
(2019) 01 RAJ CK 0133

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 3429 Of 2018

New India Assurance Co. Ltd

APPELLANT

Vs

Harish Chandra And Ors

RESPONDENT

Date of Decision : 17-01-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168, 173

Citation : (2019) 01 RAJ CK 0133

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : Rajesh Choudhary

Final Decision : Dismissed

Judgement

Appellant-Insurer has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'Act') challenging judgment and award dated 04.09.2018, passed by Motor Accident Claims Tribunal No.2, Udaipur (for short, 'learned Tribunal').

Learned Tribunal, by the impugned judgment and award, while adjudicating the claim of respondent-claimants under Section 166 of the Act, quantified and awarded compensation to the tune of Rs.9,37,200/-.

The facts, in brief, are that respondent-claimants filed a claim petition under Section 166 of the Act, inter-alia, on the ground that on the fateful day of 2nd of October, 2017 at 8.30 PM deceased Naresh Kumar was riding his motorcycle towards Udaipur with moderate speed on right side as per traffic rules. It is further averred that the insured vehicle driven at high speed rashly and negligently collided with it and as a result of which he succumbed to the injuries.

An FIR was registered at the concerned police station and later on challan was filed against respondent-driver, who is also owner of the offending vehicle. For quantifying compensation, it was pleaded by respondent-claimants that deceased was 24 years of age at the time of accident and was earning Rs.60,000/- per

month as an Electrician. Under different heads, the respondent-claimants quantified amount of compensation to the tune of Rs.1,32,25,000.

The claim petition was contested by driver/owner of the vehicle as well as Insurer. It was specifically stated by respondent-owner & driver that Police falsely implicated him and filed challan against him. According to him, accident occurred due to sole negligence on the part of deceased himself, who while driving his motorcycle slipped and the accident occurred. The Insurer, in its reply besides general pleas raised specific objection that respondent-claimants have falsely implicated the insured vehicle and got seized without any reason. As per appellant insurer no accident was caused by insured vehicle.

The learned Tribunal settled three issues for determination and parties led their evidence. On behalf of respondent-claimants two witnesses including one eye witness was examined besides tendering documentary evidence. The respondent driver of the offending vehicle did not appear in the witness box and on behalf of appellant-insurer one witness was examined.

While examining Issue No.1 relating to rash and negligent driving, upon appreciation of evidence, learned Tribunal decided the same in favour of respondent-claimants and against insurer and the non-claimant. The finding recorded by the learned Tribunal on the said issue clearly reflects that it has made sincere endeavour to adjudicate the same on the basis of materials available on record. The learned Tribunal, while deciding Issue No.1 made close scrutiny of the testimony of eye witness AW2 Kalu Ram Sharma for recording its conclusion in favour of respondent-claimants. It is also observed by the learned Tribunal that testimony of witness remained unimpeached.

Adverting to Issue No.2, which was settled on the basis of objection raised by the appellant-Insurer in written statement, learned Tribunal decided the same against the Insurer for want of any cogent evidence tendered on its behalf.

The crucial issue, i.e., Issue No.3, concerning quantum of compensation, was examined threadbare by learned Tribunal in the backdrop of available material and taking into account age of the deceased and also the number of dependents. Learned Tribunal deducted 50% for personal expenses of the deceased and adding 40% as future prospectus by considering his occupation as self-employed person, pressed into service multiplier of 18 for arriving at compensation to the tune of Rs.9,07,200/- for loss of dependency. After adding compensation under other heads, learned Tribunal finally worked out total amount of compensation to the tune of Rs.9,37,200/-. While calculating the amount of compensation, learned Tribunal has placed reliance on authoritative pronouncements of Supreme Court in case of (1) Sarla Verma Vs. Delhi Transport Company [(2009) 6 SCC 121] and, (2) National Insurance Co. Ltd. Vs. Pranay Sethi [2017 (13) Scale 12].

I have heard learned counsel for the parties and perused the impugned judgment and award.

Upon perusal of impugned judgment and award, in my opinion, learned Tribunal has not committed any error in deciding Issue No. 1 in favour of respondent-claimants. It is trite that standard of proof in claim cases is not akin to that of criminal trial. In claim cases, Tribunal is required to consider summary of evidence by applying the principles governing civil cases i.e. preponderance of probabilities. Mere jejune plea of appellant and driver/owner of the insured vehicle about insured vehicle's non-involvement in accident cannot be set out a ground to thwart genuine claim of the respondent-claimants. Non-appearance of respondent No.4 in the witness-box and sans tangible evidence by the appellant-insurer has, therefore, rendered appellant's ambitious plea in this behalf per se vulnerable so as to affirm the finding of the learned Tribunal. As regards Issue No.2, suffice it to observe that appellant insurer has failed to substantiate its defence, therefore, finding recorded by the learned Tribunal on this issue cannot be faulted. Switching on to Issue No.3, whereby learned Tribunal has partly allowed claim of the respondent-claimants and awarded aforementioned compensation, suffice it to observe that learned Tribunal has assessed compensation moderately. The learned Tribunal while deciding the amount of compensation was guided by the authoritative judgments of the Supreme Court.

In totality, by any stretch of imagination, amount quantified and awarded by the learned Tribunal is just, fair and reasonable within the meaning of Section 168 of the Act and cannot be categorized as excessive or exorbitant. Therefore, findings recorded by the learned Tribunal on Issue No.3 also merit affirmation.

In view of foregoing discussion, I find no substance in this appeal and consequently same is hereby dismissed summarily.