
(2016) 10 RAJ CK 0091
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 3717 of 2016

New India Assurance Co. Ltd

APPELLANT

Vs

Smt. Savitri Jham

RESPONDENT

Date of Decision : 17-10-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2017) 1 RLW 629

Hon'ble Judges : Mahesh Chandra Sharma, J.

Bench : Single Bench

Advocate : Rishipal Agrawal, for The New India Assu. Company Ltd.; Rahul Tiwari, Advocates, for the Claimants; R.S. Shekhawat, P.P./or State along with Karan Singh Rathore, Udai Bhan Singh, Samaydeen Khan, Mukesh Joshi, Investigating Officers, Present in Person, for

Final Decision : Disposed off

Judgement

Mahesh Chandra Sharma, J.—Applications under Section 5 of the Limitation Act are allowed for the reasons mentioned therein and delay in filing the appeals are condoned.

2. Heard learned counsel for the parties and with their consent, these appeals are being disposed of at this stage.

3. Brief facts of the case are that the claim petition/s was/were filed by the claimants against the appellant-Ins. Company and non-claimants on account of alleged loss suffered by them due to death of Karn Jham in the road accident allegedly occurred on 10.1.2012, while; he was going by motor cycle from Bhiwadi towards Choupanki on his right side. At about 3.00 pm when he reached opposite Coders Cable Factory, Kahrani at Bhiwadi Choupanki Road, a Maruti Van No. RJ-02-UA-0469 being driven by its driver in rash and negligent manner and at a fast speed, came from rear side and hit the motor cycle. As a result of the accident, Karn Jham got injured and died. An FIR with regard to the said occurrence was lodged at P.S. Bhiwadi Phase-III, Distt. Alwar bearing No.

17/2012. The police after investigation, filed charge-sheet against the driver of above Maruti Van namely Ishra before the competent court. The claim petitions were registered as claim case No. 91/2012 & 122/2012.

4. On receipt of notices, reply to the claim petitions were filed on behalf of Insurance Company and averments therein were denied. The learned Tribunal on the basis of pleading framed as many as five issues and proceeded to record the evidence of the parties.

5. The learned Tribunal after hearing counsel for the parties was pleaded to decide the claim petitions vide impugned judgment/award dated 26.4.2016. Hence, these two appeals have been filed by the Insurance Company challenging the impugned judgment and award, whereas two appeals have been filed by the claimants for enhancement of amount of compensation.

6. While hearing the appeals, this court vide order dated 15.7.2016 passed the following order:

"Learned counsel for the appellant has submitted that number of cases have been registered against the driver of the offending vehicle. Issue notice to the respondents.

In the meanwhile, operation of impugned award shall remain stayed. Taking into consideration all the facts & circumstances of the case, learned Public Prosecutor is directed to ask the SHO concerned to produce all the case diaries relating to driver of offending vehicle on 21.7.2017.

List on 21.7.2016."

7. At the very outset, learned counsel for the Insurance Company submits that one driver Isra is involved in this case and more than seven cases are pending against him. It is also submitted that the learned Tribunal while passing the impugned award has not taken into consideration the grounds which he has raised by way of aforesaid appeals. The findings of learned Tribunal are contrary to the material available on record. Thus, the impugned award passed by the learned Tribunal be quashed and set aside and the matter should be remanded to the learned Tribunal with the direction to decide the matter afresh in the light of the grounds which he has raised by way of aforesaid appeal/s.

8. On the other hand, the learned counsel for the claimants/respondents has contended that they have also filed the appeals for enhancement of amount of compensation. In case this Court is going to remand the matter, in such circumstances the learned Tribunal may be directed to decide the matter in the light of the grounds, as have been raised in their appeals and they should also be granted an opportunity of hearing by the Tribunal at the time of deciding the matter afresh.

9. All the Investigating Officers are present in person and they have stated that they have failed challan against one Isra, driver of the offending vehicle.

10. I have heard learned counsel for the parties and carefully perused the relevant material on record including the impugned award.

11. In my considered view, since such type of false cases are increasing and are registered day by day and they are defaming the Insurance Company, but the learned Tribunal while passing the impugned judgment and award has not gone through the facts of the case and passed the impugned award surreptitiously. Thus, the impugned award passed by the learned Tribunal needs interference by this court.

12. In the result, the appeals are disposed of with the following directions:

(I) The Tribunal is directed to obtain the result of cases in which the police has filed challan against driver of the offending vehicle Ishara, in different criminal courts;

(II) The matter is remanded to the Tribunal with the direction to decide the matter, in accordance with law as early as possible in the light of grounds raised by the learned counsel for the parties in their respective appeal's and the judgments to be cited by learned counsel of the parties, if any, after issuing notice to all the concerned parties and giving opportunity of hearing to them.

(III) Till disposal of the claim petition(s) by the Tribunal afresh, the operation of impugned judgment/award passed by learned Tribunal shall remain stayed.

(IV) However, it is the expected from the Insurance Company to move an application before the concerned criminal court for deciding the matter of the accused Ishara as early as possible.

(V) Both the parties have requested for specific date for appearing before the Tribunal, hence for appearing before the Tribunal, hence they are directed to appear before the learned trial Tribunal on 5.3.2017.

(VI) Record, if any, be sent back immediately.