

(2012) 09 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No"s. 319 and 324 of 2012

National Insurance Company Ltd.

APPELLANT

Vs

Devlal and Others

RESPONDENT

Date of Decision : 21-09-2012

Acts Referred:

Citation : (2013) 2 CDR 1138

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : S.R. Joshi and Mr. Ganesh Joshi, for the Insurance Co, for the Appellant; P.R.S. Rajawat and Mr. Pankaj Jain, Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Mahesh Chandra Sharma, J.—Since all the aforesaid two appeals arise out of the judgment and award dt. 19.8.2011 passed by MACT, Ramganj Mandi, District Kota, hence the arguments have been heard together and they are being decided by this common judgment. Brief facts of the case are that on 28.6.2007 at about 4.00 PM Dhanraj and Hemraj were travelling in tractor which was loaded with stoned. Both of them were sitting on the bonut of the tractor, which was being driven by Kundan @ Kunj Behari. The vehicle was being driven rashly and negligently on Highway No. 12 and the driver suddenly turned the vehicle, due to which he lost control and hence the tractor along-with trolley fell down in an adjacent mine, which was filled with water. Consequently, both the workmen died.

2. First Information Report was lodged. Claim petition Nos. 40/2007 and 41/2007 were filed. Thereafter, notices were issued, written statement was filed, issues were framed, evidence was submitted and after hearing the arguments of both the sides, the learned Tribunal has passed the impugned award, vide which in claim petition No. 40/2007 Rs. 3,73,000/- have been awarded in favour of claimant(s) and in claim petition No. 41/2007, Rs. 1,28,000/- have been awarded in favour of claimant(s).

3. Being aggrieved by the aforesaid award, the Insurance Company has filed two appeals challenging the quantum of compensation.

4. Learned counsel for the Insurance Company Mr. Joshi contended that the issue No. 3, which related to the objections raised by the Insurance Company in the written statement was not correctly decided by the learned Tribunal. Both the workmen were willfully travelling on bonnet of the tractor, which was not allowed under the law and hence, the Insurance Company could not be held liable for the death. He further submits that the tractor was insured for agricultural purposes only under Farmer Package Policy and the Tribunal was in error while not relying on the averments of the Insurance Company to the effect that the vehicle was being used for other than agricultural purposes. He further submits that the learned Tribunal has not properly appreciated the evidence of investigator Shri Rajiv Tiwari and Development Officer Shri Mahendra Kumar. Both of them stated before the Tribunal that the tractor was insured for agriculture purpose and the same was used for carrying stones against the terms and conditions of the policy.

5. On the other hand, learned counsel for the respondents defended the impugned award and stated the same to be just and apposite.

6. I have heard learned counsel for the parties. Considering the entire facts and circumstances of the case and also the evidence emerging on record, as submitted by both the parties and on perusal of the impugned award, I do not think it proper to interfere in the impugned award dt. 19.8.2011 passed by the learned Tribunal.

7. Hence, both the aforesaid appeals fail and the same being bereft of any merit deserve to be dismissed, which stand dismissed accordingly. Consequent upon the dismissal of appeals, the stay applications, filed herewith, do not survive and they also stand dismissed.