

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 440 of 1999

Appellant :- United India Insurance Comp.Ltd.

Respondent :- Smt.Kusuma Devi And Others

Counsel for Appellant :- ,Anubhav Sinha,Arun Kumar Shukla

Counsel for Respondent :- B.N. Agarwal,B.N.Agarwal

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellant.
2. The present appeal has been filed by the appellant-insurance company challenging the award dated 22.01.1999 passed by Motor Accident Claims Tribunal/Special Judge, (S.C. & S.T. Act), Jhansi in Claim Petition No.94/1997.
3. Challenging the award, learned counsel for the appellant has contended that the deceased was sitting on a two seater which collided with offending bus No.M.P.15/9292. It is submitted that it was a case between head on collision between two vehicles, therefore, driver of both the vehicles had been negligent in the accident and the Tribunal should have reduced the compensation to the extent of negligence of rider of two seater. It is further contended that the Tribunal has erred in law in deciding the issue of driving licence against the insurance company.
4. Be that as it may, admittedly the deceased was pillion rider on two seater and it was a case of composite negligence. It is settled in law that it is the choice of the claimant to claim compensation from either of the tortfeasor in view of the judgment of the Apex Court in the case of **Khenyei Vs. New India Assurance Company Limited and others (2015) 9 SCC 273.**

5. Accordingly, contention of learned counsel for the appellant on the issue of contributory negligence is misconceived and is rejected. If insurance company so advised, the insurance company may raise separate claim against the owner of the two seater and recover the amount for the negligence of the rider of the two seater in the accident.

6. So far as the issue of driving licence is concerned, the insurance company did not lead any evidence on record to prove that the driver of the bus was not holding valid driving licence. In such view of the fact, the submission of learned counsel for the appellant on the issue of breach of policy is not sustainable and is accordingly rejected.

7. For the reasons given above, the appeal lacks merit and is accordingly ***dismissed***.

Order Date :- 18.10.2023

R.S. Tiwari