
(2022) 05 RAJ CK 0068

In the Rajasthan High Court

Case No : S.B. Civil Miscellaneous Appeal No. 549, 678 Of 2021

United India Insurance Co. Ltd And Others

APPELLANT

Vs

Maina And Others

RESPONDENT

Date of Decision : 18-05-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2022) 05 RAJ CK 0068

Hon'ble Judges : Rameshwar Vyas, J

Bench : Single Bench

Advocate : N.K. Joshi, Ravi Panwar

Final Decision : Dismissed

Judgement

Rameshwar Vyas, J

Two appeals have been preferred under Section 173 of Motor Vehicles Act, 1988 challenging the award dated 27.1.2021 passed by the Motor Accident Claims Tribunal, Pali in MACT Case No.230/2017, whereby the learned Tribunal while allowing the claim petition of the claimants, awarded Rs. 12,04,000/- as compensation with interest @ 9% per annum.

Appeal No. 549/2021 has been filed by the non-claimant – Insurance Company with the prayer to set aside the award and exonerate it from the liability imposed by the learned Tribunal, whereas, Appeal No. 678/2021 has been filed by the claimants for enhancement of the quantum of the award passed by the learned Tribunal.

Since both the appeals arise out of the same award passed by the Motor Accident Claims Tribunal, Pali, they are being decided by this common order.

Brief facts of the case are as under:

As per the claim petition filed by the legal representatives of the deceased Parasmal, who died on 5.5.2017 at about 1:00 PM while engaging in work of

unloading pipes being carried out by Hydro Crane driven by the driver Shanker Lal – non-claimant No.1. It is averred in the claim petition that driver of the Crane committed negligence while unloading the pipes on account of which upper portion of the pipe came in contact with the electric lines. The deceased was holding the lower portion of the pipes who was electrocuted. He died during the treatment in the hospital. Claimants who are wife and three minor children and mother of the deceased, filed claim petition against the driver of the Crane as also against registered owner of the Crane and insurer of the Crane i.e. United India Insurance Company.

As per reply of non-claimants, accident occurred on account of negligence of Parasmal himself.

In reply, Insurance Company stated that the deceased was employee of Contractor Vishnu Muglia, who avoided liability with the connivance of police. FIR has been lodged after manipulating the facts by which Crane driver and registered owner were falsely involved. Crane was not involved in this accident. The deceased died on account of rolling of big pipes upon him. In alternate, pleading of infringement of policy conditions was also taken. The insurance company admitted the fact that this Crane was insured with him for the period from 20.12.2016 to 19.12.2017.

Learned Tribunal after making inquiry, allowed the claim petition and awarded Rs. 12,04,000/- with interest @ 9% per annum for which all non-claimants were held responsible jointly and severally. Learned counsel for the appellants has also drawn attention of this Court towards the India Motor Tariff, 47 (here-in-afterwards referred to as 'IMT-47').

Heard the learned counsel for the parties finally at admission stage and perused the material available on record.

During the arguments, learned counsel for the appellant submits that the deceased was employee of respondent no.1 Kamaljeet Singh Khera. He died during the course of his employment. Since deceased was not a third party, the insurance company was not liable to indemnify the owner.

On the other hand, learned counsel for the respondent has submitted that the deceased was not occupant in the vehicle. He was also not in the employment of Kamaljeet Singh Khera. He comes within the category of third party and the insurance company of the insured Crane has been rightly held liable to pay the compensation.

After perusal of the record, it reveals that in reply to the claim petition, the insurance company has not raised any objection regarding the deceased not coming in the category of third party. In appeal memo also, this ground has not been taken as ground of appeal. In view of above facts, the appellant is not permitted to raise this contention first time in this appeal.

Whether the deceased was a third party or not, depends upon the fact that at

the time of accident he was working as an employee of the insured or not. Since, the insurance company itself in its reply to the claim petition averred that the deceased was labourer under Contractor Vishnu Muglia. Looking to the defence raised by the insurance company, the contention raised by it in this appeal cannot be termed as pure question of law. Hence, this Court is unable to accept the contention of the learned counsel for the appellant that the deceased was not a third party.

Learned counsel for the appellant further submits that the cause of death of deceased was electrocution, hence, Electricity Board should have been made party. This contention of the learned counsel for the appellant is also not acceptable. The genesis of the accident was negligence on the part of the driver of Hydro Crane. While unloading the pipes, the pipes came in contact with the electricity wires due to which the deceased who was facilitating the unloading of pipes came in touch of the pipes and got electrocuted.

There is no substance in other grounds raised by the learned counsel for the appellant in the memo of appeal.

Learned Tribunal after appreciating the evidence determined the amount of compensation, which is just and fair. Hence, the appeal filed by the Insurance Company is liable to be dismissed.

Regarding appeal filed by the claimants for enhancement of the quantum of compensation, the impugned judgment has been based on the evidence produced by the parties. Learned Tribunal has awarded loss of consortium following the law enunciated by Large Bench of the Hon'ble Supreme Court in the case of National Insurance Company vs. Pranay Sethi & Ors. : AIR 19 2017 SC 5157, which does not calls for any interference. The quantum of compensation awarded by the learned Tribunal as compensation is just and fair. There is no merit in the appeal of the claimants, and the same is also liable to be dismissed.

Accordingly, both the appeals being devoid of merit stand dismissed.