(1997) 10 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No''s. 65 and 133 of 1989

Oriental Insurance Co. Ltd. APPELLANT

Vs

Sunita Dhanda and Others RESPONDENT

Date of Decision : 23-10-1997

Acts Referred:

Citation : (1999) ACJ 916

Hon'ble Judges : D.C. Dalela, J

Bench : Single Bench

Advocate : S.C. Srivastava, for the Appellant; Sandeep Mathur, for the Respondent

Final Decision : Dismissed

Judgement

D.C. Dalela, J.—Both these appeals referred to above, arise out of the same award dated 18.11.1988 of the learned Motor Accidents Claims Tribunal, Jaipur, (for short ''the Tribunal''), passed in Motor Accident Claim Case No. 168 of 1983 and, hence, they are being disposed of by this common judgment. Claimant, Parmendra Nath Dhanda (who has since died during the pendency of the appeals and his legal heirs have been brought on record as the appellants in the Appeal No. 133 of 1989, and, was respondent No. 1 in the Appeal No. 65 of 1989, hereinafter referred to as ''the claimants''), filed a claim petition against the truck driver, Jaswant Singh (respondent No. 1 in Appeal No. 133 of 1989 and respondent No. 2 in Appeal No. 65 of 1989, hereinafter referred to as ''the truck driver''), D.M.H.P. Sales Ltd., Delhi, (respondent No. 2 in Appeal No. 133 of 1989 and respondent No. 3 in Appeal No. 65 of 1989, hereinafter referred to as ''the truck owner''), the truck insurer, Oriental Insurance Co. Ltd. (respondent No. 3 in Appeal No. 133 of 1989 and appellant in the Appeal No. 65 of 1989, hereinafter referred to as ''the truck insurer'') and taxi car insurer, National Insurance Co. Ltd. (respondent No. 4 in both the appeals and hereinafter referred to as ''the taxi car insurer'') alleging that on 20.12.1982 at about 3.30 p.m., the taxi car No. RST 5018 owned by claimant was going from Jaipur to Ajmer. Near Dudu, the truck No. PUS 9703 coming from opposite side struck the taxi car resulting in complete damage of the taxi car. The claimant claimed compensation to the tune of Rs. 1,24,300 for the damage of taxi car. After considering the evidence of both the sides, the learned Tribunal awarded a total compensation of Rs. 1,00,300 to the claimant and against the truck owner, the truck driver and the truck insurer making them liable jointly and severally. The claim was, however, dismissed against the taxi car insurer.

2. Feeling aggrieved thereby, the truck insurer has preferred the Appeal No. 65 of 1989, while the claimant, Appeal No. 133 of 1989.

3. I have heard the arguments of both the sides.

4. Learned counsel for the appellant truck insurer has categorically argued that the maximum liability under the insurance policy in respect of the damage of property was Rs. 50,000, and as such, it is not liable to pay the whole amount of the award.

5. No other point has been argued and pressed before me.

6. The learned Counsel for the claimants has stated that total amount of compensation awarded by the learned Tribunal requires to be enhanced.

7. I have perused the record of the learned Tribunal and have also considered the arguments made by learned Counsel at Bar. I find myself broadly in agreement with the conclusion of the learned Tribunal with regard to the quantum of compensation. The reasons given by the learned Tribunal in support of its conclusion are also approved. The findings, reasonings and conclusions of the learned Tribunal with regard to the amount of compensation do not seem to be palpably wrong, manifestly erroneous and demonstrably unsustainable. Therefore, in my opinion, the Appeal No. 133 of 1989 of the claimants for the enhancement of the compensation deserves to be dismissed.

8. A perusal of the insurance policy issued by the truck insurer would show that the policy was a comprehensive one and that premium of Rs. 240 has been charged for the third party risk. It has been admitted before me at Bar by both the sides that at the relevant time, the premium of Rs. 200 was chargeable for the ''Act only'' policy and that Rs. 240 were chargeable to cover the third party liability or liability of public risk. Since a sum of Rs. 240 has been charged as premium by the truck insurer to cover the third party risk which premium is more than the ''Act only'' premium of Rs. 200, as such, in my opinion, the liability of the insurance company would not be as per the Act, but would be unlimited, whether the third party risk is with regard to the death or bodily injury of the third party or with regard to the damages to the property of third party. In my opinion, therefore, the liability of the truck insurer is not limited one, but is unlimited.

9. In my opinion, therefore, the truck insurer is liable to pay the entire amount of compensation awarded by the learned Tribunal along with the interest thereon,

jointly and severally.

10. No other point has been argued and pressed before me. Therefore, in my opinion, the appeal of the truck insurer No. 65 of 1989 also deserves to be dismissed.

11. In the result, both these appeals are dismissed.

