

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 3288 of 2003

Appellant :- National Insurance Co

Respondent :- Smt. Gyan Devi And Others

Counsel for Appellant :- Komal Mehrotra, Komal Mehrotra

Counsel for Respondent :- Madhav Jain, Ajay Kumar Chaurasia

Hon'ble Saral Srivastava, J.

1. Heard Sri Achindra Kumar, Advocate, holding brief of Sri Komal Mehrotra, learned counsel for the appellant and Sri Madhav Jain, learned counsel for the respondents.

2. The present appeal has been filed by the appellant Insurance Company against the award dated 06.09.2003 passed by Motor Accident Claims Tribunal/Additional District Judge, Court No.8, Agra in M.A.C.P. No.1082 of 2002.

3. It is contended by learned counsel for the appellant that the Tribunal in another claim petition No.1035 of 2002 arising out of the same accident held negligence of the driver of the truck to the extent of 70%, copy of which is enclosed as Anneuxre-5 to the affidavit filed in support of the present F.A.F.O., whereas in the instant case, the Tribunal has illegally held that the accident was the result of sole negligence of the driver of the truck. Thus, it is contended that the finding of the Tribunal on the issue of negligence is perverse and against the record.

4. Per contra, learned counsel for the respondents would contend that another F.A.F.O. No.1010 of 2004, which was filed against the award dated 14.01.2004 passed by the Motor Accident Claims Tribunal in which the Tribunal has fixed the entire liability upon the Insurance Company on the ground that the accident was the result of sole negligence of the driver of the truck, has been withdrawn on 09.12.2017, therefore, the ground raised herein is not open to the Insurance Company in the present appeal.

5. Since, the Insurance Company has withdrawn the F.A.F.O. No.1010 of 2004

arising out of the same accident where the entire liability has been fixed upon the Insurance Company, therefore, this Court is not inclined to interfere with the finding of the Tribunal.

6. Thus, for the reasons given above, the appeal lacks merit and is, accordingly, **dismissed** with no order as to costs.

Order on Cross Objection No.148796 of 2012

1. Heard learned counsel for the cross objector.
2. The claimants have filed the cross objection/cross appeal which is reported to be beyond time by 7 years 344 days.
3. The claimants/cross objector have not filed any delay condonation application along with the cross objection/cross appeal.
4. Since, there is an inordinate delay of about 7 years 344 days and no delay condonation application has been filed, therefore, without delay condonation application, the cross objection/cross appeal is not maintainable.
5. In such view of the fact, cross objection/cross appeal is not maintainable. Consequently, the cross objection/cross appeal is **dismissed**.

Order Date :- 1.11.2023

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