(2001) 12 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No''s. 121 and 149 of 1994

New India Assurance Co. Ltd. APPELLANT

Vs

Mithlesh Gupta and Others RESPONDENT

Date of Decision : 07-12-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (2002) 2 ACC 48 : (2002) 1 ACC 435 : (2002) ACJ 435 : (2002) WLC 137

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : S.C. Srivastava, for the Appellant; K.N. Tiwari, for the Respondent

Judgement

J.C. Verma, J.—These two connected misc. appeals arise out of the same award regarding the same accident. The Misc. Appeal No. 149 of 1994 has been filed by the insurance company whereas Misc. Appeal No. 121 of 1994 has been filed by the claimants under the same award.

2. Motor Accidents Claims Tribunal, Jaipur had awarded a total amount of Rs. 9,24,000 with interest at the rate of 12 per cent per annum in Case No. 1 of 1993 vide its order dated 23.11.1993 as compensation to the legal heirs of the deceased Nawal Kishore. The claimants were the widow, children and mother, etc., of the deceased.

3. The accident occurred on 3.12.1992, while going on scooter the deceased was hit from behind by truck No. RRD 6056. The Tribunal as a matter of fact awarded an amount of Rs. 11,40,000 as compensation but had deducted an amount of Rs. 2,31,000 from the said compensation, i.e., 20 per cent of the compensation on the ground that lump sum was being paid to the claimants and remaining amount of Rs. 9,24,000 was ordered to be paid as per the award.

4. Counsel for the claimants-appellants states that no deduction could have been made and relies on a Supreme Court judgment in the case of Hardeo Kaur and

others Vs. Rajasthan State Transport Corporation and another, holding that the deduction of certain part of assessed compensation on account of lump sum payment is not justified. It was held that with the passage of time the value of rupee is dwindling due to high rate of inflation, the action of the courts below for making deduction on account of lump sum was held to be not justified.

5. Counsel for the appellants-claimants states that the insurance company is not competent to file appeal against the order on the point of compensation as no permission u/s 170 was ever taken and for the purpose relies on number of authorities. It was held in New India Assurance Co. Ltd. v. Phooli 1998 (1) TAC 668, that the insurance company cannot challenge the award on the point of compensation unless permission u/s 170 is obtained from the Tribunal.

6. For the reasons mentioned above, the misc. appeal filed by the insurance company is dismissed as no permission u/s 170 of the Motor Vehicles Act as required was taken by the insurance company and, therefore, the appeal is not maintainable.

7. The appeal filed by the claimant, i.e., 121 of 1994 is allowed. The lump sum deduction ordered to be made by the Tribunal is held to be illegal. The full compensation as awarded by the Tribunal, i.e., Rs. 11,40,000 shall be paid as compensation with interest at the rate of 12 per cent per annum as awarded by the Tribunal, but part of the order of the Tribunal for enhancing the interest to 15 per cent if the compensation is not paid within 3 months cannot be maintained, i.e., whole of the amount shall be payable with interest of 12 per cent per annum only and not of 15 per cent.

Both the misc. appeals are disposed of accordingly.

