
(2005) 02 RAJ CK 0060

In the Rajasthan High Court

Case No : Civil Special Appeal No. 94 of 2003

Surjit Kaur (Smt.) and Others

APPELLANT

Vs

The New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 28-02-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2007) ACJ 72 : (2005) 2 RLW 1041 : (2005) 2 WLC 562

Hon'ble Judges : Shiv Kumar Sharma, J; Shashi Kant Sharma, J

Bench : Division Bench

Advocate : H.M. Bhargava and Rakesh Bhargava, for the Appellant; Vinod Tyagi, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—Instant appeal impugns the judgment dated April 5, 2002 whereby the learned Single Judge allowed the misc. appeal preferred by respondent Insurance Company and dismissed the claim petition and the award of the Motor Accident Claims Tribunal Dausa.

2. Claimant appellants, who were the legal heirs of Darshan Singh, filed the claim petition in respect of the death of Darshan Singh who died in an accident on June 10, 1990. It was stated in the claim petition that while Darshan Singh was going in truck No. RSB 6633, another truck No. RNG 1944 came from behind and overtook the truck No. RSB 6633. In the process of overtaking, the driver of the said truck without giving any signal suddenly applied breaks. The truck No RNG 1944 was loaded with iron girders, which were protruding outside the truck pierced into the chest of Darshan Singh who was sitting on Khalasi side, as a result of which Darshan Singh died. At the time of death the age of Darshan Singh was 46 years and he was earning Rs. 15000/- per month being a transporter. The respondents filed written statement and on the basis of pleadings of parties as many as 6 issues were framed. Claimant appellant Smt. Surjit Kaur examined herself as AW.1 and produced three more witnesses in

evidence. No witness in rebuttal was however examined on behalf of the respondents. Learned Tribunal after considering the material on record awarded Rs. 8,70,000/- and the interest at the rate of 12% with effect from July 13, 1990. Being aggrieved of the award the respondents Driver, Vehicle owner and Insurance Company filed the appeal before the learned Single Judge who vide impugned judgment allowed the appeal and dismissed the claim petition of the claimants.

3. A preliminary objection has been raised on behalf of the appellants that the misc. appeal against the award of the Tribunal was not maintainable jointly in view of the ratio indicated in Chinnama George and Others Vs. N.K. Raju and Another, In the said judgment their Lordships of the Supreme Court indicated that the appeal challenging the quantum of compensation if filed jointly by the owner and insurer was incompetent. It was observed as under:-

"The impugned judgment does not reflect any grievance of the owner or even that of the driver of the offending bus against the award of the claims Tribunal. The insurer by associating the owner or driver in the appeal, when the owner or driver is not aggrieved person cannot be allowed to mock at the law which prohibits the insurer from filing any appeal except on the limited grounds on which it could defend the claim petition. We cannot put our stamp of approval as to the validity of the appeal by the insurer merely by associating the insured. Provision of law cannot be undermined in this way. We have to give effect to the real purpose of the provision of law relating to the award of compensation in respect of the accident arising out of the use of motor vehicles and cannot permit the insurer or give him right to defend or appeal on grounds not permitted by law by a back door method."

4. Having heard the submissions and scanned the material on record we find that none of the grounds as given in Sub-section 2 of Section 149 of the Motor Vehicles Act exist for the respondents to defend the claim petition and misc. appeal was incompetent in view of Sub-section (2) of Section 149. The Insurance Company by associating the owner and driver of the vehicle could not prefer joint appeal. The provision of Sub-section 2 of Section 149 of the Motor Vehicles Act escape attention of the learned Single Judge. In this view of the matter, we have no option but to allow the special appeal and set aside the impugned judgment of learned Single Judge.

5. Resultantly, the special appeal stands allowed, the impugned judgment of learned Single Judge dated April 5, 2002 is set aside and the award dated November 3, 1992 of the Claims Tribunal Dausa stands restored. No costs.