

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 285 of 1999

Appellant :- United India Insurance Co. Ltd.

Respondent :- Smt. Chameli Devi And Others

Counsel for Appellant :- Satish Chaturvedi,A.C.Nigam

Counsel for Respondent :- Sandeep Saxena

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellant.
2. The present appeal has been filed by appellant challenging the award dated 22.12.1998 passed by Motor Accident Claims Tribunal/IVth Additional District Judge, Mirzapur in M.A.C.T. No.29/1996.
3. Challenging the award, learned counsel for the appellant has contended that the owner has committed breach of insurance policy inasmuch as the offending vehicle was insured for private purpose whereas it was being used for commercial purpose at the time of accident. It is submitted that in such view of the fact, the tribunal should have given the right of recovery to the appellant. It is further contended that there was contradiction in the testimony of claimant-respondent with respect to age of the deceased inasmuch as witnesses of claimant-respondents in their testimony have stated that the age of the deceased is between 52 to 58 years and therefore, the tribunal should have applied the multiplier corresponding to the age of the deceased mentioned in the claim petition as 58 years. It is further submitted that the award of 12% interest is also excessive.

4. So far as the issue with respect to breach of policy is concerned, the plea in respect to breach of policy was set up by the insurance company and therefore, the insurance company should have proved the same by leading cogent evidence that the offending vehicle was being used for commercial purpose. There was no evidence on record from where it can be inferred that it was being used for commercial purpose. Since, the insurance company failed to prove that the owner has committed breach of policy, therefore, the submission of learned counsel for the appellant in respect to breach of policy is misconceived and is rejected.

5. So far as the question of quantification of compensation is concerned, the Court may note that even if presuming that the tribunal should have applied the multiplier corresponding to the age of the deceased mentioned in the claim petition, the tribunal is duty bound to award just and adequate compensation. In the instant case, the tribunal has not awarded any amount towards future prospect. In such view of the fact, this Court is not inclined to interfere with the quantification of compensation.

6. This Court is not inclined to accept the submission in respect to award of 12% interest inasmuch as the accident had taken place in the year 1995 and at that time, normal rate of interest was around 12%.

7. Consequently, the appeal lacks merit and is **dismissed**.

Order Date :- 27.10.2023

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