

(2016) 05 RAJ CK 0076

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 3189, 3186, 3187, 3188 of 2006

Rajesh

APPELLANT

Vs

Oriental Insurance Company Ltd. & Ors.

RESPONDENT

Date of Decision : 19-05-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2016) 3 DNJ 1066

Hon'ble Judges : Mr. Mahesh Chandra Sharma, J.

Bench : Single Bench

Advocate : Mr. Amit Jindal, Advocate, for the Appellant; Mr. Rishipal Agarwal and Mr. R.P. Vijay, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Mahesh Chandra Sharma, J. -All the four civil misc appeals arise out of common Judgment and Award dated 7.4.2005 passed by the learned Judge, MACT, Baran in four different claim petitions, hence same are being decided by this common judgment.

2. All the four civil misc. appeals have been filed against the impugned judgment and award passed in claim applications No. 04/2004, 05/2004, 06/2004 and 07/2004, wherein following award has been passed:

"vr% rgdhdkrh rkSj ij Dyse la0 4@2004 ds izkFkhZ@vkgr txnh"k ds i{k esa :0 7000@&] Dyse la0 5@2004 ds izkFkhZx.k dykcrh ckbZ oxSjk ds i{k esa :0 2]46]000@&] Dyse la0 6@2004 ds izkFkhZx.k chykckbZ oxSjk ds i{k esa :0 2]60]400@& ,oe~ Dyse la0 7@2004 ds izkFkhZx.k lforkckbZ oxSjk ds i{k esa :0 2]89]200@& {kfriwfrZ izfrdj jkf"k dk vokMZ foi{kx.k la0 1 yxk;r 3 ds fo:) la;qDr ,oa i`Fkd i`Fkd :i ls e; 9 izfr"kr okf"kZd C;kt rkjh[k nk;jh izkFkZuk i=ksa ls rkjh[k olwyh rd e; [kpkZ izkFkZuk i= ikfjr fd;k tkrk gSA

vuqrks"k ds fook|d esa foosfpr rF;ksa ds vuqlkj Dyse la0 6@2004 o 7@2004 ds i{k esa iapkFvr jkf"k dze"k% :0 2]60]400@& ,oa :0 2]89]200@& dqy ;ksx :0

5]49]600@& dks e`rdksa ds rhuksa vkosnuksa esa leku :i ls foHkDr djus ij izR;sd e`rdx.k ds Dyse la0 5@2004] 6@2004 o 7@2004 ds i{k esa iapkfVr jkf"k dze"k% :0 2]46]000@& :0 2]60]400@& ,oa :0 2]89]200@& esa ls izR;sd dks foi{k@chek dza0 :0 1]83]200@& e; ns; C;kt vnk djus dk nkf;Ro gksxk vkSj rhuksa Dyse vkosnuksa ds iapkfVr mDr jkf"k;ksa dh "ks"k jkf"k dze"k% :0 62]800@&] :0 77]200@& ,oa :0 1]06]000@& rFkk Dyse vkosnu la0 4@2004 ds izkFkhZ@vkgr txnh"k dks ns; {kfriwfrZ jkf"k :0 7000@& e; ns; C;kt dh vnk;xh dk nkf;Ro okgu ekfyd@foi{k la0 2 jkts"k tkVo dk gksxkA fdarq vkgr ,oa rhuksa e`rdx.k r`rh; i{kdkj gksus ls Dyse vkosnuksa esa iapkfVr dqy jkf"k ,oa ns; C;kt dh vnk;xh dk nkf;Ro izkFkfed :i ls foi{k la0 3 chek daz0 dk gksxk vkSj mDr izdkj ls okgu ekfyd@jkts"k tkVo dh vnk;xh ds nkf;Rok/khu vnk dh x;h jkf"k dks ckn esa btjk; dj chek daiuh okgu ekfyd foi{k la0 2 ls olwy dj ldsxhA

Dyse vkosnu la0 4@2004 ds izkFkhZ@vkgr txnh"k ds i{k esa iapkfVr jkf"k :0 7000@& ,oa ns; C;kt dh jkf"k vnk gksus ij udn :i esa vnk dh tkosxhA

Dyse vkosnu la0 5@2004 ds izkFkhZx.k&dykorh ckbZ oxSjk ds i{k esa iapkfVr jkf"k :0 2]46]000@& vnk gksus ij izkFkZ;k la0 1 dykorh ckbZ] tks fd e`rd ckcw dh iRuh gS] :0 1]46]000@& ,oa vkuqikfrd ns; C;kt dh jkf"k izkIr djus dh vf/kdkjh gksxh] ftlesa ls :0 1]00]000@& ,oa ns; vkuqikfrd C;kt mls udn :i ls vnk fd;k tkos rFkk "ks"k jkf"k :0 46]000@& ,oa ns; vkuqikfrd C;kt mlds uke jk"V~h;d`r cSad es lkof/k tek ;kstuk ds rgr izFke rhu o"kZ ds fy, vkSj blh rjg uohuhd`r djkr gq, dqy 6 o"kZ ds fy, tek dj;s tkos ysfdu bl jkf"k ij feyus okyk =Sekfld C;kt izkFkhZ;k&dykorh ckbZ cSad ls vkgfjr djus ds fy, Lora= gksxhA izkFkhZx.k la0 2 o 3 dze"k% /keZohj ,oa /kkiwckbZ] tks fd e`rd dh ukckfyx larkus gSa] izR;sd :0 50&50 gtkj ,oa ns; vkuqikfrd C;kt izkIr djus ds vf/kdkjh gksxs tks nksuksa izkFkhZx.k ukckfyx gksus ls mudks ns; laiw.kZ jkf"k jk"V~h;d`r cSad esa izFke rhu o"kZ ds fy, lkof/k tek ;kstuk ds rgr muds ckfyx gksus dh vof/k rd ds fy, uohuhd`r djkr gq, tek fd;s tkosaxs] ftl jkf"k ij feyus okyk =Sekfld C;kt ukckfyx izkFkhZx.k /keZohj o /kkiwckbZ dh vksj ls mudh ekrk ,oa izkd`frd lajf{kdk dykorh ckbZ izkFkZ;k la0 1 cSad ls vkgfjr djus ds fy, Lora= gksxhA

Dyse vkosnu la0 6@2004 ds izkFkhZx.k&chykckbZ oxSjk ds i{k esa iapkfVr jkf"k :0 2]60]400@& e; ns; C;kt vnk gksus ij izkFkZ;k la0 1@chykckbZ] tks e`rd jes"k dh fo/kok iRuh gS :0 1]00]000@& ,oa ns; vkuqikfrd C;kt udn :i esa izkIr djus dh vf/kdkfj.kh gksxhA izkFkhZx.k la0 2 yxk;r 4 dze"k% gsejkt] jkds"k o vfouk"k ukckfyxku izR;sd :0 50&50 gtkj ,oa ns; vkuqikfrd C;kt izkIr djus ds vf/kdkjh gksaxs] tks jkf"k muds ukckfyx gksus ls jk"V~h;d`r cSad esa lkof/k tek ;kstuk ds rgr izR;sd ds uke muds ckfyx gksus dh vof/k rd vyx vyx [kkrkA esa izFker% rhu o"kZ vksj uohuhd`r djkr gq, tek fd;s tkosaxs] fdarq mDr ukckfyxku ds [kkrkA esa tek jkf"k ij feyus okyk =Sekfld C;kt mudh vksj ls mudh ekrk ,oa izkd`frd lajf{kdk&chykckbZ cSad ls vkgfjr djus ds fy, Lora= gksxhA izkFkhZ;k la0 5@dsnkjhckbZ] tks fd e`rd jes"k dh o`)k ekrk gS] :0 10]400@& ,oa ns; C;kt udn :i ls izkIr djus dh vf/kdkfj.kh gksxhA

Dyse vkosnu la0 7@2004 ds izkFkhZx.k&lforkckbZ oxSjk ds i{k esa iapkfVr

jkf"k :0 2]89]200@& e; ns; C;kt vnk gksus ij izkfFkZ;k la0 1@lforkckbZ] tks fd e`rd iIiw dh iRuh gS] :0 1]25]000@& e; ns; vkuqikfrd C;kt izkIr djus dh vf/kdkfj.kh gksxh] ftlesa ls :0 1]00]000@& ,oa ns; vkuqikfrd C;kt mls udn vnk fd;k tkos ,oa "ks"k :0 25]000@& ,oa ns; vkuqikfrd C;kt mlds uke jk"V~h;d`r cSad esa lkof/k tek ;kstuk ds rgr dqy rhu o"kZ ds fy, tek djks; tkosaxs] fti jkf"k ij feyus okyk =Sekfld C;kt izkfFkZ;k la0 1@lforkckbZ cSad ls vkgfjr djus ds fy, Lora= gksxhA izkFkhZx.k la0 2 yxk;r 4 dze"k% jkefuokl] iwtk vkSj y{eh] tks e`rd iIiw dh vo;Ld larkus gSa] izR;sd rhuksa :0 50&50 gtkj e; ns; C;kt jk"V~h;d`r cSad esa lkof/k tek ;kstuk ds rgr izFke rhu o"kZ ds fy, vkSj blh rjg uohuhd`r djksr gq, muds ckfyx gksus dh vof/k rd tek dh tkosxh ysfdu o bu jkf"k;ksa ij feyus okyk =Sekfld C;kt rhuksa ukckfyxku dh vksj ls mudh ekrk izkd`frd lajf{kdk lforkckbZ cSad ls vkgfjr djus ds fy, Lora= gksxhA izkFkhZ la0 5@Nhrjyky] tks fd e`rd iIiw dk o`) firk gS] :0 14]200@& ,oa ns; vkuqikfrd C;kt udn :i esa izkIr djus dk gdnkj gksxkA

izkFkhZx.k mijksDr tek jkf"k;ksa ij fdLh izdkj dk vfxze ;k bl vf/kdj.k dh iwokZuqefr ds cxSj izkIr ugha dj ldsaxsA

pwafd oDr nq?kZVuk okgu esVkmksj la0 vkj0ts0 20&th 2672 foi{kh la0 3 nh vksfj;aVy ba";ks0da0fy0 ds ;gka chehr Fkk] blfy, fook|d la0 2 esa ikfjr fu.kZ; ds vuqlkj rhuksa e`rdx.k ds Dyse vkosnuksa ds laca/k esa vnk;xh dk nkf;Ro izR;sd dks :0 1]83]200@& ,oa ns; C;kt dk chek daiuh dk gksxk vkSj rhu Dyse vkosnuksa esa iapkfVr jkf"k;ksa esa ls mDr jkf"k de djus ds mijkar "ks"k ns; jkf"k ,oa vkuqikfrd C;kt dh vnk;xh ,oa Dyse la0 4@2004 dh iapkfVr jkf"k o C;kt dh vnk;xh dk nkf;Ro okgu ekfyd foi{kh la0 2 jkts"k tkVo dk gksxk] fdarq vkgr izkFkhZ txnh"k ,oa e`rdx.k r`rh; i{kdkj gksus ds dkj.k U;k; n`"Vkar 2004] Mh,uts] ist 283 ds vuqlj.k esa pkjksa Dyse vkosnuksa esa iapkfVr jkf"k ,oa ns; C;kt dh izkFkfed vnk;xh dk nkf;Ro foi{kh chek da0 dk gksxkA tks vnk dh x;h vfrfjDr jkf"k dks ckn esa t;sZ btjk; okgu ekfyd ls olwy dj ldsxhA

chek daiuh {kfriwfrZ izfrdj jkf"k dk izkFkhZx.k ds uke vdkm.V is;h psd bl vf/kdj.k esa ,d ekg esa tek djksaA

izkFkhZx.k }kjk varfje {kfriwfrZ izfrdj jkf"k dk iwoZ esa vxj dksbZ Hkqxrku izkIr dj fy;k x;k gks rks ,slh jkf"k dk lek;kstu vafre Hkqxrku ds le; muds i{k esa ikfjr vokMZ dh jkf"k esa ls fd;k tk ldsxkA"

3. Brief facts of the case are that on 9.11.2003 injured Jagdish, Babu, Ramesh and Pappu were going in Metadoor No. RJ-20-G-2672 from Nahargar. Metadoor was loaded by 16 begs of urea, some empty begs, Kant-Bant and they were going from Nahargarh to Kekri for taking Soyabin from Khuman Singh Bhell. The said metadoor was turned down at about 3:00 PM on Guna Road due to rash and negligent driving of the driver and as a result of accident Jagdish, received grievous injuries and Babu, Ramesh and Pappu died.

4. Thereafter, the claimants filed claim applications and claimed compensation. Thereafter, notices were issued to the opposite parties. Reply to the claim petitions were filed and the learned Tribunal framed the issues. After hearing all

the parties, the learned Tribunal passed the aforesaid impugned judgment & award/

5. Against the impugned judgment and award, the appellant/s preferred the instant appeals for the relief as prayed for in it.

6. Learned counsel for the appellant/s has contended that the findings given by the learned Tribunal on the issue Nos. 2 and 5 are legally not sustainable by this Court being contrary to the provisions of law as well as facts of the case. Counsel has further submitted that the learned Tribunal has committed an error while not considering the fact that the vehicle was insured and a premium of Rs. 50/- for Khalasi and Rs. 25/- for driver was taken but the learned tribunal has committed serious error while not considering the fact that Rs. 100/- which was shown in the cover note has not been explained that on what accused used Rs. 100/- was charged by the insurance company. Counsel has further submitted that the learned Tribunal has further committed an error while not considering the fact that in the cover note in the head of licence carrying capacity (passenger carrying vehicle), in which 3 has been mentioned but even then the learned tribunal has not considered this important aspect of the matter and only assessed that vehicle was insured only for two passengers and one driver, which is wrong and contrary to the cover note produced before the learned tribunal. Counsel has further submitted that the learned tribunal has committed serious error while exonerating the insurance company and the amount awarded to the claimants is on the higher side. Counsel has further submitted that as per section 147 of the Motor Vehicles Act, no liability can be fastened on the owner of the vehicle. Hence impugned award deserves to be modified/enhanced.

7. On the other hand, learned counsel for the respondent/s has opposed the submissions advanced on behalf of appellant/s and requested for maintaining/ setting aside of judgment and award and further submitted that on account of negligence of the driver of the vehicle, Jagdish received grievous injuries and Babu, Ramesh and pappu Died. Hence, the owner of the vehicle is liable to make payment of amount of compensation.

8. I have heard learned counsel for the parties and perused the impugned judgment and award. However, I am in agreement with the observations made by the learned tribunal while deciding issues No. 2 and 5, which are reproduced as under:

bl fook|d dk Hkkj lcwr chek daiuh ij gSA esVkMksj la[;k vkj0ts0 20th 2672 ,d ekyokgd ;ku gSA chek da0 dh vksj ls ;g dgk x;k gS fd pkyd vkSj Dyhuj ls vf/kd cSBd {kerk ls vf/kd O;fDr;ksa dks ;fn ;k=k djok;h tkrh gS rks chek dk izhfe;e ekfyd }kjk ugha fn;s tkus ds dkj.k chek daiuh dk mu vfrfjDr O;fDr;ksa ds izfr dksbZ mRrjnkf;Ro ugha gS vkSj chek daiuh mudh {kfriwfrZ izfrdj jkf"k ds fy, mRrjnk;h ugha gSA ,u0,0Mc0 1@vkj0,l0 pkSgku] "kk[kk izca/kd vksfj;aVy ba";ks0 da0 fy0 lk{; esa is"k gqvk gSA okgu la0 vkj0ts0 20 th&2672 VkVk V~d ekWMy&1997] ftldh cSBd {kerk e; pkyd rhu O;fDr Fkh] mlesa e; pkyd rhu O;fDr

gh cSB ldrs gS vkSj muesa ls nks dqyh o ,d pkyd crk;k x;k gS vkSj buds vfrfjDr dksbZ O;fDr cSBrk gS rks mlds izfr chek daiuh dh dksbZ ftEesnkjh ugha gSA chek ikWfylh izn"KZ ,&1 gS] ftlds vuqlkj okgu pkyd ,oa nks dqyh dk izhfe;e fy;k x;k gS] ftlesa :0 50 izhfe;e dqyh@[kyklh o :0 25 izhfe;e pkyd dk fy;k x;k gSA bl izdkj nks vU; O;fDr;ksa pkyd ds vfrfjDr dk tksf[ke doj fd;k gqv k gS] tks dksbZ Hkh dqyh ;k [kyklh gks ldrk gSA chek daiuh us nks dqyh crk;s gSa] tks lgh gSaA vkj0,l0 pkSgku us Lo;a us nks dqyh o ,d pkyd ds vykok dksbZ cSBrk gS rks mldh tksf[ke doj ugha gksuk crk;k gSA okgu esa pkyd ds vykok 4 O;fDr vkSj Fks] buesa ls nks O;fDr;ksa dh gh tksf[ke chek vuqca/k esa ds rgr doj gksrh gS vkSj blh vuqikr esa vkxs vkns"K ikfjr dj fn;k tkosxk fd nks dh {kfriwfrZ izfrdj jkf"K fdruh gksrh gS vkSj dqy {kfriwfrZ izfrdj jkf"K fdruh ns; gSA pwaFd e`rdx.k rhljs i{kdkj gSa] blfy, nks O;fDr;ksa ds Dyse ds vykok tks jkf"K cprh gS] og chek daiuh igys rks rhljs i{kdkj dks vnk djsxh vkSj ckn esa okgu ekfyd ls olwy dj ldsxhA ;g fook|d blh vuq:i r; fd;k tkrk gS D;ksafd chek ikWfylh ij dksbZ fookn ugha gSA ;g fook|d chek daiuh ds i{k esa ,oa okgu ekfyd ds fo:) blh vuq:i r; fd;k tkrk gSaA

;g fook|d vuqrks"K dk gSA mijksDr fook|dksa ds fu.kZ; ds vk/kkj ij izkFkhZ@vkgr txnh"K Dyse la0 4@2004 dks :0 7]000@&] Dyse la0 5@2004 ds izkFkhZx.k dks :0 2]46]000@&] Dyse la0 6@2004 ds izkFkhZx.k dks :0 2]60]400@& ,oa Dyse la0 6@2004 ds izkFkhZx.k dks :0 2]89]200@& {kfriwfrZ izfrdj jkf"K foi{kHx.k la0 1 yxk;r 3 ls la;qDr ,oa i`Fkd i`Fkd :i ls 9 izfr"kr okf"KZd C;kt lfgr rkjh[k nk;jh izkFkZuk i= dze"K% 26-01-2004] 06-01-2004] 26-01-2004 o 26-01-2004 ls rkjh[k olwyh r; e; [kpkZ izkFkZuk i= izkIr djus ds vf/kdkjh gksuk ik;s tkrs gSaA

oDr nq?kZVuk esVkMksj la0 vkj ts0 20 th 2672 foi{kH la0 3 nh vksfj;aVy ba";ks0 da0 fy0 ds ;gka chfer Fkh] blfy, chek ikWfylh dh "krksZa ds vuq:i {kfriwfrZ izfrdj jkf"K vnk;xh dk nkf;Ro chek daiuh dk gSA fook|d la0 2 ds fu.kZ; esa foospu ds nkSjku ;g fofu"pr fd;k x;k gS fd chfer okgu esa ,d pkyd ,oa nks dqyh@Dyhuj ds ckcr gh izhfe;e vnk fd;k x;k Fkk vksj ,slh fLFkfr esa muds laca/k esa gh e`R;q ij chek da0 dk vnk;xh dk nkf;Ro curk gSA buds vfrfjDr O;fDr;ksa dh e`R;q ds fy, chek da0 dk mRrnkf;Ro ugha gSA ,slk ekuk x;k gSA vr% bl fLFkfr esa nq?kZVuk esa e`rdksa ds laca/k esa nks O;fDr;ksa dh e`R;q ckcr gh chek dEiuh dk nkf;Ro jguk ik;k tkrk gSA fuf.kZr Dyse izkFkZuk i=ksa esa vf/kdre {kfriwfrZ izfrdj jkf"K fu/kkZj.k okys Dyse vkosnu la0 6@2004 o 7@2004 ds izkFkhZx.k dss i{k esa iapkFvr jkf"K dze"K% :0 2]60]000@& ,oa :0 2]89]200@& dqy :0 5]49]600@& ,oa ns; C;kt dh vnk;xh dk nkf;Ro foi{kH la0@nh vksfj;aVy ba";ks0 da0 fy0 dk gksuk ik;k tkrk gSA tks jkf"K e`rdksa ds laca/k esa izLrqr rhuksa Dyse vkosnuksa 5@2004] 6@2004 o 7@2004 esa leku :i ls foHkDr fd;s tkus ij :0 1]83]200@& izR;sd rhuksa Dyse vkosnuksa ds izkFkhZx.k ds izfr ns; gksrh gSA bl jkf"K dh vnk;xh dk nkf;Ro foi{kH la0 3@chek daiuh ij gksxk vkSj e`rdks ds laca/k esa izLrqr rhuksa Dyse vkosnuksa dk nkf;Ro okgu ekfyd foi{kH la0 2@jktS"K tkVo dk gksxkA

U;k; n`"Vkar 2004] Mh0,u0ts0 (lq0dks0) ist 283 ds vuqlj.k esa vkgr ,oa e`rdx.k

r`rh; i{kdkj gksus ls muds i{k esa iapkfVr jgh jkf"k;ksa ,oa ns; C;kt dk Hkqxrku izkFkfed :i ls foi{kh la0 3@chek daiuh }kjk fd;k tkosxk vkSj chek daiuh }kjk okgu ekfyd dh mijksDrkuqlkj ns;rk dh jkf"k dk Hkqxrku tks fd;k tkosxk] mldks chek daiuh ckn esa btjk; djds okgu ekfyd jkts"k tkVo ls olwy djus dh vf/kdkfj.kh gksxhA

9. Looking to the facts and circumstances of the case and the findings arrived at by learned Tribunal, the learned Tribunal is found to have dealt with each and every aspect of the matter, and has rightly passed the impugned judgment and award. I am in unison with the findings arrived at by the learned Tribunal. Hence, I do not think it just and proper to interfere with the impugned judgment and award passed by the Tribunal, and thus all the four civil misc. appeals having no force, are hereby dismissed after confirming the impugned judgment and award passed by the learned Tribunal.