

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1046 of 1998

Appellant :- National Insurance Co. Ltd.

Respondent :- Smt. Saroj Devi And Others

Counsel for Appellant :- Om Prakash Mishra, Sudhanshu Behari Lal Gour

Counsel for Respondent :- Lovekush Kumar Mishra, Prabhakar Tripathi

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant.
2. The present appeal has been filed by the appellant-insurance company challenging the award dated 03.08.1998 passed by Motor Accident Claims Tribunal/IV Additional District Judge, Agra in M.A.C.P. No.497/1994.
3. Challenging the award, learned counsel for the appellant has contended that the finding of the Tribunal that the driver of the offending truck No.HYJ 1695 was holding a valid driving licence is perverse and against the record. It is contended that as per the charge sheet one Bhajan Singh was the driver of the offending vehicle whereas as per the owner of the vehicle one Harbhajan Singh was driver of the offending vehicle. It is contended that the Tribunal has erred in law in holding that Harbhajan Singh was driving the vehicle at the relevant time. It is contended that even if the case of the owner is accepted that the Harbhajan Singh was driving the offending vehicle, the driving licence of the Harbhajan Singh was got verified and it was found to be not valid on the date of accident. It is submitted that as per the verification report, the driving licence of the Harbhajan Singh was valid from 13.08.1990

to 12.08.1993 thereafter it was valid from 22.03.1996 to 21.03.1999. It is submitted that the accident had taken place on 09.10.1994 and even on the date of accident the driving licence of the driver was not valid. It is contended that since the insurance company has proved that the driving licence of the driver of offending vehicle was not valid on the date of the accident, the owner of the offending vehicle has committed breach of insurance policy, and therefore, the Tribunal should have given right of recovery to the appellant.

4. Be that as it may, as per the case of owner one Harbhajan Singh was driving offending vehicle. The insurance company got the driving licence of driver was verified and on verification, it was got verified that it was valid from 13.08.1990 to 12.08.1993. Subsequently, it was valid till 22.03.1996 and thereafter it was renewed on 21.03.1999. Thus, according to insurance company, the driving licence was not valid on the date of accident i.e. 19.10.1994. In the present case, there is no material on record indicating that application for renewal of driving licence was filed within one month from the date of expiry of driving licence. Thus, the submission of learned counsel for the appellant that driver of the offending truck was not holding valid driving licence has substance in view of the judgment of Apex Court in the case of ***Ram Babu Tiwari Vs. United India Insurance Co. Ltd., 2008 (8) SCC 165***, therefore, the finding of the Tribunal that since the insurance company failed to demonstrate that the driver of the offending vehicle was not eligible to get his driving licence renewed, therefore, the driver of offending vehicle was holding a driving licence is illegal and not sustainable in law.

5. However, the law is settled that the insurance company in order

to avoid its liability on the issue of breach of insurance policy has to establish two facts; the driving licence of the driver was not valid on the date of accident; secondly, the owner has committed breach of policy deliberately. In the instant case, the owner had appeared before the Tribunal and stated that he had verified the driving licence of the driver of the offending vehicle and having satisfied that Harbhajan Singh was holding a valid driving licence, he employed him as a driver. The insurance company did not lead any evidence in rebuttal to the testimony of owner of the vehicle. Thus, the insurance company has failed to demonstrate that the owner of the vehicle committed breach of policy deliberately.

6. In such view of the fact, this Court is not inclined to interfere with the finding of the Tribunal on the issue of driving licence.

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

Order Date :- 26.10.2023

R.S. Tiwari