

(2013) 02 RAJ CK 0041

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 53 and 54 of 1998

National Insurance Company Ltd.

APPELLANT

Vs

Prabhu Ram and Others

RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

Citation : (2013) 1 WLN 605

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Sanjeev Johari, for the Appellant; Rajesh Panwar, for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—These two appeals have been filed against the common judgments and awards dt. 30.07.1997 passed by the learned Motor Accident Claims Tribunal, Phalodi ("the Tribunal"), whereby an award of Rs. 3,30,800/- have been passed in favour of the respondents-claimants in Appeal No. 53/1998 and Rs. 75,000/- have been passed in favour of the respondents-claimants in Appeal No. 54/1998. Brief facts of the case are that on 02.08.1993, Khuman Singh and Nanu Ram were travelling in Jeep No. RPJ-1196 when the said Jeep collided with a Truck No. APL-3119, Khuman Singh, who was aged 45 years and Nanu Ram, who was aged 04 years died in the said accident. Two separate claim petitions being MACT No. 172/1994 by the legal representatives of deceased Khuman Singh and MACT No. 171/1994 by the parents of Nanu Ram were filed claiming a sum of Rs. 13,05,000/- and Rs. 5,05,000/- respectively as compensation for untimely death of said Khuman Singh and Nanu Ram.

2. The claim was resisted by the Insurance Company as well as the owner and driver of the Jeep. The learned Tribunal after evidence was led by the claimants and no evidence was produced by the respondents including the Insurance Company, came to the conclusion that both the vehicles were equally responsible for the accident. It also came to the conclusion that the defence taken by the

Insurance Company was not supported by any evidence and, therefore, the Insurance Company was liable for payment of the amount of compensation. Ultimately, it awarded the compensation of Rs. 3,30,800/- for the death of Khuman Singh and Rs. 70,000/- a lump sum amount, for the death of Nanu Ram. The learned Tribunal also held that for the payment of compensation, the driver, owner and Insurance Company of the Jeep and tractor were equally responsible. Feeling aggrieved by the award, these appeals have been preferred.

3. It was contended by learned counsel for the appellant that once the Tribunal had come to the conclusion that both the vehicles were equally responsible for occurrence of the accident, it was incumbent for the Tribunal to thereafter apportion the liability and in absence thereof the award deserves to be set aside and/or in any case the same deserves to be modified to the extent that both the owners of the vehicles be held responsible 50:50. It was also submitted that it was apparent from the record that the Jeep was being plied in violation of the policy conditions and, therefore, the Insurance Company was not liable.

4. On the other hand, the learned counsel for the respondent has supported the award impugned and has relied on judgment of Hon"ble Supreme Court in the case of T.O. Anthony Vs. Karvarnan and Others,

5. So far as the plea regarding violation of policy condition is concerned, the learned Tribunal while deciding Issue No. 3 has come to a categorical conclusion that there was neither any material available on record nor any evidence was led by the insurance company in support of its plea regarding violation of policy condition. Besides the above, no challenge to the said finding on Issue No. 3 has been laid in the appeal, which has been filed by the Insurance Company. In that view of the matter, the finding on Issue No. 3 regarding the liability of the insurance company is not open to challenge and the same is upheld.

6. So far as the other aspect relating to apportionment of liability is concerned, the present is a case of "composite negligence", wherein apportionment of liability is not envisaged and both the vehicles are equally liable for payment of compensation and it is upto the claimants to decide as to against which party, the claimant wants to proceed.

7. The Hon"ble Supreme Court in the case of T.O. Anthony (supra) has held as under:-

6. "Composite negligence" refers to the negligence on the part of the two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of composite negligence of those wrongdoers. In such a case, each wrongdoer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the Court to determine the extent of liability of each wrongdoer separately. On the other hand, where a person suffers

injury, partly due to negligence on the part of another person or persons, the partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.

8. From the above, it is clear that the finding recorded by the learned Tribunal regarding the equal liability of both the vehicles is in line with the law laid down by the Hon''ble Supreme Court and the said finding also does not require any interference. In view of the above discussion, the appeals have no substance and the same are, therefore, dismissed. The interim order passed by this Court in both the appeals on 21.01.1998, whereby 1/2 of the recovery from the appellant-Insurance Company was stayed, is vacated and the appellant is directed to make payment, if not already paid, to the claimants within a period of three months.