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(1990) 10 RAJ CK 0010

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 90 of 1990

United India Insurance Co. Ltd. APPELLANT

Vs

Arjunlal and Others RESPONDENT

Date of Decision : 24-10-1990

Acts Referred:

Motor Vehicles Act, 1939 — Section 96(2)

Citation : (1991) ACJ 557

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Advocate : R.K. Mehta, for the Appellant; J.M. Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

Milap Chandra, J.

1.This appeal has been filed against the award passed by the Motor Accidents Claims Tribunal, Jodhpur, dated January 12, 1990 by which a sum of Rs. 48,000/- has been awarded as compensation to the petitioner-respondent Nos. 1 and 2. The facts of the case giving rise to this appeal may be summarised thus.

2. On May 30, 1986 at about 6.15 p.m., Chandra Prakash, 9 years old, was going along with his mother on the Bhagat Ki Kothi Road, Jodhpur. From the opposite direction, truck No. RJC 2283 came with an excessive speed and dashed against Chandra Prakash. As a result thereof, he died on the spot. His parents filed an application u/s 110-A, Motor Vehicles Act, 1939 (hereinafter to be called ''the Act''). The Tribunal awarded Rs. 15,000/- to the petitioners u/s 92-A of the Act. After holding necessary enquiry, the said award was given by the Tribunal.

3. At the admission stage, the respondent Nos. 1 and 2 put their appearance through Mr. J.M. Bhandari, Advocate.

4. A preliminary objection has been taken by the learned counsel for the respondent Nos. 1 and 2 that in view of the provisions of Section 96 (2) of the

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Act the insurance company cannot challenge the award on merits and as such the appeal is not maintainable. He relied upon Sushila and Others Vs. Succha Singh and Others Oriental Fire and General Insurance Company Ltd. Vs. Rambha Barrick and Others, and National Insurance Co. Ltd. Vs. Tulsi Devi and Others,

5. There is a great force in the said preliminary objection. A perusal of the memorandum of appeal shows that the award has been challenged on merits, i.e., negligence and rashness on the part of the driver Gangaram (respondent No. 3) is not proved and the amount of compensation awarded is excessive and exorbitant. His Lordship Hon"ble Mr. JusticeKM. Kasliwal (as he then was) has observed in Sushila and Others Vs. Succha Singh and Others as follows:

(7) I may first deal with the preliminary objection raised by Mr. Mathur that appeal Nos. 80, 81 and 82 of 1988 filed by the driver, owner and the insurer are not maintainable. It was argued that so far as driver and owner are concerned, they do not fall within the meaning of aggrieved persons inasmuch as the liability to pay the compensation has been fixed on the insurance company. As regards the insurance company it is submitted that it can only raise such grounds which are permissible u/s 96 (2) of the Motor Vehicles Act, 1939 (hereinafter called ''the Act''). It is submitted that the insurance company has no right to contest the claim petition nor to challenge the award in appeal except on the grounds available under the statute. Mr. Mathur in support of his contention placed reliance on the following authorities:

(i) Kantilal & Bros. v. Ramaram Debi 1980 ACJ 501 (Calcutta).

(ii) United Fire and General Insurance Co. Ltd. and etc. Vs. Lakshmi Shori Ganjoo and Others, etc.,

(iii) United India Fire and General Insurance Co. Ltd., Kanpur and Another Vs. Gulab Chandra Gupta,

(iv) P.K. Krishnan Nair and Others Vs. K. Karukaran Nair and Others,

(v) National Insurance Co. Ltd. Vs. Tulsi Devi and Others,

(9) National Insurance Co. Ltd. Vs. Tulsi Devi and Others, has already considered the above question in detail and held that the insurance company is permitted by the statute to raise only such defences which are permitted under the provisions of Section 96 (2) of the Act and nothing more can be added to the same.

(10) A Division Bench of the Allahabad High Court in United India Fire and General Insurance Co. Ltd., Kanpur and Another Vs. Gulab Chandra Gupta, placed reliance on the decision of the Calcutta High Court in Kantilal and Bros. and Another Vs. Ramarani Debi and Others, as well as the decision of their Lordships of the Supreme Court in British India General Insurance Co. Ltd. v. libar Singh 1965 ACJ 1 (SC). It was held that the nature of the grounds taken by the owner would be different from those taken by the insurer. Thus, it would not be open to the insurer to challenge the award on the same grounds as are open

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to the owner of the vehicle. There are two exceptions to this rule. First, where the right to contest is reserved in the policy in favour of the insurer and second, where the person against whom the claim has been made, has failed to contest the claim, a right has been granted to the insurer u/s 110-C (2-A) (ii) of the Act to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made. It was thus held that a joint appeal by the insurer and the owner of the vehicle is not maintainable. It was further held that so far as the insurer is concerned, it can only take such defence in an action u/s 110-A of the Act as is available to it u/s 96 (2) of the Act. The same view has been taken in the other cases cited by Mr. Mathur, learned counsel for the claimants.

Earlier judgment of this court in National Insurance Co. Ltd. Vs. Tulsi Devi and Others, has been referred to in the above quoted para No. 9. It has also been held in Oriental Fire and General Insurance Company Ltd. Vs. Rambha Barrick and Others, that an insurance company in its appeal cannot raise the points which are not covered u/s 96 (2) of the Act. Admittedly, the points raised in the present memorandum of appeal are not covered u/s 96 (2) of the Act. As such tne appeal deserves to be dismissed.

6. Consequently, the appeal is dismissed with no order as to costs.

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