

(2013) 01 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 348 of 2011 and Civil Miscellaneous Application No. 252 of 2011

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Shakuntala and Others

RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Citation : (2013) 01 RAJ CK 0009

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : Raj Sharma, for the Appellant; Sandeep Mathur, Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

Mahesh Chandra Sharma, J.—This appeal has been filed by insurance Co. against the impugned judgment and award passed by MACT. At the very outset, learned counsel for the appellant submits that the learned Tribunal while passing the impugned award has not taken into consideration the objections which she has raised by way of the aforesaid appeal. The finding of the learned Tribunal on issue no. 2 is contrary to the material available on record. Thus, the impugned award passed by the learned Tribunal qua issue no. 2 be quashed and set aside and the matter be remanded to the learned Tribunal with the direction to decide the matter afresh in the light of objections which she has raised by way of the aforesaid appeal, in support of his contentions, she has placed reliance on the following judgment:

Santosh Devi Vs. National Insurance Company Ltd. and Others, .

2. E converso, the learned counsel for the respondents defended the impugned award and stated the same to be just and apposite.

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

4. In my considered view, the learned Tribunal while passing the impugned 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.

5. In the result, the civil misc. appeal is partly allowed and the impugned award dated 13.11.2010 passed by Motor Accident Claims Tribunal, qua issue no. 2 is quashed and set aside with the direction to the learned Tribunal to decide the matter afresh qua issue no. 2, in the light of the grounds raised by the appellant in the aforesaid appeal and the aforesaid judgment, if applicable and other judgments, to be cited by learned counsel for the parties, if any, after issuing notice to all the concerned parties and giving opportunity of hearing to them.

6. Both the parties are directed to appear before the learned Tribunal on 18.3.2013.

7. However, it is made clear that if any amount has been received by the claimants under the impugned award, the same shall not be recovered from him till disposal of the claim petition by the learned Tribunal afresh qua issue no. 2. The stay application also stands disposed of accordingly.