
(2014) 08 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 592 of 2013

United India Insurance Co. Ltd.

APPELLANT

Vs

Laxmi Devi and Others

RESPONDENT

Date of Decision : 28-08-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166 173

Penal Code, 1860 (IPC) — Section 279 304-A 337

Citation : (2015) 3 CDR 1095

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pratap Krishna Lohra, J.

1. Appalled with the award dated 09.01.2013 passed by the Motor Accident Claims Tribunal, Sumerpur (for short "learned Tribunal"), appellant insurer has laid this appeal under Section 173 of Motor Vehicles Act 1988 (for short "the Act of 1988"). By the award impugned, the learned Tribunal has partly allowed the claim petition of the respondent-claimant under Section 166 of the Act of 1988 and awarded compensation to the tune of Rs. 3,76,400/-. Succinctly stated the facts of the case are that the first respondent-claimant filed a claim petition before the learned Tribunal under Section 166 of the Act of 1988 inter alia on the ground that on the fateful day of 17.12.2010 at 8.30 p.m. when her son Hemraj was travelling by tempo No. RJ-06/P-2290, the tempo overturned due to its rash and negligent driving by the second respondent-Rishi Raj. As per the version of the respondent-claimant, the accident was so severe that it caused grievous injuries to Hemraj, which eventually engulfed his life on the way when he was taken to hospital. The incident was reported to the Police Station, Sheoganj and thereupon FIR No. 180/2010 was registered. After investigation, challan was filed against the second respondent, the driver of tempo, under Sections 279, 337 and 304-A IPC. The respondent-claimant quantified the total amount of

compensation for a sum of Rs. 55,18,500/- and for arriving at this figure has asserted in the claim that deceased Hemraj was earning his livelihood by driving and other vocation of artisan and was earning approximately six to seven thousand per month. The owner of the tempo, Pramod Kumar and the appellant-insurance company were also arrayed as non-claimants in the claim petition as the offending vehicle was insured with the appellant-insurance company.

2. The claim petition was jointly contested by the owner and the driver of the offending vehicle and in their reply, denied occurrence of the accident. The factum of insurance of the offending vehicle with appellant-insurance company was admitted in the reply. The appellant-insurance company also joined the issue before the learned trial Court and defended the claim petition. In the reply, the insurance company has also disputed the averments contained in the claim petition including the facts concerning monthly income of the deceased. In return, the insurance company has stated that the deceased Hemraj was not earning anything from driving and on the contrary he was earning very meager amount by tailoring work at his own house. The age of the respondent-claimant was also denied. The insurer has also submitted a specific objection in the reply that driver of the offending vehicle Rishi Raj was not having a valid driving license at the time of accident. On the basis of pleadings of the rival parties, the learned Tribunal framed four issues for determination. For authenticating her claim respondent-claimant herself appeared in the witness box and testified on oath. That apart, nineteen documents were produced in support of claim on behalf of respondent-claimant. The appellant insurance company examined its Administrative Officer Shri Mahesh Kumar as NAW-1 and also placed on record insurance policy and the permit as Annexures-13 and 14 respectively.

3. The learned Tribunal, on analysing the evidence, tendered by the rival parties decided issue No. 1 relating to rash and negligent driving of the offending vehicle in favour of respondent-claimant and against the appellant insurance company as well as other respondents. Switching on to issue No. 2, the learned Tribunal has assessed daily wages of the deceased at the rate of Rs. 135/- commensurating with the prevailing minimum wages. After deducting 1/3rd against the personal expenses of the deceased, the Tribunal has quantified compensation for a sum of Rs. 3,46,000/- only. Besides that adding some other amount of compensation under different heads has finally worked out the total amount to the tune of Rs. 3,76,400/-. For assessment of compensation, the learned Tribunal has relied upon a decision of Hon''ble Apex Court in case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . While dealing with the contention of the insurance company that there was no valid permit for plying tempo beyond municipal limit of Sumerpur, the learned Tribunal has found that on this technical plea insurance company cannot be absolved of its liability. For arriving at this conclusion, the learned Tribunal has placed reliance on a judicial precedents and eventually fastened liability to pay compensation on owner and driver of the offending vehicle as well as insurance company jointly and severally.

4. I have perused the impugned award with birds' eye view.

5. Upon perusal of the impugned award, in my considered opinion, the learned Tribunal has made all endeavor to marshal the facts and has appreciated the evidence available on record appropriately. The finding of learned Tribunal on issue No. 1 is based on appreciation of documentary evidence which was available on record, and therefore, the said finding is neither perverse nor infirm warranting interference by this court. The findings and conclusions of the learned Tribunal on issue No. 2 are per se just and reasonable and in the considered opinion of this Court, the assessment of compensation by the Tribunal is moderate.

6. Looking to the age of the respondent-claimant, the learned Tribunal has also rightly pressed into service multiplier of 11 for assessing the quantum of compensation. From the finding of the learned Tribunal on issue No. 3, it is clearly apparent that appellant-insurance company has failed to discharge its burden in proving that respondent No. 2 Rishi Raj was not having valid driving license to ply offending vehicle at the time of accident. Therefore, in view of the fact that appellant has failed to discharge its burden to prove issue No. 3 there is hardly any ground available to insurance company to assail the impugned award in this appeal. In totality, the instant appeal is bereft of any merit and devoid of any force and the same merits rejection summarily. Resultantly, the appeal fails and the same is hereby dismissed in limine.