

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 3246 of 2004

Appellant :- Oriental Insurance Co Ltd

Respondent :- Smt. Sameena And Others

Counsel for Appellant :- V.C. Dixit, Pawan Kumar Singh

Counsel for Respondent :- Dev Kaushik

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant.
2. The present appeal has been preferred by the appellant-insurance company challenging the award dated 13.09.2004 passed by the Additional District Judge, Court No. 9/Motor Accident Claims Tribunal, Ghaziabad in M.A.C.P. No. 85 of 2002.
3. Challenging the aforesaid award, learned counsel for the appellant has contended that once the Insurance Company has proved that cheque issued by the owner with regard to premium of the policy was dishonoured, the Tribunal should have absolved the Insurance Company from payment of compensation. Accordingly, it is contended that the direction of Tribunal to the Insurance Company to pay the award and recover it from the owner is misconceived and is against the law. It is submitted by learned counsel for the appellant that finding of the Tribunal on the issue of contributory negligence is perverse and against the record, inasmuch as the driver of the motorcycle No. U.P.P. 5130 was also negligent in the accident, and accordingly, Tribunal should have reduced the compensation to the extent of

driver of the motorcycle.

4. Per contra, learned counsel for the respondents contended that it is not in dispute that the policy was issued for a period commencing from 22.12.1999 to 21.12.2000, and even, if the cheque has been dishonoured, the Insurance Company can be saddle with the liability to pay compensation in view of Section 149 (1) of Motor Vehicle Act, 1989. It is further contended that the Tribunal considered the various precedents of the Apex Court in holding the liability of the Insurance Company to pay the compensation and thereafter, recover it from the owner.

5. Be that as it may, the Tribunal has recorded a finding that the policy was cancelled and due intimation was given to the owner. The Tribunal after considering the various precedents of the Apex Court held that the third party should not suffer as on the date of the accident, certificate of insurance was issued by the Insurance Company. Relying upon those judgments, the Tribunal directed the Insurance Company to pay the awarded amount to the claimants-respondents, and thereafter recover it from the owner. Therefore, this Court does not find any illegality in the direction of the Tribunal to the appellant Insurance Company to pay compensation under the award to the claimant and thereafter recover it from the owner.

6. It is evident from record that the claimant to prove that accident had taken place due to negligence of the driver of offending vehicle Eicher Truck No. HR-38-D-6474 which was insured by the Insurance Company, placed

reliance the testimony of PW-3 who deposed before the Tribunal that accident had taken place due to rash and negligent driving of the offending vehicle Eicher Truck No. HR-38-D-6474. The Insurance Company did not lead any evidence to rebut the testimony of PW-3.

7. In such view of the fact, the finding of the Tribunal on issue of negligence is based upon proper appreciation of evidence and material on record and thus being finding of fact, the same does not call for any interference by this Court in appeal.

8. Thus, for the reasons given above, the appeal lacks merit and is accordingly, ***dismissed*** with no order as to cost.

Order Date :- 12.10.2023

Vikram