

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 32 of 2001

Appellant :- Oriental Insurance Co. Ltd. Alld.

Respondent :- Girish Chandra Nishad Alias Munne And
Another

Counsel for Appellant :- K.S.Amist

Counsel for Respondent :- Ram Singh

Alongwith

Case :- FIRST APPEAL FROM ORDER No. - 29 of 2001

Appellant :- Oriental Insurance Co. Ltd. Alld.

Respondent :- Girish Chandra Nishad Alias Munne And
Others

Counsel for Appellant :- K.S.Amist

Counsel for Respondent :- Ram Singh

Hon'ble Saral Srivastava,J.

Order on Appeal:-

1. Heard learned counsel for the appellants and learned counsel for the respondents.
2. Since, these two appeals arise out of same accident and involve common issues, therefore, both the appeals are being decided together with this common judgement.
3. Both the aforesaid appeals have been preferred by the appellant-insurance company against the award dated 16.09.2000 passed by the Motor Accident Claims Tribunal, Allahabad (hereinafter referred to as 'Tribunal') whereby Tribunal has awarded Rs.1 lac & 3, 31,000/- respectively as compensation to the claimants/respondents in both the appeals.

4. For convenience, the facts are being delineated from F.A.F.O. No.32 of 2001.

5. Challenging the award, learned counsel for the appellant has contended that it appears that the accident had taken place by bus No.MP17A/2925 but the insurance policy was filed with regard to some other vehicle on record and thus, the offending vehicle was not insured on the date of accident and therefore, the tribunal has erred in law in fastening the liability upon the appellant to pay compensation.

6. Per contra, learned counsel for the respondents has contended that the insurance company did not dispute the validity of insurance policy inasmuch as no issue was got framed by the insurance company with regard to validity of policy. It is submitted that only issue which the insurance company got framed was whether the owner has committed breach of insurance policy as issue No.3. The tribunal in deciding the issue No.3 has categorically recorded a finding that the insurance company did not lead any evidence on record to prove that the owner has committed any breach of insurance policy. In such view of the fact, the contention advanced by learned counsel for the appellant is misconceived and is not sustainable in law.

7. Be that as it may, the judgement of the tribunal reveals that the insurance company did not dispute the fact that the offending vehicle was not insured with the insurance company or insurance policy in respect to offending vehicle was not valid. The insurance company got the issue framed

with regard to breach of insurance policy as issue No.3. The tribunal in deciding the issue No.3 concluded that the insurance company did not lead any evidence on record to prove the breach of insurance policy committed by the owner. The insurance company did not dispute the fact that the offending vehicle was not insured with the appellant-insurance company and only contention advanced was that the owner has committed breach of insurance policy which has been rejected by the tribunal in deciding the issue No.3. In such view of the fact, the contention of learned counsel for the appellant in respect to the fact that the offending vehicle was not insured on the date of accident is not sustainable in law and deserves to be dismissed.

8. For the reasons given above, both the appeals lack merit and are **dismissed**.

Order on Cross Objection in FAFO No.32 of 2001:-

1. Heard learned counsel for the claimant-cross objector and learned counsel for the respondents.
2. The cross objection has been filed by claimant-cross objector for enhancement of compensation.
3. In the instant case, the claimant claimed for enhancement of award for the death of a child Km. Sunaina Devi aged about 4 years.
4. The tribunal has awarded Rs.1 lac lump sum.
5. Challenging the aforesaid award, learned counsel for the claimant has contended that in the case of **Kurvan Ansari**

alias Kurvan Ali and another Vs. Shaym Kishore Murmu and another (2022) 1 SCC 317, the Apex Court has awarded compensation of Rs.4,70,000/- in case of a minor child. Accordingly, it is submitted that as the controversy in hand is squarely covered by the judgement of the Apex Court in **Kurvan Ansari alias Kurvan Ali (supra)**, therefore, the same amount of compensation shall be awarded to the claimant.

6. Per contra, learned counsel for the respondents has contended that the deceased was only 4 years of age and, therefore, no loss of income was suffered by the claimant and the Tribunal has rightly awarded Rs.1 lac lump sum as compensation to the claimant.

7. The Apex Court in the case of **Kurvan Ansari alias Kurvan Ali (supra)** has awarded in case of a minor Rs.4,70,000/- as compensation and considering the fact that the controversy in hand is squarely covered by the judgement of the Apex Court in the case of **Kurvan Ansari alias Kurvan Ali (supra)**, this Court also enhances the compensation from Rs.1 lac to Rs.4,70,000/-.

8. The enhanced amount of compensation shall carry 6% interest from the date of institution of claim petition till the amount is paid. The Insurance Company is directed to pay the enhanced amount of compensation to the claimant/appellant within a period of three months from the date of production of certified copy of this order.

9. For the reasons given above, the cross objection is **partly**

allowed and the award is modified to the extent indicated above.

Order Date :- 1.11.2023
SS