

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 151 of 1999

Appellant :- M/S Oriental Insurance Company Ltd.

Respondent :- State of U.P. and Others

Counsel for Appellant :- Aijaz Ahamad Khan

Counsel for Respondent :- V.B. Misra, S.K. Srivastava, Sanjai Srivastava

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant, learned counsel for the respondents and learned Standing Counsel.

2. The present appeal has been filed by the appellant-insurance company challenging the award dated 31.10.1998 passed by Motor Accident Claims Tribunal/IIIrd Additional District Judge, Urai in M.A.C.P. No.164 of 1998.

3. Challenging the award, learned counsel for the appellant has contended that in the aforesaid case, a specific issue i.e. additional issue No.1 was framed whether the driver of the offending jeep was having a valid driving licence at the time of accident. It is submitted that the Tribunal on appreciation of evidence on record concluded that the driver of the offending vehicle i.e. jeep No.U.G.I.-4188 was not holding a valid driving licence. It is submitted that since the owner of the jeep i.e. respondent No.1 committed breach of policy, therefore, the appellant insurance company cannot be fastened to pay compensation and it is only respondent No.1 who was the owner of the jeep is liable to pay compensation. It is contended that once it is established that the breach of policy has been committed by the owner, the Tribunal should have given right of recovery of the awarded amount from

the respondent No.1 after satisfying the award.

4. Learned counsel for the respondents would contend that though the Tribunal has recorded a finding that driver of the offending vehicle was not holding a valid driving licence, but he submits that finding recorded by the Tribunal is not based upon proper appreciation of law inasmuch as the burden to prove that the offending vehicle was being driven by a person holding a valid driving licence is upon the insurance company. Therefore, it is submitted that this Court may refrain from interfering with the finding of the Tribunal.

5. Be that as it may, it is true that the Tribunal has recorded a finding that the driver of the offending jeep was not holding a valid driving licence but perusal of the finding of the Tribunal on additional issue No.1 reveals that the finding recorded by the Tribunal is against the settled principle of law. The Tribunal has proceeded on the basis that A.K. Singh who was driver of the offending vehicle did not produce original driving licence, and therefore, he was not holding a valid driving licence. The record reveals that A.K. Singh produced photocopy of the driving licence which was got verified by the insurance company and on verification, it was found to have been renewed from time to time, however, for a certain period it was renewed from the Transport Office, Bareilly and only the record of Transport Office, Bareilly could verify whether the driving licence was renewed or not. The Tribunal found that the record of the Transport Office, Bareilly was missing and consequently, directed the driver of the vehicle to produce original driving licence.

6. This court may note that A.K. Singh appeared as witness and deposed categorically that he was having a valid driving licence

and his licence was renewed from time to time. Even if he had produced original driving licence, that could not prove the case of insurance company inasmuch as it has come on record that the record of the period for which it was renewed from Transport Office, Bareilly was not available. In such view of the fact, even if original driving licence was filed that could not have been verified. In view of the unrebutted testimony of the driver of the vehicle that he was having a valid driving licence and in view of the settled legal position that the burden to prove that the driver of the offending vehicle was not holding a valid driving licence at the time of accident is upon the insurance company, this Court is not inclined to interfere with the award on the ground of breach of policy by the respondent.

7. For the reasons given above, the appeal lacks merit and is accordingly **dismissed** without any order as to costs.

Order Date :- 6.11.2023

R.S. Tiwari