

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 1803 of 2004

R.S.R.T.C. & ORS
V/S
SMT.ASHA SOLANKI & ORS

Mr. ARJUN SINGH, for the appellant

Mr. MANISH PITALIYA, for the respondent

Date of Order : 30.3.2005

HON'BLE SHRI N P GUPTA, J.

ORDER

Heard learned counsel for the appellant.

The first submission made is that since the claimant is receiving benefits under ESI Act, the claim is not maintainable. To this, it was contended by the learned counsel for the caveator that this is not the plea taken in the written-statement, nor any document has been produced on record in this regard. Learned counsel for the appellant has categorically admitted that in absence of pleading, this defence cannot be taken, and that there is no pleading in this regard in the written-statement. In that view of the matter, admittedly when plea is not taken in the written-statement, the contention does not hold good.

The next submission made is that the vehicle was on contract with the appellant, and was insured, still the insurer has not been held liable. A look at the impugned judgment shows that the learned Tribunal has decided issue no.5 framed in this regard, on the basis of a judgment of Hon'ble the Supreme Court reported in 1998 DNJ (SC) 59. Learned counsel was pointedly asked, as to how that judgment is not applicable to the present case, or has wrongly been relied upon, to which, learned counsel did not give any reply. It was then contended that in this accident, A.W.2 himself had also received injuries for which he was paid compensation by the insurer, and therefore also, insurer should have been held liable. Suffice it to say, that from a reading of the statement of A.W.2, as read to me by learned counsel for

the appellant, shows that in the matter of A.W.2, there was some compromise between the insurer and the claimant. That being the position, that does not confer any right on the appellant to compel the insurer to compromise in the present case as well.

No other submission was made.

Thus, I do not find any force in the appeal. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

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