

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 206 of 1998

Appellant :- The New India Assurnce Co.

Respondent :- Sheela And Others

Counsel for Appellant :- S.K. Srivastava,S.C. Srivastava

Counsel for Respondent :- Mohd. Yusuf,A.K. Sinha,Anurag Pathak,Govind Saran Hajela,Vidya Kant Shukla

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellant and Sri Vidya Kant Shukla, learned counsel for the respondents.

2. The present appeal has been preferred by the appellant-insurance company challenging the award dated 18.12.1997 passed by the Motor Accident Claims Tribunal/IXth Additional District & Sessions Judge, Muzaffar Nagar (hereinafter referred to as 'Tribunal') in M.A.C.P. No.346 of 1990 whereby the Tribunal has awarded Rs.2,00,000/- along with 12% interest as compensation to the claimants/respondents.

3. Challenging the aforesaid award, learned counsel for the appellant has contended that there was only an 'act only policy' with respect to the Maruti Van No.D.D.A-3496 insured with the appellant-insurance company, and therefore, occupants of the Maruti Van were not covered under the insurance policy. Thus, it is submitted that Tribunal has erred in law in fastening the liability upon the appellant-insurance company to pay compensation.

4. Per contra, learned counsel for the respondents would contend that appellant-insurance company did not set up any plea in respect to same nor got any issue framed on the point that insurance policy is only 'an act only policy' and occupants of the Maruti Van are not covered under the insurance policy. Accordingly, it is submitted that the issue raised herein with regard to non-coverage of occupants of the Maruti Van cannot be raised for the first time in appeal.

5. Be that as it may, the appellant-insurance company did not set up any plea in the written statement that insurance policy was only 'an act only policy' nor it got any issue framed on the said point before the Tribunal. The insurance company did not lead any evidence on record to demonstrate that policy was only 'an act only policy' since the liability to pay compensation is

governed by the terms and conditions of the insurance policy which can be decided only on the basis of evidence on record.

6. In the instant case, since the insurance company has not set up any plea with regard to non-coverage of occupants of the Maruti Van under the insurance policy before the Tribunal, therefore, the said issue cannot be raised for the first time in appeal.

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

Order on Delay Condonation Application.

1. Heard learned counsel for the cross objector.

2. The claimants have filed the cross objection/cross appeal which is reported to be beyond time by 1475 days.

3. Learned counsel for the claimants/cross objector has explained the delay in filing the cross objection in paragraphs 4 to 6 of the affidavit filed in support of the delay condonation application. Paragraphs 4 to 6 of the affidavit are reproduced herein below:-

"4. That thereafter the present cross objection has been prepared and it is being filed without there being any further delay.

5. That the deponent has been advised to file cross objection, but there is some delay in filing the present cross objection.

6. That the conduct of the deponent is bonafide, there is no gross negligence and deliberate inaction on his part. The delay, if any, in filing the present objection is deeply regretted and liable to be condoned by this Hon'ble Court."

4. There is an inordinate delay of 1475 days in filing the cross objection, which in the opinion of the Court has not been explained properly and sufficiently by the claimants.

5. In such view of the fact, the delay condonation application is **rejected**. Consequently, the cross objection/cross appeal is also **dismissed**.

Order Date :- 31.10.2023

Sattyarth