

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 388 of 1997

Appellant :- United India Insurance Co. Ltd. Alld.

Respondent :- Mango Mal And Another

Counsel for Appellant :- Kuldip Shanker Amist

Counsel for Respondent :- S.N. Jaiswal

Hon'ble Saral Srivastava,J.

1. Heard Sri Kuldip Shanker Amist, learned counsel for the appellant.

2. The present appeal has been preferred by the appellant-insurance company challenging the award dated 01.04.1997 passed by the Motor Accident Claims Tribunal/XIIth Additional District Judge, Meerut (hereinafter referred to as 'Tribunal') whereby the Tribunal has awarded Rs.1,34,000/- along with 12% interest as compensation to the claimants/respondents.

3. Challenging the aforesaid award, learned counsel for the appellant has contended that it is a case of false implication of offending vehicle i.e. Jeep no.U.P.-15-C-1071 inasmuch as the F.I.R. in respect to the alleged accident was lodged against an unknown vehicle. It is submitted that claimant/respondent in order to fetch compensation has falsely implicated the offending vehicle in the accident. It is further submitted that the offending vehicle was insured with the appellant-insurance company for private purpose whereas it was being used for commercial purpose, therefore, owner has committed breach of insurance policy, and insurance company is not liable to pay any compensation.

4. Be that as it may, the claimant appeared himself before the Tribunal and proved the accident by the offending vehicle. The insurance company did not lead any evidence to rebut the testimony of claimant. Therefore, the finding of the Tribunal on the issue of occurrence of accident is a finding of fact based upon proper appreciation of facts and evidence on record.

5. Further, the insurance company did not get any issue framed on the point of breach of insurance policy that offending vehicle was insured for private purposes and it was being used for commercial purposes. Since the insurance company did not raise such plea

before the Tribunal, therefore, it is not open to the appellant-insurance company to raise such plea for the first time in appeal.

6. Thus, for the reasons given above, the appeal lacks merit and is hereby ***dismissed*** with no order as to costs.

Order Date :- 17.10.2023

Sattyarth