

(2002) 01 RAJ CK 0161

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 38 of 1994

The New India Assurance Company Ltd.

APPELLANT

Vs

Khima Ram and Others

RESPONDENT

Date of Decision : 08-01-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2003) 1 RLW 493

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Advocate : R.K. Mehta, for the Appellant; Heera Singh, for the Respondent

Final Decision : Dismissed

Judgement

Panwar, J.—This appeal is directed against the judgment and award dt. 12.10.1993 passed by Motor Accident Claims Tribunal, Ball (hereinafter referred to as "the Tribunal"), whereby the Tribunal awarded a sum of Rs. 25,000/- as compensation in favour of respondent-claimants and against respondent No. 4 Mohan Ram, respondent No. 5 Poona Ram and the appellant, The New India Assurance Company Ltd. (hereinafter referred to as "the insurer")

2. I have heard learned counsel for the parties. Perused the judgment and award impugned as also the record of the Tribunal.

3. Briefly stated facts necessary for disposal of the present appeal are that on 8.5.1987, deceased Smt. Kesi was travelling on tractor No. RJT-3780 attached with trolley No. RJT-5432. The said tractor was driven by its driver, respondent No. 4\$ Mohan Ram and was owned by respondent No. 5, Poona Ram. The case as set up "by the claimants is that the driver of the tractor, respondent No. 4 was driving the tractor rashly and negligently and at a great speed. Despite the request of occupants to drive the tractor at slow speed, the driver did not take care and ultimately due to rash and negligent driving of the said tractor attached with trolley, turned turtle. Due to this accident, Kesi and few others, sustained

injuries and ultimately Kesi succumbed to the injuries. The legal representatives of deceased, Kesi filed a claim petition for compensation before the Tribunal. The Tribunal vide judgment impugned, awarded a sum of Rs. 25000/- as compensation in favour of legal representatives of the deceased. The claimants have established by statements of AW.1 Kheema Ram, AW.2 Chhoga Ram and AW.3 Ganga Singh and by documentary evidence that the deceased Kesi died due to the injuries sustained in the accident as on the relevant date of the accident, she was occupant of the said tractor attached with trolley. Due to rash and negligent driving of the tractor by its driver, respondent No. 4 Mohan Ram, the said tractor turned turtle and deceased Kesi was crushed under the said tractor and ultimately, she succumbed to the injuries. Evidence led by the claimants remained uncontroverted inasmuch as the appellant-insurer and respondents No. 4 and 5 did not produce any evidence in rebuttal. The Tribunal on proper appreciation of the evidence produced before it, reached to the conclusion that the said accident was due to rash and negligent driving of the tractor by its driver. The Tribunal also reached to the conclusion that on the relevant date of the accident, the said tractor was insured with the appellant-insurer and accordingly, the Tribunal computed the compensation to the extent of Rs. 25000/- in favour of the claimants and against the driver, owner and appellant-insurer.

4. Learned counsel for the appellant-insurer contended that the tractor was insured with the appellant-insurer and the trolley attached to tractor was riot insured with the appellant. Before the Tribunal, the appellant-insurer has not placed any material to substantiate this contention. The Tribunal reached to the conclusion that the said trolley was attached to the tractor and the tractor was validly insured with the appellant-insurer. The trolley attached to the tractor was being pulled by the tractor and, therefore, it cannot be said that the accident was not outcome of the negligent driving of the tractor. More so, the appellant-insurer has not led any evidence to establish any breach of terms and conditions of the policy. Neither terms and conditions were pleaded nor were proved by the insurer. More so, the trolley without being attached to the tractor, cannot be pulled and as such, vehicle involved in the accident is the tractor, which was validly insured with the insurance company on the relevant date of the accident.

5. This Court in Sajid Mian v. Ganga and Ors. (1) held that the trolley or trailer can only move with the help of the tractor. In the present case the Tribunal on appreciation of the evidence produced by the respondent claimants categorically held that the accident in question was caused due to driving of the tractor rashly and negligently by its driver, on account, of which, the trolley over turned and occupants Thereof sustained fatal injuries. The said tractor was duly insured with the appellant on the relevant date of accident and, therefore, in my considered view, the Tribunal has correctly held the appellant liable for the compensation to the victim or the legal representatives of the victim of accident.

6. In this view of the matter, I find no error In the judgment and award

impugned. Consequently, this appeal fails and is dismissed. No order as to costs.