
(2014) 07 RAJ CK 0113
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 2025/2014

The National Insurance Company Ltd.	APPELLANT
Vs	
Seema	RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2014) 07 RAJ CK 0113

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : R.P. Vijay, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Alok Sharma, J.—This misc. appeal u/s 173 of the Motor Vehicles Act, 1988 (hereinafter "the 1988 Act") has been filed by the appellant--insurance company against the award dated 19-2-2014 passed by the Motor Accident Claims Tribunal, Alwar (hereinafter "the claimant"). Thereby the Tribunal has awarded to the respondents--claimants (hereinafter "the claimants") compensation for a sum of Rs. 7,01,000/- along with interest at the rate of 7.5% from 27-4-2009, i.e. the date of filing the claim petition till the date of payment.

2. Heard learned counsel for the appellant insurance company and perused the impugned award dated 19-2-2014.

3. The facts of the case are that the claimants filed a petition u/s 166 of the 1988 Act for the death of Anil Kumar, in an accident of 6-2-2009, while the deceased along with Anand Kumar were travelling on motor cycle RJ-02/SH-1195 from Indra Colony to Bahala. The accident was caused by the motor cycle dashing with a tractor bearing registration No. RJ-02/1R-5776, insured with the appellant insurance company, when the tractor stopped suddenly near Bahala stand. In the accident Anil Kumar died on the spot and Anand Kumar sustained grievous injuries. FIR No. 53/2009 was registered at Police Station MIA Alwar.

Following investigation challan was filed against the driver of tractor respondent Dayaram for rash and negligent driving. In the circumstances, the claimants as legal representatives of Anil Kumar filed a claim petition before the Tribunal claiming compensation of Rs. 55,00,000/-.

4. The claim petition was opposed by the respondents driver and owner of the tractor in question, as also by the appellant insurance company--the insurer of the offending vehicle. It was submitted that tractor in question was stationary when the motor cycle dashed with the same. Negligence was attributed to the person riding the motor cycle. Dismissal of the claim petition was sought.

5. The learned Tribunal after framing issues, considering the oral and documentary evidence on record found that the driver of the tractor in question insured with the appellant insurance company was responsible for the accident. The Tribunal rejecting the defence of the insurance company affixed the liability for payment of compensation, found due to the claimants, on the insurance company. On the issue of quantum of compensation the learned Tribunal finding the age of the deceased to be 25 years, at the time of accident, and assessing his income to be Rs. 4000/- per month (Rs. 48,000/- p.a.) after deducting 1/3 amount for the personal expenses of the deceased found loss of dependency at Rs. 32,000/- p.a. Applying the multiplier of 18 in view of the age of the deceased as 25 years compensation of Rs. 5,76,000/- was assessed. Rs. 25,000/- for funeral expenses and Rs. 1 lac for loss of consortium for the claimant wife was also awarded. Thus Rs. 7,01,000/- plus interest, as compensation in the aggregate was determined.

6. A perusal of the impugned award passed by the Tribunal shows that the Tribunal has considered all aspects of the case i.e. the oral and documentary evidence of the claimants and awarded a just, adequate and fair compensation to the claimants. It was incumbent upon the appellant insurance company to satisfy this court that the compensation determined by the Tribunal was not just and adequate. The appellant insurance company has failed to discharge the burden. The impugned award, which is a well considered one requires no interference by this court.

7. I also find no substance in the submission of learned counsel for the appellant insurance company that as the tractor in question was not in motion when the motor cycle dashed against it, no negligence could be attributed to the tractor driver and no compensation was payable. It was submitted that in any event the motor cycle driver was also negligent and contributory negligence ought to have been factored in by the Tribunal while affixing liability on the owner/driver of the insured tractor and by extension on the insurer thereof i.e. the appellant company. I find no force in the contention.

8. From the facts on record before the Tribunal it was clear that the driver of the tractor applied brakes suddenly. That was on a February night when it would be dark. The Tribunal has found that sudden braking on the road is rash and

negligent driving indeed. The motor cycle behind the tractor, which was not proved to have any functioning tail lights thus rammed into it with little time for its rider to take evasive action. I also find no force in the contention of the counsel for the appellant insurance company that the findings of the Tribunal on the offending vehicle (tractor) braking suddenly and causing the accident are liable to be set aside because the finding was contrary to the allegation in the FIR with regard to the incident lodged by the father of the deceased where it was alleged that the motor cycle rammed into a standing tractor. The function of the Tribunal is not that of a civil court in an adversarial context. The Tribunal is to actively engage itself in determining the true cause of the accident. In its efforts to do justice the Tribunal can arrive its own conclusion as to the cause of the accident and the party negligence on the evidence before it. Aside of the above the putative contradiction is based on a degree of motion i.e. whether the tractor was still or went still on braking. Nothing substantial turns on the alleged variation in the state of the motion of the tractor as alleged in FIR by the father of the deceased on the one hand and as found by the Tribunal on evidence before it on the other. It is quite plain that the father of the deceased was not an eye witness to the accident and the FIR was lodged on conjecture as to how the accident may have taken place. The evidence before the Tribunal was more concrete having been subjected to cross examination and withstanding it. No other argument was raised by the counsel for the appellant.

9. The Hon''ble Apex Court in the case of Narbada Prasad Vs. Chhaganlal and Others, has stated that the practice of the appellate court is uniformly to give the greatest assurance to assessment of evidence by the trial court. The burden is on the appellant and it is for him to show how the judgment under appeal is erroneous or wrong on facts and/or law and why the compensation on case of claim under the Act of 1988 wrong in the facts of the case. On this test for interference in appeal, the appellant insurance company has failed. In my considered opinion, the compensation awarded by the Tribunal is just, fair and adequate, which requires no interference by this court.

10. The miscellaneous appeal is therefore without any force. Dismissed.