

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 804 of 1993

Appellant :- The Oriental Insurance Co Ltd

Respondent :- Smt. Saroj Devi And Others

Counsel for Appellant :- ,Parv Agarwal

Counsel for Respondent :- Nalin Kumar Sharma

Hon'ble Saral Srivastava,J.

Order on Appeal:-

1. Heard learned counsel for the appellant.
2. The present appeal has been preferred by the appellant-insurance company challenging the award dated 31.05.1993 passed by the Motor Accident Claims Tribunal, Muzaffarnagar (hereinafter referred to as 'Tribunal') in M.A.C. No.349 of 1992, whereby the Tribunal has awarded Rs.3,10,000/- along with 12% interest as compensation to the claimants/respondents.
3. Challenging the aforesaid award, learned counsel for the appellant has contended that the finding of the Tribunal that appellant has failed to prove that the driver of the offending vehicle was not holding a valid driving licence is illegal and not sustainable in law inasmuch as no driving licence was filed by the claimant or owner on record, and in the absence of any driving licence on record, the appellant-insurance company could not verify the same. It is contended that burden to prove the driving licence of the driver of offending vehicle is upon the owner of the vehicle and once, he discharges that burden, the burden would shift upon the appellant. Accordingly, it is submitted that Tribunal should have given right of recovery to the appellant-insurance company.
4. Be that as it may, the Apex Court in the case of **National Insurance Company Ltd. Vs. Swaran Singh & Others, AIR 2004 SC 1531** has held that the burden to prove that driver of the offending vehicle was not holding a valid driving licence is upon the insurance company. The record reveals that the appellant-insurance company did not make any effort to get the driving licence verified and since, the controversy is concluded by the Apex Court in the case of **Swaran Singh (supra)**, this Court does

not find any merit in the submission of learned counsel for the appellant.

5. Accordingly, present appeal lacks merit and is hereby **dismissed** with no order as to costs.

Order Cross Objection:-

List has been revised. No one appears for cross objector.

Accordingly, the cross objection is **dismissed** for want of prosecution.

Order Date :- 30.10.2023

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