

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 3007 of 2003

Appellant :- Oriental Insurance Co Ltd.

Respondent :- Smt. Swaroop Kaur And Others

Counsel for Appellant :- Amaresh Sinha

Counsel for Respondent :- Anurag Kumar Pandey

With

Case :- FIRST APPEAL FROM ORDER No. - 859 of 2006

Appellant :- Oriental Insurance Co. Ltd.

Respondent :- Dalbeer Singh And Others

Counsel for Appellant :- Amaresh Sinha

Counsel for Respondent :- Syed Fahim Ahmad

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellant and learned counsel for respondents.
2. Since all the appeals arise out of the same accident and involved common issues, therefore, all the appeals are being decided by this common judgement.
3. The F.A.F.O. No.3007 of 2003 has been filed challenging the award dated 05.09.2003 passed by Motor Accident Claims Tribunal/Special Judge, E.C. Act, Rampur in M.A.C.P. No.224 of 2001 and F.A.F.O. No.859 of 2006 has been filed challenging the award dated 07.10.2005 passed by the Motor Accident Claims Tribunal/Additional District Judge, Rampur in M.A.C.P. No.96 of 2003
4. For the sake of convenience, the facts are being delineated from FAFO No.3007 of 2003.
5. Challenging the award, learned counsel for the appellant has contended that in the instant case, the appellant-Insurance

Company insured vehicle i.e. combine No.U.P.22B-8708. It is submitted that the combine was under repair and was put on jack and somehow the jack slipped which caused the accident and in the said accident, driver, namely Mangal Singh died whereas cleaner namely, Dalbeer Singh sustained severe injuries. It is further contended that at the time of accident, the vehicle combine was not in use on the road, and therefore, it was not an accident arising out of the motor vehicle, and as such, the appellant Insurance Company cannot be made liable to pay compensation.

6. Be that as it may, the claim petition has been instituted by the dependents of the driver (deceased) and cleaner who sustained injuries under Section 167 of the Motor Vehicles Act and choice has been given to the employee either to file claim petition before the Motor Accident Claims Tribunal or before the Commissioner under Workmen's Compensation Act. In the instant case, employment of the deceased and cleaner was not denied by the appellant Insurance Company.

7. The deceased and cleaner having been employed on the vehicle combine are entitled to receive compensation, if it is proved on record that they were employed on the vehicle combine and the accident arose during the course of employment. In the instant case, both the conditions to grant compensation exists. Therefore, in such view of the fact, the contention advanced by the learned counsel for the appellant Insurance Company is misconceived and is rejected.

8. Thus, for the reasons given above, both the appeals lacks merit and are accordingly, **dismissed** with no order as to costs.

Order Date :- 28.10.2023/NS