

(2002) 07 RAJ CK 0078

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 173 of 1996

New India Assurance Company Limited

APPELLANT

Vs

Smt. Hanju Devi and Others

RESPONDENT

Date of Decision : 11-07-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2003) 1 WLN 359

Hon'ble Judges : O.P. Bishnoi, J

Bench : Single Bench

Judgement

O.P. Bishnoi, J.—This appeal has been filed by the New India Assurance Company Limited, who is the insurer of the vehicle involved in an accident.

2. On 12.12.1993, at about 6.15 A.M., a Government Jeep bearing No. RNY 2667 was going from Kherwara towards Udaipur and there was a head on collision with truck No. HR-02A/0843. The driver of the jeep Rameshwar Lal died on account of the injuries received during the accident. The respondents No. 1 to 6 preferred a claim petition u/s 166 of the Motor Accident Claims Act and prayer was made to award Rs. 15,01,000/- as damages. The respondent No. 1 is the widow of the deceased and the respondents No. 2 and 3 are the parents of the deceased. The other three respondents are the minor daughters of the deceased. The respondent No. 7 Praveen Baxi was the owner of the said truck, which was involved in the accident. It is not in dispute that the said truck was insured by the appellant. The claim petition was not seriously contested by the owner or the driver of the truck. The appellant, in its reply, contended that the accident was caused by the deceased Rameshwar Lal who took the jeep wrong side and consequently collided with the truck.

3. Necessary issues were framed and the learned Tribunal found that it was the driver of the truck, who was solely responsible for causing the accident. Thus, the appellant as well as respondent No. 7 were found liable to reimburse the claimants and an Award totalling Rs. 6,25,000/- was passed, against which,

this appeal has been preferred by the Insurance Company.

4. During the course of arguments, the learned Counsel for the respondents raised legal objection about maintainability of the appeal and contended that the appellant being insurer, had no locus-standi to prefer an appeal on the ground that the amount awarded was excess. So far as this objection is concerned, it is not in dispute that mainly the contention of the appellant is to the effect that the learned Tribunal was rather liberal in awarding the amount to the claimants but I find that in view of a decision of the Apex Court delivered in the matter of *United India Insurance Co. Limited v. Bhushan Sachdeva*, [(2000) 2 SCC 265], all objections raised by the learned Counsel for the respondents No. 1 to 6 are unacceptable and I find that challenging the award on the ground that the awarded amount was unreasonable and excessive is permissible on the part of the Insurance Company. It would be proper to reproduce the observations of the Apex Court in respect of the point in issue and the relevant portion contained in Paras 10 and 11 of the judgment, reads as under:

10. Can it be said that the Insurance Company should not have any grievance at all even in a case where the award appears to be unjust to that company? We must bear in mind that the nationalised insurance companies in India are holding public money. What they have to deal with is public fund. They are accountable to the public for every pie of it. If it is held that no insurance company should feel aggrieved even if the award is seemingly unjust and that such awarded amount should go out of the public fund, it is public interest which suffers. If the insurance company has reason to believe that the award was obtained fraudulently which fact was not known to the insured, should we allow public money to be given to satisfy such an award? In such cases, the insurance company must feel aggrieved. Any interpretation denying such aggrieved insurance companies the opportunity to seek the legal remedy of appeal should not be adopted unless there is a statutory compulsion. There is nothing in Section 173 or in the other relevant provisions of the Act which debars the insurance company to resort to the remedy of appeal when it knows that the award is unjust.

11. We are, therefore, of the view that the insurance company can fall within the ambit of the words "any person aggrieved by an award of a Claims Tribunal" as used in Section 173(1) of the Act, when the insured failed to file an appeal against the award.

5. There is, thus, no merit in the submissions made by the learned counsel for the respondents about the maintainability of this appeal.

6. The learned Counsel for the appellant has argued that the deceased was employed in the Police Department as Driver and his monthly salary as per proof (Ex. 6) was Rs. 2,385/-. The learned Tribunal in calculating the award money in respect of loss of income doubled the salary to Rs. 4,770/-. He further found that out of the said Rs. 4,770/- the claimants' share was Rs. 3180/- per month and

thus the annual loss amounted to Rs. 38,160/-. the learned Tribunal further found that the deceased was aged 30 years and applied the multiplier of 16 and thereby arrived at a conclusion that the loss of income to the claimants was Rs. 6,10,000/-. The learned Tribunal further allowed Rs. 15,000/- in lump sum under the other heads and thereby, passed an award totalling Rs. 6,25,000/- in favour of the claimants. I find that in view of a later judgment of the Apex Court delivered in the case of Smt. Sarla Dixit and another Vs. Balwant Yadav and others, , the awarded sum is evidently excessive. In the case of Smt. Sarla Dixit, (supra), the deceased was an Army Officer and was aged only 27 years. His monthly salary at the time of accident, was Rs. 1543/- and taking into consideration the future increase in his salary the Apex Court came to a conclusion that the loss to the claimants was to be calculated at the rate of Rs. 15,00/- per month. Thus, the annual loss was calculated to be Rs. 18,000/- The age of the deceased was 27 years only and a multiplier of 15 was allowed and the total loss of income to the claimants was assessed at Rs. 2,70,000/-. To this figure, the Apex Court added another 15,000/- as a sum, which was to be allowable under all other heads and the total amount of the award, in this way, came to be Rs. 2,85,000/-

7. In the instant case, the deceased was earning Rs. 2,385/- per month at the time of the accident and on the logic of Smt. Sarla Dixit's case (supra), the loss of income of the claimants can at best be calculated at the rate of Rs. 2,385/- per month, which was the amount, the deceased earned at the time of the accident. In this way, the annual loss to the claimants comes to Rs. 28,620/-. Looking to the fact that the deceased Rameshwar Lal was aged 30 years, a multiplier of 14 would be proper to assess the amount of award and calculate, in this way, the loss of income to the claimants comes to Rs. 4,00,680/-. To this amount, a lump sum amount of Rs. 15,000/- may be added, as has been done in Smt. Sarla Dixit's case (supra) and the total amount to be awarded comes to Rs. 4,15,680/-.

8. A dispute has been raised in respect of the rate of interest and in view of the law laid down by the Apex Court in the matter of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, it has to be held that interest is to be allowed at the rate of 9% per annum.

9. Consequently, this appeal is allowed in part and the amount of award is reduced from Rs. 6,25,000/- to Rs. 4,15,680/-. The rate of interest, allowed vide the impugned judgment was 12% per annum and the same shall stand reduced to 9% per annum. The rest of the appeal shall stand dismissed. Consequently, the cross-objections filed by the respondent No. 7 also stand disposed of. No order as to costs.