

**Court No. - 2**

**Case :-** FIRST APPEAL FROM ORDER No. - 790 of 1998

**Appellant :-** The New India Assurance Co. Ltd.

**Respondent :-** Smt. Gayatri Mishra And Others

**Counsel for Appellant :-** Sushil Kumar Mehrotra

**Counsel for Respondent :-** Vipul Dube, Hanuman Prasad  
Dube, Ramanand Gupta

**Hon'ble Saral Srivastava, J.**

1. Heard Sri Sushil Kumar Mehrotra, learned counsel for the appellant and Sri Vipul Dubey, learned counsel for the respondents.

2. The present appeal has been preferred by the appellant-insurance company challenging the award dated 31.03.1998 passed by the Motor Accident Claims Tribunal, Jhansi (hereinafter referred to as 'Tribunal') in M.A.C.P. No.124 of 1992 whereby the Tribunal has awarded Rs.1,63,500/- along with 10% interest as compensation to the claimants/respondents.

3. Challenging the aforesaid award, learned counsel for the appellant has contended that insurance company has produced the officer from the transport office, Jhansi to prove that driving licence of driver-Sabir Khan was not issued from the transport office, Jhansi, and therefore, driving licence of Sabir Khan filed on record was a fake driving licence, and hence, Tribunal has erred in law in deciding the issue of driving licence against the appellant-insurance company. Accordingly, it is submitted that since insurance company has proved that owner of the offending vehicle i.e. Truck No.M.P.-2-1292 has committed breach of insurance policy, therefore, Tribunal should have given right of recovery to the appellant-insurance company.

4. Per contra, learned counsel for the claimants/respondents would contend that breach of insurance policy is an issue between the owner and insurance company for which claimants should not suffer and claimants shall be paid compensation.

5. Be that as it may, the Tribunal in deciding the issue of driving licence against the appellant-insurance company recorded a finding that it was stated by the officer of the transport office

Jhansi that he did not have the original driving licence. He further stated that without perusing the original driving licence, it cannot be said whether driving licence of driver Sabir Khan was fake or not. The Tribunal further found that the owner of the offending vehicle appeared before the Tribunal and stated that he had verified the driving licence of Sabir Khan and after satisfying that he possessed valid driving licence, he employed him. Therefore, no breach of insurance policy has been committed by the owner of the offending vehicle.

6. It is settled in law that appellant-insurance company in order to avoid its liability to pay compensation on the ground of breach of insurance policy has to establish the breach as well as the fact that breach of policy has been committed by the owner deliberately.

7. In the instant case, insurance company did not lead any evidence in rebuttal to the testimony of owner of the offending vehicle, who deposed that after having been satisfied that driver of the offending vehicle holding a valid driving licence, he employed him. In such view of the fact, even if the case of the appellant-insurance is accepted that driver of the offending vehicle was not holding a valid driving licence, the appellant-insurance company has failed to prove that breach of insurance policy has been committed by the owner deliberately.

8. In such view of the fact, this Court does not find any good ground to interfere with the finding of the Tribunal on the issue of driving licence.

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

**Order on Delay Condonation Application.**

1. Heard learned counsel for the claimants/cross objector and learned counsel for the respondent.
2. The Stamp Reporter has reported 8265 days of delay in filing the cross objection.
3. The cross objection has been filed on 07.12.2021.
4. The record reveals that claimant/respondent was represented by Sri Ramanand Gupta, Advocate who has filed his Vakalatnama on 30.03.1999, therefore, limitation for filing the cross objection would be counted from the date the Vakalatnama has been filed on

behalf of claimant/respondent no.1. Thus, there was an inordinate delay of more than 23 years in filing the cross objection.

5. Learned counsel for the cross objector has explained the delay in paragraphs 4 to 11 of the affidavit filed in support of the delay condonation application. Paragraphs 4 to 11 of the affidavit are reproduced herein below:-

*"4. That it is most respectfully submitted that after obtaining copy of the judgement and award under appeal, the cross objector-claimant/respondent was advised by her local counsel that the amount of compensation so awarded by the Tribunal in favour of the cross objector-claimant/respondent is at the lower side and therefore, she should file a First Appeal From Order in this Hon'ble Court seeking enhancement of the amount of compensation.*

*5. That it is stated that before the cross objector-claimant/respondent could come to Allahabad after making due arrangement for the purposes of filing the First Appeal From Order seeking modification of award for enhancement of the amount of compensation, the insurer of the offending vehicle filed the present appeal in this Hon'ble Court challenging the said judgement and award dated 31.03.1998 and this Hon'ble Court upon hearing counsel for the appellant was pleased to grant an interim order in favour of the insurer-appellant. The present appeal is pending in this Hon'ble Court for the last over 23 years and the amount so awarded by the learned Tribunal has also not been paid to the cross objector-claimant/respondent to the total satisfaction of the award.*

*6. That having acquired knowledge about the filing of the present appeal, the cross objector-claimant/respondent engaged Sri Ramanand Gupta, Advocate, as per advice of her local counsel, who put in appearance on her behalf in the present appeal. However, the cross objector-claimant/respondent could not get any fruitful result and the present appeal continued to remain pending for such a long period i.e. 23 years.*

*7. That it is submitted that the cross objector-claimant/respondent thereafter contacted Sri Vipul Dube, Advocate, practising in this Hon'ble Court, who after hearing the grievance of the cross objector-claimant/respondent advised her to come to Prayagraj and file a cross objection in the pending appeal as she could not file a First Appeal From Order in this Hon'ble Court earlier, when the award under appeal was passed by the learned Claims Tribunal.*

*8. That it is categorically stated that the earlier counsel of the cross objector-claimant/respondent had never advised her to file cross objection in the present appeal seeking enhancement of the amount of compensation and the cross objector-claimant/respondent being uneducated was not in a position to understand the remedy available to her. Consequently, the present cross objection is being filed by the cross objector-claimant/respondent at such a belated stage only on the advice of the present counsel for the cross objector-claimant/respondent Sri Vipul Dube, Advocate.*

*9. That on legal advice received from Sri Vipul Dube, Advocate, the cross objector-claimant/respondent intended to come to Allahabad for filing the*

*present cross objection in this Hon'ble Court, but because of the personal difficulties arising from the financial crunch, since the deceased was the only earning member of the house and after his death in this particular road accident which caused great loss, she could not come to Allahabad. The amount of compensation which was awarded by the learned Claims Tribunal was also not given by the Insurance Company since the Insurance Company preferred First Appeal From Order in this Hon'ble Court.*

*10. That the cross objector-claimant/respondent lost her husband in this accident and it was really difficult for her to travel all the way from Jalaun to Allahabad for filing the First Appeal From Order before this Hon'ble Court in order to get this amount of compensation enhanced, since the cross objector-claimant/respondent is an uneducated one, neither well read nor well versed in Legal Complications to understand the documents for filing the First Appeal From Order.*

*11. That it is submitted that the deponent has been going through the mental trauma and distress, and therefore, she was not in a position to understand and avail the appropriate remedy available to her within time."*

6. This Court finds that there is an inordinate delay of more than 23 years in filing the cross objection and delay in filing the cross objection has not been properly explained.

7. Accordingly, the delay condonation application is **rejected**. Consequently, the cross objection is **dismissed**.

**Order Date :- 31.10.2023**

Sattiyarth