

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 279 of 1998

Appellant :- Oriental Insurance Co. Ltd.

Respondent :- Smt. Manorma And Others

Counsel for Appellant :- A.K. Sinha

Counsel for Respondent :- B.D.Shukla

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellant.
2. The present appeal has been filed by the appellant-insurance company challenging the award dated 29.11.1997 passed by Motor Accident Claims Tribunal/VI Additional District Judge, Kanpur Dehat in M.A.C.P. No.287/1994.
3. Challenging the award, learned counsel for the appellant has contended that the award of Tribunal is not sustainable in law inasmuch as the Tribunal has erred in law in holding that the appellant has failed to discharge its burden of proving that the offending vehicle was not insured with the insurance company and the driver of the offending vehicle was not holding a valid driving licence at the time of accident. It is further contended that the burden was upon the owner to firstly discharge that the offending vehicle was duly insured and driver of the offending vehicle was holding a valid driving licence.
4. Be that as it may, the claimants/respondents in the claim petition have disclosed the number of the cover note. It is not a case of the insurance company that this cover note was not of insurance company. Para-17 of the claim petition is reproduced hereinbelow:-

"7- बीमा कम्पनी का नाम व पता जिससे सम्बन्धित दुर्घटनाग्रस्त वाहन का बीमा था। : - ओरियन्टल इन्श्योरेन्स कंपनी कानपुर लि० डिवीजनल आफिस नं 03, 111 -ए/6 अशोक नगर, कानपुर 208012 तथा कबरनोट संख्या - 31/24/00021 व दिनांक 13.4.93 से 12.4.94 तक वैध है।"

5. Since the claimants/respondents have given the details of the insurance policy and period of insurance policy and this fact is not denied by the insurance company, therefore, in such view of the fact, this Court does not find any illegality committed by Tribunal in concluding that the vehicle was duly insured with the insurance company.

6. So far as the issue of driving licence is concerned, 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 obtain the driving licence and get it verified. Since, the controversy is concluded by the judgement of 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.

7. Accordingly, the appeal lacks merit and is accordingly **dismissed** with no order as to costs.

Order Date :- 2.11.2023

R.S. Tiwari