

Surendra Singh Vs. Manohar Singh and ors.

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Court : Rajasthan

Decided On : Jan-18-2008

Reported in : 2008(2)WLN313

Judge : Manak Mohta, J.

Appeal No. : S.B. Civil Misc. Appeal No. 1042/2006

Appellant : Surendra Singh

Respondent : Manohar Singh and ors.

Judgement :

Manak Mohta, J.

1. This appeal is directed against the Judgment and Award dt. 19.01.2006 passed by the learned Judge, Motor Accident Claims Tribunal, Balotra in MACT Case No. 89 of 2003 whereby the learned Court below has partly allowed the claim petition.

2. Brief facts of this appeal are that on 13.02.2003 at about 4.30 PM Bhanwardass, Babudass @ Babulal and Govind Singh were going from Kalyanpur to Jodhpur in Jeep No. RJ 22C/1757, which was being driven by Govind Singh Driver. When they reached towards village Araba approximately 1Km away, they saw a Bus No. RJ 19P/4935 coming towards them, which was being driven by driver Manohar Singh rashly and negligently at a high speed and hit the jeep. On

account of which, all the persons sitting in the jeep including the driver sustained serious injuries and they died in the way before reaching to Jodhpur for treatment. It was further submitted that in accident, the jeep was completely damaged, therefore, a claim petition was filed by Surendera Singh owner of the jeep through his Special Power of Attorney-holder Madan Dass claiming damage to the tune of Rs. 1,10,000/- with interest @ 12% p.a. from the date of accident. Other claimants have also filed their separate claim petitions.

3. After service of notices the non-claimant No. 1 Manoharsingh and no claimant No. 2 driver and owner of the Bus have filed their replies in other Claim Case No. 42 of 2003 of the same accident denying all the allegations but no reply was filed in the present claim petition. Non-claimant No. 3- United India Insurance Co. Limited has filed reply mostly denying the allegations for want of knowledge. It was stated in the reply that the insurer has violated the terms and conditions of the Policy as the driver was not holding valid and effective driving license. The accident was occurred due to rash and negligent driving of the jeep by the driver, therefore, the driver and owner of the jeep were responsible to bear the loss caused in accident. In view of it, the Insurance Company was not liable to pay damages and prayed to dismiss the claim petition.

4. After conclusion of trial, the learned Tribunal awarded Rs. 60,000/- as compensation against non-claimants No. 1, 2 and 3 but the liability of the non-claimant No. 3 was kept limited upto Rs. 6000/- with interest. Being aggrieved by the judgment and award dt. 19.01.2006, the claimant preferred the present appeal for enhancement of awarded amount and for holding the full liability of the Insurance Company for payment of compensation amount. Notice of the appeal were issued to the claimant-respondents.

5. I have heard the learned Counsel for the parties and carefully perused the impugned judgment as well as record of the case.

6. Learned Counsel for the appellant submitted that the learned Tribunal has committed grave error in determining the losses caused to the said jeep in accident. It was submitted that the appellant has able to prove the loss sustained to the jeep by cogent material but the learned Tribunal has not considered

thoroughly. It was also contended that while deciding the issue with regard to the liability for the payment of compensation, the learned Tribunal again committed error in holding the Insurance Company for the payment upto Rs. 6000/-. It was further contended that the learned Tribunal found that the accident occurred only due to rash and negligent driving of the offending Bus and held them responsible for the payment of compensation but the claim of the appellant qua the Insurance Company was accepted upto limited amount. It was urged that Insurance Company has neither taken the said plea nor it was proved. Thus, the finding in this respect is not sustainable. It was also urged that no specific issue was frame in this respect in spite of wrong finding has been given. The learned Counsel for the appellant also contended that the appellant has proved damages to jeep worth more than one lac and has proved them by producing evidence. Further damages are corroborated by M.T.O. Report (Ex.3). It was submitted that the jeep remained under repair for one month. Thus, suffered loss for that period but the learned Tribunal determined only loss upto Rs. 60,000/- thus, it requires modification and enhancement according to the demand. On these submissions, it was prayed that the appeal may be allowed.

7. On the contrary, the learned Counsel for the respondent supported the judgment and submitted that the actual loss of one lac has not been proved. The learned Tribunal has rightly determined the loss due to damages of the jeep. Further the liability of the Insurance Company was limited upto Rs. 6000/-, therefore, the learned Tribunal has rightly held the responsibility of the Insurance Company upto that limit. It was prayed that the appeal may be dismissed.

8. I have considered the rival contentions and perused the finding given by the learned Tribunal in respect of jeep damages. So far as the finding on Issue No. 1 with regard to accident is concerned, the finding of the learned Tribunal is based on the statement of the eye-witness PW 5 Karna Ram that is corroborated by the police investigation papers. Thus, the finding is maintained that the accident occurred due to rash and negligent driving of the Bus. The learned Tribunal while determining the quantum of damages in respect of jeep has considered the statement of PW 4 Madanlal and relevant repair Bills and other relevant documents. It has come on record that the said jeep was of 1957 Model. The

learned Tribunal has determined the damages of Rs. 60,000/- that is found reasonable and requires no interference, therefore, the contentions raised in this context are not acceptable. The second contention raised with regard to the liability of Insurance Company upto Rs. 6000/- in that respect. I have perused the statement of A.W. 4 Madanlal and also considered the said cover-note issued by the Insurance Company in respect of the Bus. In that Cover-note, no extra premium has been received to cover the risk more than statutory limit, therefore, the learned Tribunal after considering the material, rightly held responsible of the Insurance Company upto Rs. 6000/- and rest of the responsibility to pay compensation of Rs. 5400/- (sic 54,000/-) of the owner of the Bus. The conclusion drawn by the learned Tribunal is not suffering from any infirmity and deserves to be maintained.

9. In the result, the appeal filed by the appellant is dismissed and the judgment and award is maintained. No order as to costs.

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