

(2001) 07 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Special Appeal (Civil) No. 76 of 1999

Oriental Insurance Company Ltd.

APPELLANT

Vs

Kamla Bai and Others

RESPONDENT

Date of Decision : 25-07-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2001) 3 RLW 1888 : (2001) 3 WLC 370 : (2001) 3 WLN 675

Hon'ble Judges : A.R. Lakshmanan, C.J.;K.S. Rathore, J

Bench : Division Bench

Advocate : Virendra Agarwal, for the Appellant; S.K. Jain and N.K. Singhal, for the Respondent

Final Decision : Partly Allowed

Judgement

Lakshmanan, C.J.

(1). By consent of counsel for both the parties, the present special appeal is taken up for hearing at the admission stage.

(2). Heard counsel for both the sides.

(3). This appeal has been filed by the appellant-Oriental Insurance Company Ltd. against the order dated 29.7.1999, passed by the learned Single Judge in S.B. Civil Misc. Appeal No. 1098/1999 and other 8 similar appeals, whereby the Misc. Appeal filed u/s 173 of the Motor Vehicles Act, 1988 by the appellant Oriental Insurance Company Ltd. against the Award dated 4.3.1999, passed by the Motor Accident Claims Tribunal, Chhabra, District Baran in Claim Petition No. 61/1995, awarding a sum of Rs. 2,89,000/- together with interest @ 12% per annum from the date of petition jointly and severally as against the respondents No. 7 and 8 with that of the appellant Insurance Company, has been dismissed and the Award has been confirmed.

(4). The appellant Insurance Company has denied its liability because of the fact

that the truck was being driven in contravention of the policy conditions. It was also pleaded by the insurer that the driver of the truck was not having valid driving license and that the said truck was given on hire and reward and, as such, no liability can be fastened on the appellant - Insurance Company. It has also been averred by the appellant herein that as many as eight claim petitions were filed arising out of an accident dated 22.6.1993 and all the petitions were ordered to be consolidated and were disposed of by a common Award dated 4.3.1999 by the learned Tribunal. The owner of the truck also filed written statement, denying averments made by the claimants, stating that all the victims were travelling as labourer in the vehicle. The Tribunal, on the basis of the pleadings of the parties, framed necessary issues and after recording the evidence, passed the impugned award.

(5). The Tribunal, in its Award, has held that the accident dt. 22.6.1995 occurred on account of rash and negligent driving of the said truck and, as such the Tribunal awarded the compensation as stated above alongwith interest at the rate of 12 p.a. from the date of petition till payment as against the respondents driver, owner and the appellant jointly and severally in favour of the claimants. Dissatisfied with the said award, the appellant preferred an appeal u/Sec. 173 of the Motor Vehicle Act, 1988 and the learned Single Judge dismissed the same vide order dt. 27.9.1999, on the ground that there is no will full breach of policy. Being aggrieved by the Award dated 4.3.1999, passed by the Tribunal and order dated 29.7.1999, passed by the learned Single Judge, the appellant Insurance Company has preferred the present Special Appeal.

(6). Though, the Tribunal disposed of nine claim petitions on the same day by a common order, however, by a separate Award, the Tribunal disposed of the claim petition No. 61/1995, separately and awarded Rs. 2,89,000/- with a direction to pay interest at the rate of 12% per annum within two months, failing which the rate of interest will be 15% per annum.

(7). Ten separate Special Appeals were preferred by the appellant Insurance Company before the Division Bench, against the order of learned Single Judge, out of which nine appeals were disposed of confirming the order passed by the learned Single Judge as well as the learned Tribunal. So far as this appeal, arising out of the order passed in Civil Misc. Appeal No. 1068/1999 against the order passed by the Tribunal in Claim Petition No. 61/1995, is concerned, this Court issued notices to the respondents on 16.9.1999 in the following terms:-

"Issue notice to the respondents only so far it relates to awarding penal interest, returnable in four weeks.

In case the appellant company deposits the entire amount awarded with interest as ordered, there shall be no attachment of the Bank account of the appellant company, and, this order will be effective only after the appellant make deposits as afore- mentioned."

(8). Since the notice was issued in so far as it relates to awarding penal interest,

we heard the respective parties. In our opinion, the Tribunal as well as the learned Single Judge have acted illegally in awarding compensation against the appellant -Insurance Company, jointly and severally with that of the other respondents; namely, the driver, owner. Since all the connected nine Special Appeals have already been disposed of by the Division Bench, we have to allow this appeal in part in so far as it relates to awarding penal interest. In our opinion, the award of 15% interest per annum in default of payment of compensation is not proper and is liable to be set aside, since the same amounts to penal interest. In all other similar cases, the Interest at the rate of 12% per annum has been awarded, but there is no direction in regard to the penal interest, in case of default in payment of compensation amount within two months. In other words, the tribunal has allowed higher rate of interest in case of default. Once the Tribunal has exercised its discretion to award interest on the amount of compensation to be awarded at a particular rate, from a particular date, there is no scope for retrospective enhancement, for the default in the payment of compensation. Such a discretion in the award, for retrospective enhancement of the rate of interest for default of payment of the amount of compensation, together with the interest payable thereon virtually amounts to imposition of penalty, which is not envisaged in the Motor Vehicle Act. Same view has been taken by the learned Single Judge of this Court in the case of R.S.R.T.C. v. Kanchan Bai and Ors. (1) and Oriental Fire and General Insurance Company Ltd. v. Buli Dei and Others (2). We, therefore, direct that the rate of interest of 12% per annum, as awarded by the learned Tribunal, shall be applicable and the penal interest awarded by the Tribunal in default clause mentioned therein shall stand set aside.

(9). In the result, the appeal filed by the appellant - Insurance Company is partly allowed. No order as to costs.