

(2013) 01 RAJ CK 0074

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 5414 of 2008

National Insurance Company Ltd.

APPELLANT

Vs

Shiv Bux Singh and Others

RESPONDENT

Date of Decision : 17-01-2013

Acts Referred:

Citation : (2013) 01 RAJ CK 0074

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : Deepak Goyal, for the Appellant;

Final Decision : Dismissed

Judgement

Mahesh Chandra Sharma, J.—This appeal has been filed against the award dated 28.8.2008 passed by Judge, Motor Accident Claims Tribunal (Additional District Judge Fast Track No. 1) Sikar, in MACT case No. 78/2008 whereby claim petition of the claimant was allowed and he has been granted compensation in the amount of Rs. 3,19,000/-. The facts have been set out in the impugned judgment and hence I am not repeating the same here except wherever necessary.

2. Brief facts of the case are that on 17.3.2007 at about 2.30 p.m. the deceased Pratap Singh was going to school by his cycle. Suddenly one tempo No. RJ 23 PA 0556 which was being driven by the respondent No. 3 in rash and negligent manner hit the deceased cycle from front side. The deceased sustained grievous injuries on his person who succumbed to injuries. He was a student of Tenth standard and also doing work in agriculture field. First information report was lodged against the respondent No. 3 driver of the Tempo and charge sheet was also filed against him.

3. The respondent No. 3 filed reply to the claim petition and Denied that the accident took place due to negligence of the driver. The accident took place due to negligence of the deceased. The appellant insurance company also filed reply

to the claim petition and denied the allegation made therein. The appellant has stated that the driver was not having valid and effective driving license. The respondent No. 3 who was insured owner did not inform about accident to the insurer. There was a breach of policy because the fitness certificate and permit to ply the vehicle outside the municipal area of Sikar were not produced.

4. On the basis of the pleadings of the parties, the MACT framed three issues. Two witnesses were produced by the claimants. The insurance company produced one witness. The MACT decided all the issues in favour of the claimants and vide award dated 28.8.2008 awarded compensation in the amount of Rs. 3,19,000/- with 6.25% interest per annum from the date of filing of the claim petition.

5. The learned counsel for the insurance company has argued that the award is against the law and facts. The findings on all issues are perverse and against the evidence and material available on record. The MACT has failed to consider the material and evidence brought on record in it's true and legal perspective and has passed the impugned award in a cursory manner. The learned counsel has placed reliance on National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, I have heard the learned counsel for the appellant and also gone through the award passed by the MACT. In relation to issue No. 1 the MACT observed as under:

I am in agreement with the findings recorded by the MACT on issue No. 1. The issue No. 1 was rightly decided by the MACT in favour of the claimants. The tempo driver was driving the tempo rashly and negligently and on account of which the accident took place and the deceased died. In relation to issue No. 2 the MACT after considering the evidence of the claimants computed the income of the deceased Rs. 100/- per day and out of it one third was to be incurred by the deceased on self and in this manner Rs. 2,000/- were computed as income per month and since the deceased was aged 20 years and not married and on account of that dependency of father and mother who were aged 52 and 54 applied the multiplier of 11. In this manner the income was computed Rs. 2,64,000/-. For mental agony of claimants 1 and 2 Rs. 25,000/- each total Rs. 50,000/- was awarded and for cremation Rs. 5,000/- was awarded. Total compensation awarded was Rs. 3,19,000/-. Rs. 1,000/- was awarded as cost to the claimants. The findings arrived at by the MACT cannot be said to be perverse. The compensation in the amount of Rs. 3,19,000/- was rightly determined as dependency for father and mother on account of death of their son. The appeal filed by the insurance company being devoid of merit stands dismissed. Vide order dated 13.2.2009 the insurance company was directed to deposit 50% amount of the award and the same directed to be disbursed to the claimants. As the main appeal stands rejected, the stay application also stands disposed of. The insurance company is directed to deposit the remaining 50% percent amount and the same be disbursed to the claimants as per the terms of the award.