

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 653 of 1998

Appellant :- The New India Assurance Co. Ltd.

Respondent :- Smt. Manorama Devi And Others

Counsel for Appellant :- ,A.K. Saxena,Brijesh Chandra Naik

Counsel for Respondent :- Vashishtha Tiwari

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellants and learned counsel for the respondents.

2. The present appeal has been filed by the appellants against the award dated 06.04.1998 passed by Motor Accident Claims Tribunal/District Judge, Deoria in M.A.C. Case No.348 of 1996.

3. Challenging the award, learned counsel for the appellant has contended that the Tribunal has erred in law in deciding the issue of driving licence against the Insurance Company. It is submitted that no driving licence of driver of the offending vehicle, i.e. Jeep No.U.R.X./8609 was filed on record. It is further submitted that in view of the judgement of the Apex Court in the case of ***Pappu and others Vs. Vinod Kumar Lamba and another, 2018 (1) ACCD 412 (SC)***, the burden was upon the owner of the offending vehicle to prove that the driver of the offending vehicle was holding a valid driving licence. It is submitted that once the owner discharges such burden, the burden would shift upon the Insurance Company to prove that the driver of the offending vehicle was not holding a valid driving licence. Accordingly, it is submitted that since no driving licence was filed on record by the owner, therefore, an adverse inference should have been drawn against the owner on the issue of driving licence and the Tribunal should have

permitted the appellant to recover the awarded amount from the owner after satisfying the award.

4. Per contra, learned counsel for the respondents would contend that the issue of breach of policy is a matter between the insured and the Insurance Company for which the claimant should not suffer. It is submitted that the claimant is entitled to compensation from the Insurance Company in view of the settled law that in case of breach of policy, the Insurance Company shall pay the award and recover it from the owner.

5. Be that as it may, the plea of breach of policy has been set up by the Insurance Company and the burden is upon the Insurance Company to prove that the offending vehicle was being driven in breach of insurance policy. The Apex Court in the case of ***National Insurance Company Ltd. Vs. Swaran Singh & Others, AIR 2004 SC 1531*** in paragraph no.110 (iv) of the judgement has held that the Insurance Company in order to avoid the liability has not only to prove that the owner has committed breach of policy but also has to establish on record that the owner has deliberately committed breach of insurance policy. In the instant case, the Insurance Company did not discharge its burden of proving that the driver of the offending vehicle was not holding a valid driving licence nor it set up a case that the breach of policy was committed by the owner deliberately.

6. So far as the judgement of the Apex Court in the case of ***Pappu (supra)*** is concerned, that was a case rendered in different factual circumstances, inasmuch as in the said case, the appellant preferred appeal challenging the order of the High Court whereby the Insurance Company was absolved to pay compensation on the breach of policy and the liability was fastened upon the owner to

pay the compensation, and in such facts and circumstances the Apex Court modified the award of the Tribunal and directed the Insurance Company to pay the compensation and recover it from the owner. The said judgement of the Apex Court in the case of ***Pappu (supra)*** does not come in aid to the appellants.

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

Order Date :- 18.10.2023

NS