(2013) 01 RAJ CK 0072

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 2991 of 2005

United India Insurance Co. Ltd. APPELLANT

Vs

Sita Ram and Others RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Citation : (2013) 01 RAJ CK 0072

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : Virendra Agarwal, for the Appellant; M.M. Ranjan with Mr. Rajat Ranjan for the respondent No. 11 in SBCMA No. 503/2004, Mr. Brij Narain for the respondents 1 to 8 in SBCMA No. 503/2004 and Mr. Rohan Jain for the respondent No. 9 in SBCMA No. 503/2004, for the Respondent

Final Decision : Dismissed

Judgement

Mahesh Chandra Sharma, J.—These two appeals have been filed against the award dated 2.1.2003 passed by Judge, Motor Accident Claims Tribunal, Kota, in MACT cases No. 177/2000 and 454 of 2000 whereby claim petition of the claimants were allowed and they have been granted compensation in the amount of Rs. 3,08,100 and Rs. 43,100/- respectively. The facts have been set out in the impugned judgment and hence I am not repeating the same here except wherever necessary.

2. In SBCMA No. 2991 of 2005 injured claimant filed the claim petition No. 454/2000 for the injuries received by him in the accident took place on 29.1.2000. The MACT after considering the evidence of both the parties awarded Rs. 43,100/- to the claimant. In SBCMA No. 503/2004 the claimants, who are respondents 1 to 8 in the claim petition No. 177/2000 filed the claim petition on account of death of Chhitar Lal, in the accident took place on 29.1.2000 when the deceased was traveling in truck No. RSE 0045. The claimants were allowed compensation in the amount of Rs. 3,08,100/-.

3. It was alleged in the claim petitions that the deceased and the injured were traveling in the Truck No. RSE 45 which was being driven by the respondent No. 9 rashly and negligently and when said truck reached near 11 miles it became out of control and over turned resulting in death of Chittar Lal and injury to Sita Ram. The said truck was owned by respondent No. 10 and 11 and was insured with the appellant insurance company. Respondents 9 and 10 in claim case No. 177/2000 and respondents 2 and 3 in the claim case No. 454/2000 filed their joint reply and the respondent Abdul Vahib filed separate reply in both the claim petitions denying the averments made therein. In the reply the insurance company pleaded that the insurance company is not liable to make the payment of compensation because at the time of accident the victims were traveling in the truck as passenger which is goods vehicle and neither any premium was paid by the insured to cover the risk of the passengers nor the registration of the vehicle permit the owner to ply the vehicle for carrying passengers. The MACT framed as many as five issues and thereafter recorded the statements and after hearing both the parties passed the award in both the claim petitions as mentioned above.

4. The learned counsel for the insurance company has argued that the award dated 2.1.2003 is absolutely illegal, without jurisdiction and contrary to the facts of the case. The MACT has committed serious error of law and in negativing the defence taken by the insurance company and the insurance company has been wrongly burdened with the liability though the breach of policy has been clearly proved. The deceased and the injured were traveling in the truck and the said truck was insured only for goods carriage and the policy does not cover the risk of passenger traveling in the truck and thus the insurance company cannot be held liable for the risk of the passengers. The truck is having the capacity of only 6 persons i.e. only the driver labourer and does not include any passenger and as such no passenger can be allowed to travel in the truck and whereas at the time of the incident the victims along with 40- 50 persons were traveling in the truck as a passengers and thus the breach of policy is clearly established.

5. In SBCMA No. 503 of 2004, learned counsel appearing for the claimant-respondents has categorically stated that the MACT has considered properly all the points raised by the insurance company and the award was rightly passed by the MACT. The appeals filed by the insurance company are liable to be rejected.

6. I have heard the learned counsel for the parties and has also gone through the award passed by the MACT dated 2.1.2003 in both the claim petitions. The only ground taken by the insurance company in these two appeals is about the issue No. 4. On issue No. 4 the MACT held as under on the basis of the Apex Court decision:

7. In view of the above, it is clear that in case of breach of policy the insurance company is liable to make the payment to the claimants with a right to recover the same from the vehicle owner. It may also be mentioned that the SBCMA No. 503/2004 was filed after expiry of 304 days period of limitation. SBCMA No.

2991/2005 was filed after 316 days of the period of limitation. Thus on account of delay in filings the appeals for a period of more than 316 days and 304 days, the delay in filing the appeals after such a long time cannot be accepted as the appellants have not given any cogent reason for condoning the delay in filing the appeals. The applications for condoning the delay in filing the appeals also deserve to be rejected and the same are rejected. Thus on account of filing the appeal after such a long period the appeals are also liable to be rejected. I have also gone through the findings of the MACT on other issues and in my view the MACT has not committed any error in the award passed by it. The appeals filed by the insurance company stand dismissed. The stay applications also stand dismissed.