

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 591 of 1997

Appellant :- The Oriental Insurance Company Ltd.

Respondent :- Chhedi Lal And Others

Counsel for Appellant :- Subhash Chandra Srivastava

Counsel for Respondent :- Deepak Jaiswal, Mohd. Naushad Siddiqui

Hon'ble Saral Srivastava, J.

Order on Application under Order 41 Rule 27 of C.P.C.

Heard learned counsel for the appellant/applicant.

The present application under Order 41 Rule 27 of C.P.C. has been filed by the appellant to take the verification report issued by the licensing authority, Etawah as additional evidence which shows that driving licence of the driver of the offending vehicle i.e. Tempo No.U.P-78-N-290 was not valid on the date of accident. An affidavit filed in support of the application under Order 41 Rule 27 of C.P.C. does not indicate as to why same could not be filed before the Tribunal.

Since, the conditions enumerated in application under Order 41 Rule 27 of C.P.C. to accept the additional evidence i.e. verification report on record are not present to allow the present application, therefore, the application under Order 41 Rule 27 of C.P.C. being misconceived is ***rejected***.

Order on Appeal.

1. Heard Sri Subhash Chandra Srivastava, learned counsel for the appellant-insurance company.
2. The present appeal has been preferred by the appellant-insurance company against the award dated 02.05.1997 passed by the Motor Accident Claims Tribunal/VIIIth Additional District Judge, Kanpur Nagar (hereinafter referred to as 'Tribunal') in M.A.C.P. No.281 of 1996 whereby Tribunal has awarded Rs.90,000/- alongwith 12% interest as compensation to the claimants/respondents.

3. Challenging the aforesaid award, learned counsel for the appellant has contended that the finding of the Tribunal that appellant has failed to prove that the driver of the offending vehicle was not holding a valid driving licence is illegal and not sustainable in law inasmuch as no driving licence was filed by the claimant or owner on record. It is contended that burden to prove the driving licence of the driver of offending vehicle is upon the owner of the vehicle and once, he discharge that burden, the burden would shift upon the appellant. Accordingly, it is submitted that Tribunal should have given right of recovery to the appellant-insurance company.

4. Be that as it may, the Apex Court in the case of ***National Insurance Company Ltd. Vs. Swaran Singh & Others, AIR 2004 SC 1531*** has held that the burden to prove that driver of the offending vehicle was not holding a valid driving licence is upon the insurance company. The record reveals that the appellant-insurance company did not make any effort to get the driving licence verified and since, the controversy is concluded by the Apex Court in the case of ***Swaran Singh (supra)***, this Court does not find any merit in the submission of learned counsel for the appellant.

5. Further, the insurance company has filed an application under Order 41 Rule 27 of C.P.C. to take verification report issued by the licensing authority, Etawah as additional evidence on record. However, the said application has been rejected by this Court by order dated 26.10.2023.

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

Order Date :- 26.10.2023

Sattyarth