
(2008) 01 RAJ CK 0107

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 693, 694 and 695 of 2001

United India Insurance Co. Ltd.

APPELLANT

Vs

Bhata Ram and Others

RESPONDENT

Date of Decision : 25-01-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4, Order 22 Rule 9
Limitation Act, 1963 — Section 5

Citation : (2008) 2 WLN 311

Hon'ble Judges : Manak Mohta, J

Bench : Single Bench

Judgement

Manak Mohta, J.—Heard.

2. These three appeals have been filed by the Insurance Company against the common judgment and Award dt. 31.01.2001 passed by the Judge, Motor Accident Claims Tribunal No. 1, Jodhpur (hereinafter referred to in short as 'the Tribunal'), by which the learned Tribunal has exonerated the Insurance Company from its liability to pay the compensation to the claimants on the basis that on the fateful day the driver of the offending vehicle was not having a valid and effective driving licence. The learned Tribunal has further directed that initially the payment of compensation would be made by the Insurance Company but later on that amount would be recoverable from the owner of offending vehicle in the same proceedings. Thus, the appellant-Insurance Company being aggrieved by the order made in the judgment and Award under appeal, prefers these misc. appeals before this Court.

3. During the pendency of the aforesaid appeals, respondent No. 4 the owner of the bus dies, therefore, in all the appeals the Insurance Company filed separate applications under Order 22 Rules 4 and 9 of C.P.C. for bringing on record the legal representatives of respondent No. 4 and also for setting aside the abatement of appeal along with an application u/s 5 of the Limitation Act stating therein that respondent No. 4 Mangal Singh S/o Lakshman Singh has expired

way back in the year 2004. It was further stated in the applications that the factum of death of respondent No. 4 was conveyed by the learned Counsel for the respondent on 11.07.2006 and thereafter the applications could not be filed earlier and were filed on 26.07.2006 for taking on record the legal representatives of deceased-respondent No. 4.

4. During the course of arguments, it was submitted on behalf of the appellant-Insurance Company that due to inadvertence the applications could not be filed in time, as such, a liberal view may kindly be taken and it was prayed that the legal representatives of respondent No. 4 be ordered to be taken on record and the abatement of appeals be set aside and the aforesaid applications may kindly be allowed. Learned Counsel for the appellant in support of his contentions placed reliance on the judgment rendered in the case of S. Amarjit Singh Kalra (dead) by Lrs. and Others and Smt. Ram Piari (dead) by L.Rs. and Others Vs. Smt. Pramod Gupta (dead) by Lrs. and Others,

5. Learned Counsel for the respondents refuted the contentions placed with regard to the applications filed by the Insurance Company under Order 22 Rules 4 and 9 of C.P.C. and the application filed u/s 5 of the Limitation Act and submitted that the sole contesting respondent had expired long back and an information in that respect was given to the appellants much earlier during the pendency of the proceedings of other appeals filed on behalf of the owner of the truck but deliberately and carelessly no steps were taken for bringing on record the legal representatives of respondent No. 4 and now at this belated stage the application filed by the Insurance Company are not acceptable and urged that the same be rejected.

6. After considering the submissions and perusing the impugned judgment and Award, I do not find any merit in these appeals. The learned Tribunal has discharged the appellant from the liability of paying compensation, therefore, without expressing anything on the merit of the case, the main appeals deserve to be dismissed. Furthermore, the applications filed under Order 22 Rules 4 and 9 of C.P.C. along with the application u/s 5 of the Limitation Act have been filed after an inordinate delay, for which no satisfactory and cogent reasoning/explanation has been advanced for not bringing the legal representatives of the sole contesting respondent No. 4 on record. Thus, the appeals have already been abated. Further, the proceedings against respondent No. 3 (driver of vehicle) has already been to be dropped and respondents No. 1 and 2 are the proforma-claimant/respondents.

7. In the background of these facts and the authority cited by the learned Counsel for the appellant does not help their contentions, the applications filed by the Insurance Company under Order 22 Rules 4 and 9 of C.P.C. and u/s 5 of the Limitation Act and the appeal deserve to be dismissed as there being no merit in the appeal.

8. Accordingly, the applications filed by the Insurance Company under Order 22

Rules P.C. and u/s 5 of the Limitation Act and the aforesaid appeals stand dismissed. There shall be no order as to costs.