
(2003) 05 RAJ CK 0012
In the Rajasthan High Court

Oriental Insurance Company Ltd.

APPELLANT

Vs

Mst. Prem and Others

RESPONDENT

Date of Decision : 13-05-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 173

Citation : (2003) 3 ACC 608 : (2003) 4 WLC 271

Hon'ble Judges : Harbans Lal, J

Bench : Single Bench

Judgement

Harbans Lal, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 (in short the Act) has been preferred by the Insurance Company against the judgment/award dated 1.11.2001 passed by the learned Judge, Motor Accident Claims Tribunal, Gangapur City awarding an amount of Rs. 6,80,000/- as compensation along with interest @ 9% p.a. from the date of filing of the claim petition i.e. 27.10.1999 till realisation.

2. Briefly stated, the relevant facts are that claimant respondent Nos. 1 to 5 who are heirs of deceased Pooran filed a claim on 27.10.1999 before the Tribunal claiming Rs. 16,46,000/- as compensation on account of the death of Pooran who was going on motor cycle No. HR 3264 along with Shiv Lahari and Ram Phool in Sector-3 Good Year Chick, Faridabad on 7.10.1999 and the truck bearing No. HR-38-B-2172, which was insured with the appellant Insurance Company, was owned by Ramesh Kumar respondent No. 6 and was being driven rashly and negligently by Kashmir respondent No. 5, dashed against the motor cycle as a result of which Pooran and Ramphool died. The deceased was 30 years of age and was working as Supervisor in the construction work and was earning Rs. 4,500/- p.m. The owner and driver of the vehicle admitted the factum of accident but denied the negligence on the part of the truck driver. The appellant Insurance Company also contested the claim petition by filing separate reply denying the averments made in the claim petition. It was pleaded that the claim petition was not maintainable because the driver and insurer of the motor cycle were not

joined as parties. The Tribunal framed six issues on the basis of the pleadings of the parties and after taking oral and documentary evidence led by the parties and after affording an opportunity of hearing to them passed the impugned award which is under challenge in this appeal, wherein the findings with regard to rash and negligent driving and quantum have been assailed.

3. I have heard learned Counsels for the parties and have also perused the record.

4. This appeal by the insurer challenges only the findings of the Tribunal with regard to the quantum of compensation and the negligence on the part of the truck driver and no other ground has been taken to challenge the judgment/award of the Tribunal. Admittedly, no permission has been sought from the Tribunal or this Court by appellant Insurance Company for contesting the case on other grounds than the grounds that were available to it u/s 149(2) of the Act.

5. It has been held in National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, that the insurer cannot challenge the quantum of compensation as well as the findings with regard to negligence of the offending vehicle.

6. In view of this authoritative pronouncement of the Hon''ble Apex Court on the point, this appeal is not maintainable and deserves to be dismissed on this ground alone.

7. In the result, this appeal is hereby dismissed.