

Court No. - 2

1. **Case :-** FIRST APPEAL FROM ORDER No. - 1171 of 1999

Appellant :- National Insurance Co.Ltd.

Respondent :- Rahtoo And Others

Counsel for Appellant :- A.K. Srivastava

With

2. **Case :-** FIRST APPEAL FROM ORDER No. - 565 of 1999

Appellant :- National Insurance Co. Ltd.

Respondent :- Ram Pal And Another

Counsel for Appellant :- A.K. Srivastava, Komal Mehrotra

Counsel for Respondent :- V.K. Goel

With

3. **Case :-** FIRST APPEAL FROM ORDER No. - 566 of 1999

Appellant :- National Insurance Co. Ltd.

Respondent :- Virendra Singh And Another

Counsel for Appellant :- A.K. Srivastava

Counsel for Respondent :- V.K. Goel

With

4. **Case :-** FIRST APPEAL FROM ORDER No. - 604 of 1999

Appellant :- National Insurance Co.Ltd.

Respondent :- Satpal And Another

Counsel for Appellant :- A.K.Srivastava

Counsel for Respondent :- V.K. Goel

5. **Case :-** FIRST APPEAL FROM ORDER No. - 1258 of 1999

Appellant :- National Insurance Co.Ltd.

Respondent :- Kamruddin And Another

Counsel for Appellant :- A.K. Srivastava, Kuldeep Shanker

Amist

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellants.
2. Since, these five appeals arise out of same accident and involve common issues, therefore, these appeals are being decided together with this common judgement.
3. The aforesaid five appeals have been preferred by the appellant-insurance company against the awards dated 20.08.1999, 16.03.1999, 05.03.1999, 08.04.1999 & 20.08.1999 passed by the Motor Accident Claims Tribunal, Meerut (hereinafter referred to as 'Tribunal') in MAC Nos.476 of 1993, 475 of 1993, 499 of 1993 & 408 of 1993 & 477 of 1993 respectively.
4. For the sake of convenience, the facts are being delineated from F.A.F.O. No.1171 of 1999.
5. Challenging the award, learned counsel for the appellant has contended that the offending vehicle was a goods carrying vehicle and the deceased was a gratuitous passenger, therefore, the deceased was not covered under insurance policy and hence, the tribunal has erred in law in fixing the liability upon the insurance company to pay the compensation.
6. Be that as it may, the tribunal has framed the following issues:-

"अभिवचनों के आधार पर निम्न वाद बिन्दू बनाये गये।

1. क्या यात्री को चोटें दिनांक 21.7.93 को समय करीब रात के 10 बजे ग्राम मलकपुर के पास बहद थाना बड़ौत जिला मेरठ में ट्रक सं०

एच०आर०पी०-8598 को उसके चालक द्वारा उसे तेजी में लापरवाही से चलाये जाने के कारण हुई और दुर्घटना में याची को चोटें आईं। और उक्त ट्रक का मालिक विपक्षी सं० 1 है और उक्त ट्रक विपक्षी सं० 2 के यहां बीमित था।?

2. क्या याची कोई प्रतिकर पाने का अधिकारी नहीं है। जैसा कि विपक्षी सं० एक के जवाब दावे की धारा 31 में कहा है?
3. क्या विपक्षी सं० 2 की कोई प्रतिकर अदा करने की जिम्मेदारी नहीं है जैसा कि जवाब दावे के पैरा 36 व 36 में कहा गया है?
4. क्या याची किसी प्रतिकर के पाने का अधिकारी है , यदि हां तो कितना व किससे?

7. In deciding the issues No.2 and 3, the tribunal has recorded the following issues:--

"वाद बिन्दु सं० 2 व 3

इन दोनों वाद बिन्दुओं पर उभयपक्षों की ओर से कोई आग्रह नहीं किया गया। अतः वाद बिन्दु तदानुसार याची के पक्ष में निर्णत किये जाते हैं।"

8. Since, the issues No.2 and 3 were not pressed by the insurance company before the tribunal, therefore, the contention advanced before this Court cannot be raised in appeal till the finding returned by the tribunal on issues No.2 and 3 extracted above, is assailed on the ground that the issues No.2 and 3 were pressed and the tribunal did not consider the argument advanced by the counsel of the company. There is no certificate filed on record issued by the counsel of the insurance company certifying that he had pressed the issues No.2 and 3 but the tribunal did not record any finding, nor any averment in this regard has been made

by the company in the affidavit. In such view of the fact, the finding of the tribunal on issues No.2 and 3 are binding upon the insurance company and cannot be assailed by it on any ground.

9. The judgement in other claim petitions arising out of same accident reveals that the insurance company has raised plea of breach of insurance policy on the ground that the deceased was travelling on a goods carrying vehicle and no premium covering risk of passengers on the goods carrying vehicle had been paid, therefore, the deceased was not covered under the insurance policy.

10. This Court may note that the appellant insurance company cannot take inconsistent inasmuch as in one case, the insurance company did not press the point of breach of insurance policy and in other cases, it pressed the issue of breach of insurance policy. This conduct of the insurance company is not appreciated.

11. Even otherwise, the finding returned by the tribunal on issue of breach of insurance policy is based upon appreciation of facts and evidence on record. It is pertinent to note that the insurance company in order to avoid the liability on the ground of breach of insurance policy has to establish that the owner had committed breach of insurance policy deliberately, besides proving that there was breach of insurance policy. In the instant case, the insurance company did not set up any plea that the breach of insurance policy committed by the owner was deliberate. For this reason also, the insurance

company cannot escape from its liability to pay compensation.

12. For the reasons given above, all the appeal lack merit and are **dismissed**.

Order Date :- 3.11.2023
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