
(2021) 08 RAJ CK 0025

In the Rajasthan High Court

Case No : S.B. Civil Miscellaneous Appeal No. 518, 522 Of 2021

New India Assurance Co. Ltd And Others

APPELLANT

Vs

Nikhil Saini And Others

RESPONDENT

Date of Decision : 25-08-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Order 1 Rule 10(2)

Motor Vehicles Act, 1988 — Section 155

Indian Succession Act, 1925 — Section 306

Citation : (2021) 08 RAJ CK 0025

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Jagdish Vyas

Final Decision : Dismissed

Judgement

Arun Bhansali, J

These appeals are directed against the common judgment and awards dated 30.1.2021 passed by the Motor Accident Claims Tribunal-I, Jodhpur, ('the Tribunal'), whereby, the Tribunal has awarded compensation to the tune of Rs.4,65,976/- to claimant - Nikhil Saini in Claim Application No.554/2011 and Rs.4,08,620/-to the claimant - Sanjay Parihar & Anr. in Claim Application No.618/2011 alongwith interest @ 6% per annum. However, another claim petition filed by Nikhil Saini being Claim Application No.555/2011 has been rejected.

The applications for compensation were filed seeking compensation for death of Smt. Babita and Mr. Hansdev by claimant - Nikhil Saini and for death of Smt. Santosh by claimant Sanjay Parihar & Anr., who were all travelling in Car No.RJ-15-CA-0610, which was being driven by its driver - Narayan Singh.

The applications were contested by the Insurance Company on various grounds including the ground that as owner of the vehicle has not been impleaded as

party, the Insurance Company cannot be saddled with the liability.

The Tribunal inter alia while deciding the applications for compensation, came to the conclusion that in view of the provisions of Section 155 of the Motor Vehicles Act, 1988 ('the Act'), it was not necessary to implead the legal representatives of the deceased owner (insured vehicle) as party and awarded compensation for death of Smt. Babita and Smt. Santosh to the claimants. The claim petition filed seeking compensation for death of Hansdev - owner of the vehicle, was rejected.

Learned counsel for the appellant - Insurance Company made submissions that the Tribunal was not justified in passing the award for compensation despite the fact that owner of the vehicle was not impleaded. Submissions were made that the appellant could only be held liable for payment of compensation, only if the owner of the vehicle is found liable, as the contract of Insurance Company is to indemnify the owner, in case any compensation is required to be paid by him and, therefore, the Tribunal was not justified in accepting the applications in absence of owner of the vehicle and, therefore, the awards impugned deserve to be set aside.

I have considered the submissions made by learned counsel for the appellant and have perused the judgments passed by the Tribunal.

The present is a case of peculiar nature, wherein, two applications for compensation were filed by Nikhil Saini seeking compensation for death of his father and mother and father was owner of the vehicle, who died in the accident. Another application was filed by Sanjay Parihar and Nootan Prakash Parihar, children of Smt. Santosh seeking compensation.

The submissions made by learned counsel for the appellant in substance appears to be justified, however, in the circumstances of the present case, wherein, the claimant - Nikhil Saini is the son of the owner of the vehicle and his mother has also died and apparently there is no other legal representative of deceased owner of the vehicle, who could be impleaded as party respondent in the claim applications filed by him as the applicant could not have impleaded himself again as respondent as legal representative of owner of the vehicle. As such the plea raised in this regard in the case of Nikhil Saini has no substance.

So far as the case of Sanjay Parihar & Anr. is concerned, in that said case, Nikhil Saini could have been impleaded as party being the legal representative of owner of the vehicle, however, as all the claim petitions were tried together, in any case, said Nikhil Saini was before the court in the same trial.

The Tribunal on objections being raised, could have exercised powers under Order I Rule 10(2) CPC to implead Nikhil Saini as party respondent to the application filed by Sanjay Parihar & Anr. The powers can be exercised by the appellate court also. As the impleadment apparently has no implication other than completing the array of parties and, therefore, exercising powers under Order I Rule 10(2) CPC, the son of deceased owner - Nikhil Saini is taken as

party respondent in claim application No.618/2011. The above direction takes care of the objection raised by the appellant - Insurance company.

So far as the decision by the Tribunal based on provisions of Section 155 of the Act is concerned, the said provision reads as under:-

"155. Effect of death on certain causes of action - Notwithstanding anything contained in Section 306 of the Indian Succession Act, 1925 (39 of 1925), the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer."

A perusal of the said provision would indicate that the provision has no application to the present circumstance. The provision deals with the circumstance where the owner of the vehicle dies after the cause of action for claiming compensation has arisen against the owner. The provision only indicates that the cause of action would survive against his estate and against the Insurer. Even under the said provision, the estate holder after death of the insured has to be impleaded as party for claiming compensation against him and the Insurer and in those circumstances, the determination as such made by the Tribunal, cannot be sustained.

No other point on merits has been raised/argued.

In view of the above discussion, while holding that the determination made by the Tribunal regarding requirement of presence of the owner of the vehicle, cannot be sustained in the circumstances of the case, no interference is required in the awards impugned. The appeals are, therefore, dismissed.