

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 703 of 1993

Appellant :- The Oriental Insurance Com. Ltd.

Respondent :- Sita Ram

Counsel for Appellant :- ,Komal Mehrotra

Counsel for Respondent :- Amar Nath Srivastava

Hon'ble Saral Srivastava,J.

1. List has been revised. Learned counsel for the appellant is present. However, learned counsel for the respondents is not present.

2. Heard learned counsel for the appellant.

3. The present appeal has been preferred by the appellant-insurance company challenging the award dated 30.03.1993 passed by the Motor Accident Claims Tribunal/1st Additional District Judge, Azamgarh (hereinafter referred to as 'Tribunal') in M.A.C.P. No.70 of 1990 whereby the Tribunal has awarded Rs.3,84,500/- along with 9% interest as compensation to the claimants/respondents.

4. Challenging the aforesaid award, learned counsel for the appellant has contended that deceased was the real brother of owner of the offending vehicle i.e. Car No.U.M.D-1560 and therefore, he was not the employee of owner of the offending Car. It is submitted that deceased had gone on the instruction of owner of the car to drop the relatives at the station and as the deceased was not employed as driver on the offending car, therefore, insurance company is not liable to pay compensation.

5. Be that as it may, the Tribunal in recording a finding that deceased was employed as driver on the offending vehicle has considered the testimony of the claimants.

6. Learned counsel for the appellant has laid emphasis upon the testimony of P.W.3, who was also the brother of the owner of the offending vehicle and deposed that deceased was not employed as driver on the offending vehicle, and thus, finding of the Tribunal in respect of employment of deceased is perverse. This Court is not inclined to accept the said submission inasmuch as the owner of

the offending vehicle also appeared as witness before the Tribunal and he had not denied the employment of the deceased on the offending vehicle. In such view of the fact, the finding of the Tribunal in respect of employment of deceased as driver is a finding of fact based upon proper appreciation of evidence on record.

7. So far as the judgement of Apex Court relied upon by the learned counsel for the appellant in the case of ***Ramkhiladi and Another Vs. The United India Insurance Company & Another 2020 (0) SC 7*** is concerned, the same is not applicable as the facts of the present case are different.

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

Order on Cross Objection.

Learned counsel for the cross objector is not present even in the revised call.

Accordingly, the cross objection is ***dismissed*** for want of prosecution.

Order Date :- 16.10.2023

Sattyarth