(2002) 02 RAJ CK 0138

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1035 of 2001

United India Insurance Co. Ltd. APPELLANT

Vs

Babulal Saini and Another RESPONDENT

Date of Decision : 13-02-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2002) 4 RCR(Civil) 118 : (2002) 3 RLW 1790 : (2003) 2 WLN 593

Hon'ble Judges : Gyan Sudha Mishra, J

Bench : Single Bench

Advocate : Tripurari Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Misra, J.—This appeal has been filed by the appellant-United India Insurance Company Ltd. challenging the award dated 26.5.2001 passed by the Motor Accident Claims Tribunal, Kotputali, District Jaipur by which an amount of Rs. 1,25,260/- (Rs. One lac Twenty Five thousand two hundred sixty) has been ordered to be paid to the claimant-respondent No. 1 alongwith interest. Learned counsel for the appellant-Insurance Company has assailed this award not on the ground of its quantum but on the ground that the driver of the vehicle was at fault in driving the vehicle and therefore the Insurance Company is not liable to pay the amount of compensation.

2. It is difficult to accept this argument for in the prevailing facts and circumstances of this case, it cannot be held that the driver had not taken normal precautions while driving the vehicle as he was having a duly valid license and was also driving normally on the road. Yet if the accident took place, it cannot be held that the driver of the vehicle was grossly negligent so as to exonerate the Insurance Company from paying the amount of compensation. It also cannot be denied that an accident in most cases takes place accidently by force of circumstance and hence no intention can be attributed to the driver that he caused the accident deliberately so as to exonerate the Insurance Companies

from paying the amount of compensation unless specific plea of contributory negligence against the driver is raised and proved. In absence of this, a casual plea taken by the Insurance Company that the driver of the vehicle was negligent in driving the vehicle cannot be accepted. Rash and negligent driving of a vehicle is no doubt a criminal offence for which a driver is liable for prosecution but to contend in a claims case without evidence that the driver was negligent in driving the vehicle which caused the accident, would be outrageous for if this arguments were to be accepted, under no circumstance any Insurance Company can ever be held liable to pay the amount of compensation.

3. It cannot be denied that no issue in this case on the question of contributory negligence on the part of the driver of the vehicle which was hit, was framed before the Tribunal and in absence of a specific plea raised by the Insurance Company before the Tribunal in this regard, it cannot be allowed to raised it before the appellant forum. Although the proceedings before a claims Tribunal is summary in nature and the strict rules of evidence and procedure may not be insisted upon yet if evidence regarding contributory negligence on the part of the driver which caused the accident is totally missing, the appellate Court cannot be expected to enter into a scrutiny of the same. Hence this argument raised by the appellant is not fit to be sustained. The appeal therefore stands dismissed.