

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 639 of 1999

Appellant :- The Oriental Insurance Company Ltd.

Respondent :- Raj Bahadur Yadav And Others

Counsel for Appellant :- A.K. Sinha

Counsel for Respondent :- Manoj Kumar Singh

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellant and learned counsel for the respondent.

2. The present appeal has been filed by the appellant against the judgement and award dated 17.04.199 passed by Motor Accident Claims Tribunal/IV Additional District Judge, Jaunpur (hereinafter referred to as the 'Tribunal') passed in M.A.C.P. No.43 of 1994.

3. Challenging the said award, learned counsel for the appellant has contended that the driver of the offending vehicle i.e. Truck No.M.O.K./8721 (hereinafter referred to as the 'offending truck') was not holding a valid driving licence on the date of accident. It is submitted that the driving licence was valid from 22.02.1989 to 21.09.1992, and thereafter it was renewed from 23.04.1996 to 22.04.1999 whereas the accident had taken place on 01.03.1994. Thus, it is proved on record that the driver of the offending bus was not holding a valid driving licence on the date of accident, therefore, the Tribunal has erred in law in deciding the issue of driving licence against the Insurance Company.

4. Per contra, learned counsel for the respondents would contend that the issue of driving licence is a matter between the insured and the Insurance Company and the claimants/ respondents should not

suffer. It is submitted that it is settled in law that in the case of breach of insurance policy, the Insurance Company is liable to pay the award, and after paying the award is entitled to recover the same, thus, the submission of learned counsel for the appellant is not sustainable in law.

5. Be that as it may, it is settled in law that the Insurance Company in order to avoid its liability has not only to establish that the driver of the offending vehicle was not holding a valid driving licence on the date of accident, but also has to establish that the breach of policy was committed by the insured deliberately.

6. In the instant case, there may be some substance in the submission of learned counsel for the appellant in respect to the fact that the driver of the offending bus was not holding a valid driving licence on the date of accident, but the appellant Insurance Company did not set up any case that breach of policy was committed by the owner deliberately. In such view of the fact, this Court is not inclined to interfere with the finding on the issue of driving licence returned by the Tribunal against the Insurance Company.

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

Order Date :- 31.10.2023

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