

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 457 of 2003

Appellant :- Oriental Insurance Company Ltd.

Respondent :- Anandveer And Another

Counsel for Appellant :- Manish Goyal(Senior Adv.),Santosh Kumar Singh

Counsel for Respondent :- Manoj Vashisth,Arun Kumar Srivastava,Satish Kumar Tyagi

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellant and learned counsel for the respondents.
2. The present appeal has been filed by the appellant-insurance company challenging the award dated 30.11.2002 passed by Motor Accident Claims Tribunal/A.D.J., Court No.15, Meerut in M.A.C. No.287/2000.
3. Challenging the award, learned counsel for the appellant has contended that the finding of the Tribunal on the issue of driving licence is illegal and not sustainable in law inasmuch as the burden to prove that the driver of the offending vehicle i.e. Ambassador car was not holding valid driving licence was upon the owner and once the owner discharged that burden, the same shall shift upon the appellant insurance company. As the owner has failed to discharge its burden of proof that driver of the offending vehicle was not holding a valid driving licence, therefore, the Tribunal should have given right of recovery to the appellant.
4. It is further submitted that the compensation awarded by the Tribunal is excessive. It is submitted that no disability certificate from the medical board constituted by the Chief Medical Officer was filed on record rather the disability

certificate issued by the private Doctor R.N. Gupta was filed, and thus, the Tribunal has erred in law in relying upon the disability certificate issued by private doctor R.N. Gupta in holding that the claimant-respondent suffered 100% loss earning capacity. Accordingly, it is submitted that the compensation awarded by the Tribunal is not sustainable in law and is liable to be set aside. Lastly, it is urged by learned counsel for the appellant that 9% interest awarded by the Tribunal is not adequate.

5. Per contra, learned counsel for the respondent would contend that the breach of policy is an issue between the insurance company and the owner of the offending vehicle and for which the claimant should not suffer as the claimant is entitled to compensation in view of the settled law that in case of breach of insurance policy, the insurance company shall pay the award and thereafter recover it from the owner. It is further submitted that insurance company has not disputed the fact the claimant-respondent suffered injury in his spinal cord. It is submitted that because of the injuries in the spinal cord, the claimant-respondent is unable to do any work and the claimant-respondent suffered 100% loss earning capacity. It is submitted that the insurance company did not lead any evidence in rebuttal to the injuries sustained by the claimant-respondent, and therefore, finding of the Tribunal holding 100% loss earning capacity suffered by claimant-respondent based upon the disability certificate issued by Dr. R.N. Gupta and testimony of Dr. R.N. Gupta cannot be discarded only on the ground that the disability certificate was issued by a private doctor. It is submitted that the compensation awarded by the Tribunal is just and fair and does not call for any interference by this Court.

6. I have considered rival contentions of learned counsel for the parties and perused the record.

7. So far as the issue in respect of driving licence is concerned, this Court may note that the burden is upon the insurance company to prove that the driver of the offending vehicle was not holding valid driving licence. The insurance company in order to avoid its liability has not only to prove that the driver of the offending vehicle was not holding a valid driving licence but also has to establish that the breach of policy committed by the owner was deliberate. In the instant case, the insurance company neither discharge its burden of proving that the driving licence of the driver of the offending vehicle was valid nor set up a plea that the breach of insurance policy was committed by the owner of the offending vehicle deliberately. In such view of the fact, the submission advanced by learned counsel for the appellant in respect of breach of policy is misconceived and is accordingly rejected.

8. Now coming to issue of quantification of compensation, this Court may note that the claimant-respondent produced ample evidence indicating that he suffered injuries in his spinal cord due to which he is incapacitated to discharge any work. He also produced the disability certificate issued by Dr. R.N. Gupta to prove the same. The insurance company did not lead any evidence on record to establish that the claimant-respondent did not suffer any injury in his spinal cord nor it led any evidence to establish that the injuries suffered by the claimant-respondent were not such which incapacitated him from discharging any work. Considering the fact that the claimant-respondent suffered injuries in his spinal cord, this Court is of the view that the nature of injuries suffered by the claimant-respondent indicates that because of the injuries suffered in the accident, the claimant-respondent has been incapacitated to perform any work. In such view of the fact, this Court does not find any merit in the submission of learned counsel for the appellant in

respect of quantification of compensation.

9. Though there may be some substance in submission of learned counsel for the appellant regarding award of 9% interest, but the Tribunal has not awarded any amount towards future prospect. In such view of the fact, the contention of learned counsel for the appellant is not accepted and is rejected.

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

Order Date :- 18.10.2023

R.S. Tiwari