
(2013) 02 RAJ CK 0070

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 4032 of 2006

Premnarayan

APPELLANT

Vs

Hariom and Others

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Citation : (2013) 2 CDR 1078

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : Sanjay Singhal, for the Appellant; Inderjeet Singh, Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Mahesh Chandra Sharma, J.—This appeal has been filed against the judgment and award dated 3.11.2004 passed by MACT. Brief facts of the case are as under:--

On 37.7.1998, injured Hariom was going on with his mother Gordhani Bai from Atru towards Chatrapura on offending vehicle-Tractor. At about 5.00 PM when offending vehicle reached between Atru to Chatrapura, due to the rash and negligent driving of the driver, the claimant fell down from the tractor, as a result of which he sustained injuries.

2. After that the FIR was lodged. Claim petition was filed by the claimant. Notices were issued, reply was filed, issues were framed, evident was submitted and after hearing both the sides, an award of Rs. 18,000/- has been passed by the Tribunal in favour of the claimant and against the non claimants.

3. Against the said judgment and award dated 3.11.2004, this appeal has been submitted by the non claimant - appellant challenging its liability to pay the compensation.

4. Learned counsel for the appellant has contended that the learned MACT has

manifestly erred while deciding issue No. 1 in a manner that the accident had occurred because of rash and negligent driving by the driver of the tractor trolley. The claimant has failed to establish the fact that the accident had occurred because of rash and negligent driving by the driver of the tractor trolley. In these circumstances, the finding on issue No. 1 as well as the impugned award deserves to be quashed and set-aside. He has further contended that the learned Tribunal has committed gross error and illegality while deciding issue No. 6 & 7 in a manner that the insurance company is not liable to pay compensation to the claimant respondent because the deceased person and the injured person were travelling in the tractor trolley after paying the fare. He has further contended that first of all, this fact was not proved that any fare was paid to the driver of the tractor trolley or to the appellant. Secondly, it has not been proved by the insurance company that there was any such condition in the policy, which can restrict the persons travelling in the tractor trolley. A perusal of the policy would reveal that separate premium have been charged by the insurance company from the appellant for the tractor and trolley which clearly means that the persons travelling in the trolley were covered in the policy itself, especially when there was no such condition in the policy to restrict them. Thirdly, nowhere in the policy it has been mentioned that the tractor trolley would be used only for agricultural purpose. Fourthly, the insurance company has failed to establish the fact that such breach of policy condition was a willful breach of policy condition on the part of the appellant. Fifthly, it is proved by the claimant respondent that at the time of accident tractor was used for the agriculture purpose, therefore, there was no breach of policy. It is a fact that the appellant is an old aged person who is also a heart patient, had never authorized his driver to charge fare or to allow unauthorized persons to travel in the tractor trolley. If any person is allowed by a driver to travel in the tractor trolley or if any fare was charged from him, then this act of the driver cannot be said to be a willful breach of policy condition on the part of the appellant. In these circumstances, in absence of any willful breach of policy condition, the insurance company could not have been exonerated from the liability of paying compensation to the claimants. Lastly, it was the duty of the insurance company to prove the fact that there was any breach of policy condition, then it was a direct cause for the accident. The insurance company has not proved this fact also. So, in these circumstances, the insurance company ought not to have been exonerated from the liability of paying compensation to the claimant respondent. Hence, the finding of the learned Tribunal on issue No. 6 & 7 deserves to be quashed and set-aside and also the impugned award is liable to be quashed and set-aside.

5. E converse, the learned counsel for the respondent defended the impugned award and stated the same to be just and apposite. I have heard learned counsel for the parties and perused the judgment and award dated 3.11.2004 passed by the learned Tribunal. The learned Tribunal after considering the aforesaid facts and circumstances and taking into consideration the oral as well as documentary evidence placed before it, is found to have rightly passed the judgment and

award, hence I do not think it proper to interfere in the same and the appeal filed by the non claimant being bereft of any merit deserves to be dismissed, which stands dismissed accordingly after confirming the judgment and award passed by the learned Tribunal.