

(2013) 02 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 3269 of 2005 and Civil Miscellaneous Stay Application No. 2836 of 2005

The United India Insurance Co. Ltd.

APPELLANT

Vs

Rama and Others

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Citation : (2013) 02 RAJ CK 0030

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : Virendra Agarwal, for the Ins. Co, for the Appellant; Anil Jain, Counsel for the Claimants, for the Respondent

Final Decision : Dismissed

Judgement

Mahesh Chandra Sharma, J.—Since both these appeals have been filed against one judgment and award passed by MACT, hence the arguments have been heard together and they are being decided by this common judgment. Brief facts of the case are that on 17.9.2000 when the deceased Gajsingh was traveling on the mudguard of tractor no. RJ-11R-1776, being driven by Ashok, due to the negligence of the driver of tractor, Gajsingh fell down and the wheel of tractor crossed over him, as a result of which Gajsingh died in Gwalior Hospital.

2. Thereafter claim petition was filed, notices were issued, issues were framed, evidence was recorded and after hearing both the sides, the learned Tribunal decreed an amount of Rs. 3,04,000/- in favour of claimants and against the non claimants.

3. The Insurance Co. as well as the owner of the offending vehicle have filed the aforesaid appeals challenging quantum of compensation.

4. Learned counsel for the Insurance Co. has contended that the learned Tribunal committed error in deciding issue no. 4 and 5 against the Insurance Co. holding that the insurer is liable to satisfy the claim qua third party and can recover the

amount thereafter from the owner because it is settled law that the insurer is not liable to cover the risk of passengers travelling in the tractor. Hence, the impugned award deserves to be quashed and set-aside.

5. E Converso, the learned counsel for the owner of the offending vehicle contended that the burden to prove that the alleged breach of the condition of the policy was with the knowledge of the owner and that it was also willful lies upon the Insurance Co., but in this case the Insurance Company has miserably failed to discharge the said burden.

6. Having heard the learned counsel for the parties and carefully perused the impugned award including the relevant material on record, it is noticed that the learned Tribunal having dealt with each and every aspect of the matter, rightly passed the impugned award. The impugned award is found not to have suffered from any legal flaw, rather it is found to be just and apposite, based on cogent finding, with which I fully concur.

7. For the reasons stated, I do not find any ground to interfere in the impugned award passed by the learned Tribunal and the appeals filed by the Insurance Co. as well as by the owner of the offending vehicle being bereft of any merit deserve to be dismissed, which stand dismissed accordingly. Stay applications also stand dismissed.