

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1263 of 1998

Appellant :- United India Insurance Co. Ltd.

Respondent :- Onkar And Others

Counsel for Appellant :- Ashok Kumar Srivastava, Sushil Kumar Mehrotra

Counsel for Respondent :- Santosh Kumar Pandey, Sunil Kumar Upadhyay

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant.
2. The present appeal has been filed by the appellant Insurance Company against the award dated 06.08.1998 passed by the Motor Accident Claims Tribunal/VIIth Additional District Judge, Bareilly in M.A.C. Case No.235 of 1988.
3. Challenging the award, learned counsel for the appellant has contended that the deceased was travelling in the bus and the liability of the appellant Insurance Company in respect to the passengers of the bus was limited. Accordingly, it is submitted that the Tribunal has erred in law in fixing the entire liability upon the appellant Insurance Company to pay the compensation.
4. Be that as it may, the issue whether the liability of the Insurance Company under the insurance policy was limited or not is a question which can be decided on the basis of pleading and evidence on record. The appellant Insurance Company did not set up the said plea before the Tribunal nor got any issue framed on the said point. In such view of the fact, the said plea cannot be raised for the first time in appeal before this Court.
5. Thus, for the reasons given above, the appeal lacks merit. It is accordingly, **dismissed** with no order as to costs.

Order Date :- 9.11.2023/NS