Mohan Lal (A.W.2), but it has to be remembered that proceeding before the learned Tribunal is not a full fledged trial, but is a summary proceeding. Therefore, even if Mohan Lal has not been able to produce the relevant documents showing the fact that he is registered with Public Works Department it would not dilute the truthfulness of his testimony. According to his testimony, in the cross examination, he clearly states that earlier he was a Grade "C" Contractor with the Department, and now has been upgraded to Grade "B". Moreover, he tells the Tribunal that he has the relevant documents and is registered in Jaipur. He further informs the Tribunal that Rameshwar Lal was working as a Supervisor for a period of one year prior to his death. He has also revealed the fact that when there was less work or when Rameshwar needed leave for his personal work, he was sent on leave. He has also proven the salary certificate (Ex.17). According to the salary certificate, he was paying Rameshwar Rs. 5,500/- per month. Despite the cross examination that Mohan Lal has been subjected to, there is no reason to disbelieve the testimony of this witness. Thus, two points emerge from this testimony: firstly that Rameshwar was working on the post of Supervisor and that he was earning Rs. 5,500/- per month. Therefore, the contention raised by the learned counsel that Mohan Lal is an unreliable witness, is clearly unacceptable.

8. Considering the fact that the claimants and Mohan Lal revealed the fact that Rameshwar was working as a Supervisor, considering the fact that his salary certificate was proven by Mohan Lal, obviously Rameshwar's income cannot be assessed on the basis of a notional income of Rs. 15,000/- per annum. Therefore, the stand taken by the learned counsel for the appellant is unsustainable.

9. According to the claimants, Rameshwar was earning a total of Rs. 10,000/- i.e. 5,500/- while working as a Supervisor, and the remaining amount from his agricultural activities. However, the learned Tribunal has discarded the fact that Rameshwar was earning Rs. 4500/- from his agricultural activities. According to the Tribunal, since there was no documentary evidence to prove this fact, the said assertion made by the claimants was not accepted by it. Therefore, the contention raised by the learned counsel for the appellant that the assessment of income is an incorrect one, is without any basis.

10. A bare perusal of the award clearly reveals that the learned Tribunal has meticulously examined the evidence marshalled before it and has given legal and cogent reasons for granting an award of Rs. 7,34,064/- to the claimants. For the

reasons stated above, this Court does not find any illegality or perversity in the impugned award. This appeal being devoid of any merit is hereby dismissed.