

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 195 of 1999

Appellant :- Oriental Insurance Co.

Respondent :- Smt. Anita And Others

Counsel for Appellant :- V.K. Birla, Ashutosh Vaish

Counsel for Respondent :- Shyawal S. Narain, Raj
Laxmi, Smt. R. Sinha

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant.
2. The present appeal has been filed by the appellant challenging the award dated 21.11.1998 passed by the Motor Accident Claims Tribunal, Ghaziabad in M.A.C.P. No.291/1993.
3. Challenging the award, learned counsel for the appellant has contended that once, the tribunal has recorded a finding that the original driving license of the driver of offending truck issued from Licensing Authority, Agra was forged, its renewal from Noida would not validate the driving license. Thus, it was established on record that the owner of offending truck has committed breach of insurance policy and therefore, the tribunal should have given the right of recovery to the appellant.
4. Be that as it may, the submission of learned counsel for the appellant has substance in view of the fact that the tribunal has recorded a finding that the original driving license issued from Transport Authority, Agra was fake and its renewal

would not validate the driving license.

5. The law on the point that the insurance company in order to avoid its liability on the issue of breach of policy has not only to prove that the driver of offending vehicle was not holding valid driving license at the time of accident but also has to establish that the breach of insurance policy committed by the owner was deliberate.

6. In the instant case, the record reveals that the owner of the offending vehicle namely R.P. Singh had appeared as a witness and established that before employing the driver, driving license was verified and it was found valid. The testimony of owner of offending vehicle namely R.P. Singh reveals that the owner had taken every precaution to satisfy himself that the driver of the offending truck was holding valid driving license. The insurance company did not lead any evidence in rebuttal to the testimony of owner of truck R.P. Singh. Since, the insurance company failed to prove that the breach of policy was deliberate on the part of the owner, therefore, the insurance company cannot avoid its liability on the ground of breach of policy

7. For the reasons given above, the appeal lacks merit and is **dismissed.**

Order Date :- 30.10.2023

SS