

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 633 of 1996

Appellant :- The New India Insurance Co. Ltd. Allahabad

Respondent :- Smt. Saghir Jahan And Others

Counsel for Appellant :- Vinod Swarup, Aditya Singh Parihar

With

Case :- FIRST APPEAL FROM ORDER No. - 634 of 1996

Appellant :- The New India Insurance Co. Ltd. Allahabad

Respondent :- Nabbu Khan And Others

Counsel for Appellant :- Vinod Swarup, Aditya Singh Parihar

Counsel for Respondent :- Anurag Jauhari

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant.
2. Since, these two appeals are arising out of same accident and involves common issues, therefore, both the appeals are decided together with this common judgement.
3. For convenience, the facts are being delineated from F.A.F.O. No.633 of 1996.
4. Both the aforesaid appeals have been preferred by the appellant-insurance company against the awards dated 20.04.1996 passed by the Motor Accident Claims Tribunal/IXth Additional District Judge, Moradabad (hereinafter referred to as 'Tribunal') whereby Tribunal has awarded Rs.1,52,000/- & Rs.1,20,000/- respectively as compensation to the claimants/respondents in both the appeals.
5. Challenging the aforesaid award, learned counsel for the appellant has contended that the finding of the Tribunal that appellant has failed to prove that the driver of the offending vehicle was not holding a valid driving licence is illegal and not sustainable in law inasmuch as no driving licence was filed by the claimant or owner on record, and in the absence of any driving licence on record, the appellant-insurance company could not verify the same. It is contended that burden to prove the driving licence of the driver of offending vehicle is upon the owner of the

vehicle and once, he discharge that burden, the burden would shift upon the appellant. Accordingly, it is submitted that Tribunal should have given right of recovery to the appellant-insurance company.

6. Be that as it may, the Apex Court in the case of ***National Insurance Company Ltd. Vs. Swaran Singh & Others, AIR 2004 SC 1531*** has held that the burden to prove that driver of the offending vehicle was not holding a valid driving licence is upon the insurance company. The record reveals that the appellant-insurance company did not make any effort to get the driving licence of driver of offending vehicle verified and since, the controversy is concluded by the Apex Court in the case of ***Swaran Singh (supra)***, this Court does not find any merit in the submission of learned counsel for the appellant.

7. Accordingly, both the appeals lack merit and are hereby ***dismissed*** with no order as to costs.

Order Date :- 1.11.2023

Sattyarth