Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1117 of 1999

Appellant :- The Oriental Insurance Co.Ltd.
Respondent :- Smt.Maya Devi And Others
Counsel for Appellant :- Amaresh Sinha
Counsel for Respondent :- V.K.Gupta,Deepak Saxena,N.K. Saxena,Neeraj Tripathi,Sanjay Tripathi

Hon'ble Saral Srivastava,J.

1. Heard Sri Anubhav Sinha, learned counsel for the appellant.

2. The present appeal has been preferred by the appellant-insurance company challenging the award dated 30.08.1999 passed by the Motor Accident Claims Tribunal/IInd Additional District Judge, Mahoba (hereinafter referred to as 'Tribunal') whereby the Tribunal has awarded Rs.2,48,900/- along with 9% interest as compensation to the claimants/respondents.

3. Challenging the aforesaid award, learned counsel for the appellant has contended that appellant is the insurer of Tractor No.U.P.J-4183 which was involved in the instant case. It is submitted that trolly was attached with the tractor, and driver of the tractor while reversing the tractor hit the Jeep No.16-A-1153 causing death of one Mahipal Singh. It is submitted that since trolly was not insured with the appellant-insurance company, therefore, owner had committed breach of insurance policy and appellant-insurance company cannot be made liable to pay compensation. It is further submitted that deceased was travelling in the Jeep as paid passenger and Jeep was insured with the appellant-insurance company for private purpose, and in such view of the fact, the appellant is not liable to pay compensation.

4. Be that as it may, the contention advanced here by the learned counsel for the appellant with regard to fact that trolly was not insured with the appellant-insurance company was not raised by the appellant in the written statement nor it got framed any issue on the said point before the Tribunal. In such view of the fact, the said issue cannot be raised for the first time in appeal.

5. So far as the fact that deceased was travelling in the Jeep i.e. a private vehicle as passenger on payment of fare, therefore, owner

of Jeep has committed breach of insurance policy, and appellant-insurance company is not liable to pay compensation is concerned, this Court may note that deceased was a third party, and therefore, the contention advanced by the learned counsel for the appellant with regard to breach of insurance policy by the owner of the jeep is misconceived and is accordingly, rejected.

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

Order Date :- 1.11.2023
Sattyarth

Digitally signed by :-
SATTYARTH ANAND
High Court of Judicature at Allahabad