

**Court No. - 2**

**Case :-** FIRST APPEAL FROM ORDER No. - 272 of 2000

**Appellant :-** The New India Assurance Co. Ltd. Alld.

**Respondent :-** Smt. Lakhpatiya And Others

**Counsel for Appellant :-** Arvind Kumar

**Counsel for Respondent :-** Anamika Srivastava, Vashishtha Tiwari

**Hon'ble Saral Srivastava, J.**

1. Heard learned counsel for the appellant and learned counsel for the respondents.
2. The present appeal has been filed by the appellant-insurance company challenging the award dated 08.12.1999 passed by Vth Additional District Judge, Deoria in M.A.C. No.56/1988.
3. Challenging the award, learned counsel for the appellant has contended that the appellant is insurer of jeep No.MAM 2822. It is submitted that the accident had taken place between two vehicles namely Jeep No.MAM 2822 and Jeep No.BPF 3553 which were coming from opposite direction. It is submitted that it was a case of head on collision. There was some negligence of driver of Jeep No.BPF 3553 also. It is submitted that even as per the case of claimants/respondents, accident was the result of negligence of both the drivers, and thus, the Tribunal has erred in law in holding that the accident had taken place due to rash and negligent driving of driver of offending vehicle i.e. Jeep No.MAM 2822 insured with the appellant insurance company. It is further submitted that the compensation awarded by the Tribunal is excessive inasmuch as there was no evidence on record in respect of the income of the deceased, and therefore, the Tribunal has erred in law in holding

the income of the deceased to be Rs.4000/- per month. Accordingly, it is submitted that the compensation is liable to be reduced.

4. It is lastly urged that the Tribunal in operative portion of the order has directed the appellant insurance company to pay the awarded amount within one month from the date of award along with 12% interest and in case the same is not deposited within the aforesaid period, the insurance company shall liable to pay 16% penal interest.

5. Per contra, learned counsel for the respondents would contend that the Tribunal in concluding that the accident was the result of negligence of driver of Jeep No.MAM 2822 insured with the appellant insurance company considered the evidence on record and after appreciating the evidence in respect of the negligence of driver of jeep insured with appellant insurance company concluded that the accident was the result of sole negligence of driver of Jeep No.MAM 2822 insured with the appellant insurance company. It is further contended that the compensation awarded by the Tribunal is just and proper and does not call for any interference by this Court. Learned counsel for the respondents would contend that the insurance company is duty bound to deposit the awarded amount expeditiously and in such view of the fact, the Tribunal has rightly awarded the penal interest, in the event, the insurance company did not deposit the awarded amount within one month from the date of award.

6. Be that as it may, the Court has perused the original record and finds that the claimants/respondents have not set up any case in the claim petition that the accident was the result of negligence of both the drivers. The Tribunal in concluding that the accident had taken

place due to rash and negligent driving of driver of Jeep No.MAM 2822 insured with the appellant insurance company placed reliance upon the testimony of eyewitness and other documentary evidence and concluded that the accident was the result of sole negligence of driver of Jeep No.MAM 2822 insured with appellant insurance company. The finding of the Tribunal is based upon proper appreciation of evidence on record and no perversity could be pointed out by the learned counsel for the appellant in the finding of the Tribunal with respect to negligence of jeep insured with the appellant insurance company in the accident. Therefore, the finding being a finding of fact does not call for any interference by this Court in appeal on the issue of contributory negligence.

7. So far as the quantification of compensation is concerned, this Court may note that considering the fact that accident had taken place on 31.10.1987 the assessment of the income of the deceased to be Rs.4,000/- is on higher side, but the Court is obliged under law to award just and proper compensation. In the instant case, the Tribunal has not awarded any amount towards future prospect though considering the age of the deceased, the claimant respondents were entitled to 40% future prospect. In such view of the fact, this Court is not inclined to interfere with the quantification of the compensation.

8. This Court finds substance in the submission of learned counsel for the appellant in respect to award of penal interest inasmuch as the limitation for filing of the appeal is 90 days and at least the Tribunal should have given 90 days for depositing the amount as the insurance company cannot be forced to deposit the award within the period of limitation. In such view of the fact, the condition imposed by the Tribunal in case the award is not

deposited within one month from the date of award, the company shall pay 16% penal interest is set aside and the insurance company is directed to pay 12% interest as awarded by the Tribunal on the entire awarded amount till the date of its deposit.

9. For the reasons given above, the appeal is partly **allowed** and award of the Tribunal is modified to the extent indicated above.

**Order Date :- 16.11.2023**

R.S. Tiwari