
(2011) 04 RAJ CK 0069

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 498 of 2011

Oriental Insurance Company Ltd.

APPELLANT

Vs

Smt. Manohari and Others

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 170, 173

Citation : (2011) 3 RLW 2775 : (2012) 2 TAC 459

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—In both the above appeals filed u/s 173, Motor Vehicles Act, 1988, the Appellant Oriental Insurance Company is challenging common judgment and award dated 12.10.2010 passed in inter alia claim cases No. 87/07 and 88/07. In MAC Case No. 87/07, filed by claimants Smt. Manohari and others, the Motor Accident Claims Tribunal, Nagaur awarded Rs. 5,14,000/- and in MAC Case No. 88/07, filed by claimants Smt. Radha Devi and others, the Tribunal awarded Rs. 5,27,000/- as compensation. Both the above claim cases arise out of same accident, therefore, both the appeals are decided by this common judgment.

2. As per brief facts of the case, an accident occurred on 10.05.2007 when Mohabbat Ram, Bhanwarlal, Om Prakash and Harish Chandra were travelling in jeep No. RJ-21/C/4302 from Khnivsar to Nagaur along the national highway. Near village Kharnal, driver of truck bearing No.RJ-07/G/8251 negligently halted the truck in the middle of the road and, due to evening coupled with the fact that the said truck standing in the middle of the road did not bear any rear lights, the jeep in which among others Mohabbat Ram and Bhanwarlal were travelling collided with the stationary truck on the road. After hitting the truck, the jeep swerved out of control, however, the driver of the jeep controlled the vehicle but as soon as the jeep driver brought the vehicle under control it dashed against

oncoming car No.RJ-19/CA/0077. As a result of the said accident, Mohabbat Ram, Bhanwarlal, Om Prakash and Harish Chandra and one other person Anil received serious injuries. In respect of the above accident, FIR was registered at Police Station Khinvasar.

3. Legal heirs of Mohabbat Ram and Bhanwarlal filed their claims u/s 163A of the Motor Vehicles Act, 1988. After filing claim petitions u/s 163A, Motor Vehicles Act, three other petitions were also filed u/s 166 of the Act. Learned Tribunal decided all the claim petitions together and, for that purpose, ten issues were framed for adjudication of the claims.

4. Out of ten issues, issues No. 1, 2, 3 and 4 were framed for deciding all the five claims and issues No. 5 and 6 were framed for deciding claim petitions No. 87/07 and 88/07, filed by Smt. Manohari and Smt. Radha Devi, respectively.

5. It is admitted position of the case that the accident took place in the evening after 7 O'clock and, in both the claims, claimants were not required to prove negligence of the driver because the claims were filed u/s 163A of the Act. Learned Tribunal after recording evidence gave issue-wise finding and held that the incident occurred due to negligently putting truck No.RJ-07/G/8251 in the middle of the road and said truck was insured with the Appellant insurance company.

6. In the accident, in all, four persons died and one person was injured. Legal heirs of Mohabbat Ram and Bhanwarlal filed their claim petitions u/s 163A of the M.V. Act whereas legal heirs of late Om Prakash and Harish Chandra filed their claim petitions u/s 166 of the M.V. Act. Learned Tribunal proceeded to decide all the claim petitions by a common judgment.

7. In the above miscellaneous appeals, the Appellant insurance company is challenging the award passed in Claim Cases No. 87/07 and 88/07, whereby, the Tribunal awarded Rs. 5,14,000/- and Rs. 5,27,000/- respectively in favour of the claimants.

8. In Claim Case No. 87/07, claim was filed by Manohari w/o late Mohabbat Ram, Shobha d/o late Mohabbat Ram, Kanaram s/o late Mohabbat Ram and mother of deceased Smt. Tulchha Devi. According to the claimants, Mohabbat Ram was running a barbar's shop and was earning Rs. 3,000/- per month. So also, he was having domestic animals and was working in agricultural fields in village Mandpura, from which also he was earning Rs. 40,000/- per year.

9. After filing claim by the claimants, reply was filed and opportunity to lead evidence was granted to both the parties. Learned Tribunal decided all the claims together, therefore, in support of claimants, statements of A.W.-1 Manohari, A.W.-2 Radha Devi, A.W.-3 Anuti, A.W.-4 Anil and A.W.-5 Babulal were recorded and 65 documents were exhibited in support of the claims although the claim cases were filed separately. Non-claimants examined their witnesses N.A.W.-1 Ram Singh and N.A.W.-2 Vishnu Narayan Arora and exhibited 4 documents, so

also, the insurance company filed application u/s 170 of the Motor Vehicles Act and the same was allowed by the Tribunal.

10. Learned Tribunal after framing 10 issues, decided all the claims vide consolidated judgment dated 12.10.2010.

11. Learned Counsel for the Appellant while assailing the validity of the judgment rendered by the Tribunal in claim cases No. 87/07 and 88/07 filed u/s 163A of the M.V. Act, argued that the Tribunal has committed an error while determining the income of the deceased, so also, granted compensation in contravention of the provisions of the Motor Vehicles Act, 1988. It is also argued that although the claims were filed u/s 163A and 166 of the M.V. Act separately; but, learned Tribunal committed error while deciding all the claims together vide the consolidated impugned judgment/award, therefore, the manner in which the Claims Tribunal passed awards through consolidated judgment is illegal and as such the impugned judgment deserves to be quashed.

12. The Appellant insurance company pointed out that not only the income of the deceased is wrongly determined learned Tribunal proceeded to decide the claims while ignoring the Schedule-II in which specific amount is fixed under the other heads of claims which have not been taken into consideration. In this view of the matter, it is argued that although the claim was filed u/s 163A, in which, negligence was not required to be proved but, at the same time, the Tribunal ought to have considered the relevant provisions of the Act for granting award in favour of the claimants.

13. After hearing learned Counsel for the Appellant, following adjudication is made in both the above appeals:

S.B. Civil Misc. Appeal No. 498/2011:

14. After hearing arguments of learned Counsel for the Appellant, I have perused the award impugned. It appears from the award that issue No. 1 was framed to prove the accident occurred at Jodhpur ? Nagaur national highway, near village Kharnal. Learned Tribunal after taking into consideration the relevant record of the case and site-plan produced in the criminal case, gave finding that truck No.RJ-07/G/8251 was standing in the middle of the road and due to darkness in the evening the jeep in which late Mohabbat Ram and other deceased were travelling collided and went down the road and, thereafter, the driver again tried to control the jeep but the jeep was hit by a car on the road. Learned Tribunal gave specific finding that the truck was standing in the middle of the road and there was no rear light, no indicator, therefore, obviously if any vehicle is standing on the middle of the road on national highway, any vehicle may be hit if no rear lights or indicator is there on the stationery vehicle. In my opinion, the finding with regard to gross negligence on the part of the truck driver while putting the truck in the middle of the road does not require any interference. More so, it is evident from the record that insurance company is not raising argument with regard to the incident but raising argument that there was no

negligence on the part of the truck.

15. So also, the fact that in fact the main accident occurred when the jeep in which the deceased were travelling hit the car. In my considered opinion, when the insurance company is not denying the incident and raising voice that there was no negligence even if the truck was standing in the middle of the road, such argument cannot be accepted because after sunset it is not possible for any vehicle to see any other vehicle which does not have lights, therefore, although the claims of deceased Mohabbat Ram were not required to prove negligence in the claim but it appears that this accident took place due to putting the truck in the middle of the road which was insured with the Appellant insurance company. The finding given by the Claims Tribunal does not require any interference.

16. Admittedly, no evidence was led by the insurance company to refute the case of the claimants that Mohabbat Ram was earning Rs. 3,000/- per month because he was running a barber's shop. Further, no evidence was placed on record to refute the claim except statements of two witnesses who were not connected with the determination of income of the deceased. Learned Tribunal determined the monthly income of the deceased at Rs. 3,000/- and yearly income of Rs. 36,000/- out of which after deducting ? amount towards own expenses of the deceased calculated dependency. Deceased was 33 years old, therefore, the Tribunal applied multiplier of 17 and allowed the award. In my opinion, learned Tribunal although ignored other income of the deceased for which it was specifically pleaded by the claimants with regard to income from agricultural working and animals, the compensation awarded by the Tribunal to the tune of Rs. 5,14,000/- is just and proper because at the time of death of Mohabbat Ram, his 4 years old daughter and 2 years old son as well as his wife and mother were deprived from maintenance and love and affection. In my opinion, although the future income is not calculated, the learned Tribunal accepted Rs. 3,000/- per month income for computing the claim, therefore, there is no error in the determination of income of the deceased Mohabbat Ram. Learned Tribunal has rightly arrived at the finding that the claimants are entitled for the said claim.

17. With regard to contention of learned Counsel for the Appellant that amount awarded by the Tribunal upon other heads is excessive and in contravention of the Schedule-II of the Motor Vehicles Act, in my opinion, due to price escalation, award passed by the Tribunal upon different other heads excluding income of the deceased is not illegal. More so, it is based upon principle of natural justice. In this view of the matter, the appeal filed by the Appellant insurance company against judgment passed in Claim Case No. 87/07 filed by Smt. Manohari and other does not require any interference.

S.B. Civil Misc. Appeal No. 499/2011:

18. In this case, the appeal arises out of claim case No. 88/07 filed by Smt. Radha Devi and others, in which, eight claimants claimed compensation for death of deceased Bhanwarlal in the aforesaid accident.

19. Learned Claims Tribunal assessed the income of deceased Bhanwarlal as Rs. 3,000/- per month and, thereby, calculated Rs. 36,000/- as annual income of the deceased. The Tribunal has observed in the impugned judgment that as many as eight persons were dependent upon the deceased and, accordingly, after deducting 1/5 of the said amount towards own expenses, determined the annual dependency as Rs. 28,800/-. Since the deceased was 40 years of age at the time of his death, therefore, as per second schedule of the Act the Tribunal applied multiplier of 15 and computed the total compensation for loss of income.

20. In the light of the discussion made above in the appeal arising out of claim case No. 87/07 filed by Manohari and others, I am of the opinion that Tribunal has rightly assessed the income of the deceased and there is no error in the finding arrived at by the learned Tribunal.

21. With regard to contention of learned Counsel for the Appellant that amount awarded by the Tribunal upon other heads is excessive and in contravention of the Schedule-II of the Motor Vehicles Act, for the reasons mentioned hereinabove, the award passed by the Tribunal upon different other heads excluding income of the deceased is not illegal. More so, it is based upon principle of natural justice. In this view of the matter, the appeal filed by the Appellant insurance company against judgment passed in Claim Case No. 88/07 filed by Smt. Radha Devi and others does not require any interference. Consequently, both the appeals are dismissed.