

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 455 of 1999

Appellant :- Oriental Insurance Co.Ltd.

Respondent :- Km.Roshan And Another

Counsel for Appellant :- Ramesh Singh

Counsel for Respondent :- A.D. Saunders,N.K. Sharma

Hon'ble Saral Srivastava,J.

1. Heard Sri Ramesh Singh, learned counsel for the appellant and Sri A.D. Saunders, learned counsel for the respondents.

2. The present appeal has been filed by the appellant against the award dated 04.02.1999 passed by Motor Accident Claims Tribunal/VI Additional District Judge, Muzaffar Nagar in M.A.C. P. No.69 of 1996.

3. Challenging the said award, learned counsel for the appellant has contended that the accident had taken place on 20.01.1996 by the bus No.U.T.L.-852. It is contended that the said bus was not insured on the date of accident and therefore, in order to avoid its liability to pay compensation, the owner of the bus No.U.T.L.-852 colluded with the owner of bus No.U.P.12B-7338 and set up a case that the accident had taken place by bus No.U.P.12B-738. It is a case of false implication of bus No.U.P.12B-7338 in collusion of owner of bus No.U.P.12B-7338 to fetch the compensation from the Insurance Company. Accordingly, it is submitted that the Tribunal has erred in law in holding that the accident had taken place by bus No.U.P.12B-7338 and fixed the liability upon the appellant Insurance Company to pay the compensation.

4. Per contra, learned counsel for the respondents submits that the

Tribunal after appreciating the evidence on record and also appreciating the fact that the driver of the bus No.U.P.12B-7338 admitted the factum of accident recorded a finding that the accident had taken place by bus No.U.P.12B-7338. It is submitted that the finding of the Tribunal being finding of fact based upon proper appreciation of evidence on record is not liable to be interfered with by this Court in appeal.

5. Be that as it may, the Tribunal in concluding that the accident had taken place by bus No.U.P.12B-7338 has placed reliance upon the testimony of PW2-Shamim who stated that the accident had not taken place by bus no.U.T.L.-852 but had taken place by bus No.U.P.12B-7338. The Tribunal further placed reliance upon the testimony of DW-4, the owner of the bus No.U.P.12B-7338, who admitted the factum of the accident. The Tribunal also considered the testimony of DW1 who was Station Manager of the bus station at the relevant time, who deposed that the bus no.U.T.L.-852 was not plied on Muzaffarnagar Meerapur via Jauli Tewda Alipur route. However, the appellant Insurance Company produced DW3-S.M.Kamil, Investigator of the Company to prove the investigation report who proved that the accident had taken place by bus no.U.T.L.-852, but the Tribunal disbelieved the testimony of DW3. This Court is of the opinion that the Tribunal has rightly disbelieved the testimony of DW3 inasmuch as the testimony of DW3 was only based on hearsay evidence whereas PW2 has categorically stated that the accident had taken place by bus No.U.P.12B-7338, which fact had been admitted by the owner in his deposition before the Tribunal.

6. In such view of the fact, this Court is of the opinion that the Tribunal has rightly held that the accident had taken place by bus

No.U.P.12B-7338.

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

Order Date :- 1.11.2023

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