

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 962 of 2000

Appellant :- Oriental Insurance Co.Ltd.

Respondent :- Smt.Ram Kali And Another

Counsel for Appellant :- Kuldeep Shanker Amist

Counsel for Respondent :- Nagendra Singh Chaudhary

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 01.04.2000 passed by Motor Accident Claims Tribunal/1st Additional District Judge, Etah in M.A.C.P. No.143/1993.

3. Challenging the award, learned counsel for the appellant has contended that the deceased was chasing a truck No.URR 1186 to get hold the driver of the said truck as the driver of the truck had hit scooter No.UP82 1400 causing injuries to two persons riding on the scooter, and while he was about to catch the driver of the truck, he was pushed by the cleaner of the truck due to which he came under the truck and died. He further submits that the driver of the truck in order to avoid his arrest had deliberately caused the murder of the deceased by crossing the truck over him, and therefore, it was a case of murder and not a motor accident. It is submitted that in such view of the fact, the insurance company cannot be made liable to pay compensation. It is further submitted that the driver of the offending truck was impleaded as respondent No.7 in the claim petition and he denied the fact that he was driver of the offending truck at the time of accident. In such view of the

fact, it was the duty of the owner to prove by leading cogent evidence on record that the actual driver of the truck was holding a valid driving licence at the time of accident. Accordingly, it is contended that the owner has committed breach of policy and the appellant insurance company should have been given right of recovery.

4. Per contra, learned counsel for the respondents would contend that the record reveals that it was not a case of murder because of enmity but the deceased in an attempt to catch the driver of the truck No.URR 1186 met with the accident and died, therefore, in view of the judgment of the Apex Court in the case of *Smt. Rita Devi Vs. New India Assurance Company Ltd. & Another*, (2000) 5 SCC 113 the insurance company cannot avoid its liability to pay compensation. It is further contended that the burden is upon the insurance company to prove that the driver of the offending vehicle was not holding a valid driving licence at the time of accident and in the instant case, the insurance company utterly failed to discharge its burden of proving that the driver of the offending vehicle was not holding a valid driving licence. In such view of the fact, the Tribunal has rightly decided the issue of driving licence against the appellant.

5. Be that as it may, the record reveals that the deceased having seen that the truck No.URR 1186 had caused the accident ran after the truck to get hold of the driver of the truck but in the said process, he was pushed by the cleaner and the driver of the truck and he came under the truck causing injuries to him resulting in his death. The manner in which the deceased had died reveals that the deceased was on duty and while attempting to catch the driver of truck in discharge of his duty was hit by the truck, and therefore, it

was a case of accidental murder and not the murder arising out of enmity. Therefore, in view of the judgment of Apex Court in the case of *Smt. Rita Devi (supra)*, the insurance company cannot avoid its liability to pay compensation.

6. So far as the issue of driving licence is concerned, the law is settled that the burden is upon the insurance company to prove that the driver of the offending vehicle was not holding a valid driving licence at the time of accident which the insurance company failed to discharge in the instant case. Since the controversy on the issue of driving licence is covered by judgment of Apex Court in the case of National Insurance Company Ltd. Vs. Swaran Singh & Others, AIR 2004 SC 1531, therefore, contention of learned counsel for the appellant in respect to driving licence is misconceived and is rejected.

7. For the reasons given above, the appeal lacks merit and is accordingly *dismissed* without any order as to costs.

Order on Cross objection.

No one appears on behalf of the cross objector even in the revised call.

The cross objection is ***dismissed*** for want of prosecution.

Order Date :- 1.11.2023

R.S. Tiwari