
(2001) 02 RAJ CK 0076

In the Rajasthan High Court

Case No : Civil Special Appeal No. 18 of 1994

Smt. Nenu Devi and Others

APPELLANT

Vs

United India Insurance Company Ltd. and Another

RESPONDENT

Date of Decision : 01-02-2001

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)

Citation : (2002) 2 ACC 32 : (2001) 2 RLW 772 : (2001) 2 WLN 12

Hon'ble Judges : Bhagwati Prasad, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : Vijay Bishnoi, for the Appellant; R.K. Mehta for Insurance Company, B.L. Tinwari and Rajesh Panwar for Owner, for the Respondent

Judgement

Lakshmanan, C.J.

(1). Heard Shri Vijay Bishnoi, counsel for the appellants, Shri R.K. Mehta, counsel for the Insurance Company and Shri B.L. Tinwari alongwith Mr. Rajesh Panwar, counsel for the owner.

(2). The claimants aggrieved against the judgment in S.B. Civil Misc. Appeal No. 145/1990 dated 4th September, 1991 preferred this special appeal. The S.B. Civil Misc. Appeal was filed by the claimants against the award dated 16.2.1990 passed by the Motor Accident Claims Tribunal, Barmer in case no. 37/88. Two appeals were filed before the learned Single Judge, one against the interim award dt. 14.12.1988 and another against the final award dt. 16.2.1990. The Tribunal awarded a compensation to the tune of Rs. 1,54,000/- and has made liable the Insurance Company to the extent of Rs. 1,50,000/- and owner and driver were made liable to the extent of Rs. 4000/-. This apportionment was challenged by the Insurance Company.

(3). According to the Insurance Company, the Insurance Company is liable to pay only Rs. 50,000/- under the terms of policy Ex.A/1 under Sec. 92(2) of the Act of 1939, therefore, it was submitted that error committed by the Tribunal should be

corrected by this Court by invoking provisions of Order 41 Rule 33 CPC, even if no appeal or cross-objection had been filed by the claimants. The learned Single Judge on a consideration of the material placed before him came to the conclusion that the owner of the tractor and the Insurance Company are held jointly and severally liable to pay the amount of compensation. The Insurance Company was made liable to the extent of Rs. 50,000/- with interest and for remaining amount of Rs. 1, 04,000/- with interest, respondent No. 4 Kanaram was made exclusively liable. To this extent award of the Motor Accident Claims Tribunal was modified.

(4). Being aggrieved, the claimants have preferred the present appeal. At the time of hearing, Mr. Bishnoi invited our attention to Sec. 95(2)(c) of the old Act and submitted that Sec. 95(2)(c) being a residuary clause the liability of the Insurance Company cannot be limited and that the vehicle involved in the accident being a tractor, the same cannot be said to be a goods vehicle or a passenger vehicle and it has to be vehicle of any other class as covered by Sec. 95(2)(c). In support of his contention, Mr. Bishnoi placed reliance on the order passed by the learned Single Judge of this Court reported in *Rajendra Kumar vs. Suman Lata Chaturvedi and Others* (1). The learned Single Judge in the facts and circumstances of the case held that tractor is neither a goods vehicle nor a vehicle which carries passengers; it is a vehicle of any other class where the limit of liability is the amount of liability incurred.

(5). We are of the opinion that this contention cannot at all be countenanced in view of the judgment of the Supreme Court reported in *New India Assurance Co. Ltd. vs. Ramlal and Others* (2), which was also cited by the learned counsel for the Insurance Company. In that case, the Supreme Court held that insurance policy produced in that case provides that the insurance company had undertaken to indemnify the insured to the extent of Rs. 50,000/- and therefore, liability of the Insurance Company is limited to that extent only and the High Court was in error in holding that insurer was liable to pay the entire amount of compensation which was more than Rs. 50,000/- on the basis that the policy was one under which the insurer had undertaken to bear an unlimited liability. We have perused the policy Ex. A/1. It is seen from the policy that Insurance Company has undertaken the liability only to the tune of Rs. 50,000/- and therefore in view of the terms of policy, we are of the opinion that Insurance Company cannot be made liable to an unlimited liability as contended by the learned counsel for the appellants-claimants. Mr. Bishnoi has argued that provisions of the Motor Vehicles Act are socially beneficial legislation and therefore, Insurance Company should be made liable to unlimitedly. It is also argued that the tractor is a heavy vehicle. We are unable to appreciate both above contentions. In this case, the Insurance Company has produced insurance policy which provides that Insurance Company had undertaken to indemnify the insured only to the extent of Rs. 50,000/-. Under such circumstances, we are of the opinion that the order passed by the learned Single Judge is correct and there is no reason to interfere in regard to the apportionment of the liability on

the Insurance Company and also on the owner and driver of the vehicle.

(6). Accordingly, the appeal fails and is dismissed.