

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 956 of 1999

Appellant :- Mohd. Rafiq

Respondent :- The National Insurance Company Agra And Ors.

Counsel for Appellant :- Madhav Jain

Counsel for Respondent :- Pankaj Shukla,N.K.Srivastava,Ajai Singh,N.K. Srivastava

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 challenging the award dated 29.05.1999 passed by Motor Accident Claims Tribunal/VII Additional District Judge, Mathura in M.A.C. No.150 of 1998.
3. Learned counsel for the appellant has contended that the finding of the Tribunal that the owner of the offending jeep has committed breach of insurance policy is perverse and based upon the reading of evidence on record. It is contended that from misreading of statement of PW-2, it is not borne out that the deceased was travelling on the jeep as fare paying passenger. It is submitted that even in cross-examination, PW-1 has categorically stated that he did not pay any fare. It has also come in his statement that he did not know whether the deceased had paid any fare or not. It is submitted that the statement of PW-2 has to be read as a whole and only one line in the statement of PW-2 that the offending jeep was being used for taxi from Rambagh to Sadabad is not sufficient to hold that the owner has committed breach of insurance policy. It is submitted that the driver of the offending jeep also appeared before the Tribunal and stated that no fare was charged from the occupants of the jeep. It is submitted that there was no evidence on

record to prove that the jeep was being used for commercial purpose, and thus, the Tribunal has erred in law in fixing the liability upon the appellant to pay compensation.

4. Per contra, learned counsel for the respondents would contend that it has come in the statement of PW-2 that the jeep was being plied as taxi from Rambagh to Sadabad everyday. It is submitted that the statement of PW-2 that he has not paid any fare to the driver of the jeep nor he had any knowledge about the fact whether the deceased had paid any fare or not is based upon the tutoring by the owner to the PW-1. Thus, it is contended that the evidence on record establishes that the owner has committed breach of insurance policy. It is also contended that the insurance company also produced its officer to prove that the owner of the jeep had committed breach of insurance policy, and thus, it is submitted that the finding of the Tribunal on the issue of breach of insurance policy is a finding of fact based upon the proper appreciation of evidence on record and is not liable to be interfered with by this Court in its appellate jurisdiction.

5. I have considered the rival contentions of learned counsel for the parties and perused the record.

6. This Court has perused the original statement from the record of the Tribunal and finds that PW-2 who was eyewitness of the accident categorically stated that he boarded on the jeep without paying any fare. He had also stated that he did not know whether any fare was paid by the deceased or not. The only statement which the Tribunal relied upon in concluding that the owner of the jeep had committed breach of policy was that the jeep was being plied as taxi from Rambagh to Sadabad, however, in support of said statement of PW-2, there was no material or evidence on

record. Even the reading of statement of PW-2 does not suggest that the jeep was being plied as taxi from Rambagh to Sadabad inasmuch as if that be so, PW-2 ought to have stated the name of persons who travelled on the jeep by paying fare whereas on the other hand, the specific statement was made by PW-2 that he did not pay any fare nor he had any knowledge about the fact whether the deceased paid any fare or not. The question of breach of policy is to be seen at the time of accident and not the breach committed by owner earlier as the liability to pay compensation arises on account of the accident and if the insurance company failed to prove that at the time of accident the owner had been plying offending vehicle in breach of terms and conditions of policy, the insurance company cannot be absolved to pay compensation.

7. Though it is true that the insurance company produced its officer to prove the breach committed by the owner, but the officer cannot make a positive statement as to whether the jeep was being plied as taxi for the reasons that he was not present on the spot of the accident. In such view of the fact, the testimony of officer of the insurance company with regard to breach of policy is not worthy reliance. This Court finds that the finding of the Tribunal with respect to breach of policy is based on misreading of evidence of PW-2, and thus, is not sustainable in law. In such view of the fact, this Court finds that the finding of the Tribunal on the issue of breach of policy is not sustainable and is accordingly set aside.

8. For the reasons given above, the appeal is ***allowed*** and the award is modified accordingly and it is held that the insurance company is liable to pay entire awarded amount awarded by the Tribunal. No order as to costs.

Order Date :- 3.11.2023

R.S. Tiwari