

(2013) 11 RAJ CK 0161

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 817 of 2012

United India Insurance Company Ltd.

APPELLANT

Vs

Smt. Mamta Devi and Others

RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Citation : (2014) 1 RLW 535

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Manoj Bhandari and Mr. Sushil Bishnoi, for the Appellant; Kunal Paliwal for the Respondent No. 7, for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—Heard learned counsel for the appellant and learned counsel for the respondent No. 7. This appeal is directed against the judgment and award dated 7.12.2011 passed by the Motor Accident Claims Tribunal, Balotra ("the Tribunal"), whereby qua death of one Anand Kumar, the Tribunal has awarded a sum of Rs. 14,99,342/- as compensation alongwith interest @ 9% p.a. from the date of application i.e. 21.5.2008.

2. Brief facts of the case may be noticed thus: at about 9:30 a.m. on 14.2.2008, when deceased Anand Kumar was travelling on the motor-cycle alongwith Mahendra Kumar, which motor-cycle was being driven by Dhanraj Bafna, the same met with an accident with tanker RJ-04-GA-230, which was driven by Rajesh Choudhary, which resulted in injuries to Anand Kumar and Dhanraj Bafna, to which Anand Kumar and Dhanraj succumbed.

3. The application for compensation was filed by wife, two children and parents of the deceased Anand Kumar.

4. A reply to the application was filed by the respondents and the averments made in the application were disputed. On behalf of the Insurance Company it was alleged that the accident occurred on account of negligence of the driver of

the motorcycle and therefore, the Insurance Company was not liable. The Tribunal, after the evidence was led by the parties, came to the conclusion that the accident occurred on account of negligence of the Tanker driver and went on to award compensation as noticed here-in-before.

5. It is submitted by learned counsel for the appellant that admittedly, the motor-cycle was driven by Dhanraj Bafna and it was carrying besides the driver two pillion riders and consequently, there was negligence and violation of provisions of the Motor Vehicles Act, 1988 ("the Act") wherein on the said vehicle alongwith driver only one pillion rider is permitted, the claimant alongwith the driver of the motor-cycle contributed in the accident and therefore, the Tribunal was not justified in coming to the conclusion that the accident occurred on account of rash and negligent driving by the tanker driver. Reliance was placed on a judgment of this Court in Yuvraj v. Shri Prakash Chandra & Ors. S.B. Civil Misc. Appeal No. 804/1996 decided on 4.1.2008. It was further submitted that the compensation awarded is excessive.

6. Learned counsel for the respondent supported the judgment and award impugned.

7. I have considered the submissions made by learned counsel for the parties.

8. The Tribunal after considering the evidence of AW-7 Mahendra Kumar, who was himself a pillion rider on the motorcycle, which resulted in death of Anand Kumar and Dhanraj Bafna and the other documentary evidence available on record came to the conclusion that the tanker was being driven rashly and negligently by its driver Rajesh. The Tribunal also recorded a categorical finding that there was no oral or documentary evidence available on record to indicate that the accident occurred on account of any negligence by the deceased Dhanraj and/or Anand Kumar.

9. Merely, as more than one pillion rider was riding the motor-cycle, it cannot ipso facto result in the Court coming to the conclusion that the deceased had contributed in the accident.

10. This Court in United India Insurance Company Limited v. Smt. Santosh Devi & Ors. S.B. Civil Misc. Appeal No. 324/2010 decided on 15.4.2013 after considering the available law on the subject came to the conclusion that the deceased would not be guilty of contributory negligence unless the violation has casual connection with the damage caused to the deceased or pillion rider, which could be termed as contributory negligence on his part. The judgment cited by learned counsel for the appellant in the case of Yuvraj (supra) was considered and distinguished on account of the fact that there was a finding by the Tribunal that the driver of the motor-cycle was guilty of 25% contributory negligence.

11. So far as the quantum of compensation is concerned, the Tribunal after taking into consideration the income tax Returns filed by the deceased during his life time and duly exhibited and applying the principles laid down by the Hon"ble

Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, has awarded the compensation to the tune of Rs. 14,99,342/-. Nothing glaring could be pointed out by learned counsel for the appellant so as to require interference in the said quantum, which is based on the income tax Returns of the deceased. In view of the above discussion, there is no substance in the appeal, the same is, therefore, dismissed. The stay application also stands dismissed.