

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 669 of 1998

Appellant :- National Insurance Co. Ltd.

Respondent :- Satya Pal And Others

Counsel for Appellant :- Ashok Kumar Srivastava, Arvind Kumar, Krishna Shanker Chaudhary

Counsel for Respondent :- Rajendra Singh Sengar

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant.
2. The present appeal has been filed by the appellant challenging the award dated 01.04.1998 passed by Motor Accident Claims Tribunal, Meerut in M.A.C. No.608/1995.
3. Challenging the award, learned counsel for the appellants has contended that the finding of the tribunal that the accident was result of sole negligence of driver of offending truck No.UHQ/859 is perverse and illegal. It is further contended that the deceased was travelling as a gratuitous passenger on the truck and was not covered under the insurance policy, therefore, the tribunal has erred in law in not giving the right of recovery to the appellant after paying the award.
4. Be that as it may, the tribunal on issue of contributory negligence considered the testimony of eye witness Satya Pal PW 1. The tribunal after considering the testimony of PW1 and other evidence on record found the negligence of driver of truck proved in the accident. Accordingly, it held that the accident had taken place due to sole negligence of driver of

truck. The finding of the tribunal on the issue of negligence is based upon proper appreciation of facts and evidence on record. Since, there is no perversity in the finding of the tribunal on the issue of negligence, the contention of learned counsel for the appellant on the issue of negligence is not sustainable and is rejected.

5. So far as the submission of learned counsel for the appellant that the deceased was travelling as gratuitous passenger and the insurance company is not liable to pay any compensation for the reason that the owner has committed breach of insurance policy. The record reveals that the insurance company did not get any issue framed on the point of breach of policy on the ground that the deceased was travelling as gratuitous passenger on the truck. In such view of the fact, the said ground cannot be raised for the first time in appeal. Consequently, the submission of learned counsel for the appellant in respect to breach of policy is misconceived and is rejected.

6. It is lastly urged that the award of 12% interest is excessive. The said submission is also misconceived for the reason that the accident had taken place in the year 1995 and at that time, the prevalent market rate of interest was around 12%.

7. For the reasons given above, the appeal lacks merit and is **dismissed**.

Order Date :- 30.10.2023

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