

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1019 of 1995

Appellant :- Oriental Insurance Co. Ltd.

Respondent :- Haji Abdul Hamid And Another

Counsel for Appellant :- Manish Goel, Dharmendra Kumar

Counsel for Respondent :- Rajendra Dobhal

Hon'ble Saral Srivastava, J.

1. Heard Sri Dharmendra Kumar, learned counsel for the appellant.

2. The present appeal has been preferred by the appellant-insurance company challenging the award dated 19.08.1995 passed by the Motor Accident Claims Tribunal/Ind Additional District Judge, Saharanpur (hereinafter referred to as 'Tribunal') whereby the Tribunal has awarded Rs.62,000/- along with 12% interest as compensation to the claimants/respondents.

3. Challenging the aforesaid award, learned counsel for the appellant has contended that Tribunal has erred in law in deciding the issue no.6 in respect of driving licence against the appellant-insurance company. It is contended that appellant-insurance company produced the judgement of another M.A.C. No.93 of 1992 (Harish Vs. Waheed) wherein rider of the scooter appeared as witness before the Tribunal and admitted in his cross examination that he did not have valid driving licence, and therefore, Tribunal has erred in law in not considering the finding of the judgement of the Tribunal in M.A.C. No.93 of 1992 on flimsy grounds. Accordingly, it is submitted that since appellant-insurance company proved that rider of the scooter was not holding a valid driving licence, therefore, the Tribunal should have given the right of recovery to the appellant-insurance company.

4. Be that as it may, the Tribunal in deciding the issue no.6 has recorded a finding that Harish who was said to be the rider of the scooter was not produced before the Tribunal. No application was filed by the appellant or owner with the testimony of Harish given by him in M.A.C. No.93 of 1992 with a prayer to accept the same in evidence. The Tribunal further recorded a finding that each case has to be decided on the facts and evidence placed before it, and burden to prove that driver of the offending vehicle was not holding a valid driving licence is upon the appellant-insurance company which the

appellant-insurance company has failed to discharge. Accordingly, it decided the issue no.6 against the appellant-insurance company.

5. Thus, this Court finds that the reasons assigned by the Tribunal in not placing reliance upon the judgement of M.A.C. No.93 of 1992 is cogent and is based upon sound principles of law. In such view of the fact, this Court does not find any illegality committed by the Tribunal in deciding the issue no.6 against the appellant-insurance company.

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

Order Date :- 31.10.2023

Sattyarth