

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 309 of 1998

Appellant :- United India Insurance Company Limited Through
Div. Manager

Respondent :- Safiqan Bi And Ors.

Counsel for Appellant :- Nagendra Kumar Srivastava

Counsel for Respondent :- R.K.Mathur,P.K. Srivastava

with

Case :- FIRST APPEAL FROM ORDER No. - 308 of 1998

Appellant :- United India Insurance Company Limited Through
Div. Manager

Respondent :- Smt. Jameela Begum And Ors.

Counsel for Appellant :- Nagendra Kumar Srivastava

Counsel for Respondent :- R.K.Mathur

with

Case :- FIRST APPEAL FROM ORDER No. - 310 of 1998

Appellant :- United India Insurance Company Limited Through
Div. Manager

Respondent :- Smt. Shahana Fatima Alias Shahana Bi And Ors.

Counsel for Appellant :- Nagendra Kumar Srivastava

Counsel for Respondent :- R.K. Mathur

with

Case :- FIRST APPEAL FROM ORDER No. - 311 of 1998

Appellant :- United India Insurance Company Limited Through
Div. Manager

Respondent :- Tariq Irfan And Others

Counsel for Appellant :- Nagendra Kumar Srivastava

Counsel for Respondent :- R.K. Mathur

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellant, however, no one is present on behalf of the respondents even in the revised call.
2. Since, these four appeals are arising out of same accident and involves common issues, therefore, all the appeals are decided together with this common judgement.

3. For convenience, the facts are being delineated from F.A.F.O. No.309 of 1998.

4. All these appeals i.e. F.A.F.O. No.309 of 1998, F.A.F.O. No.308 of 1998, F.A.F.O. No.310 of 1998 and F.A.F.O. No.311 of 1998 have been filed by the appellant-insurance company challenging the award dated 11.12.1997 passed by Motor Accident Claims Tribunal/IVth A.D.J., Moradabad in M.A.C. No.225/1992, M.A.C. No.217/1992, M.A.C. No.182/1992 and M.A.C. No.183/1992 respectively.

5. Challenging the award, learned counsel for the appellant has contended that the appellant insurance company produced the verification report of driving licence of driver of offending truck No.DIG 6313 and proved the same by producing DW-1 Sri Krishna Kumar & DW-2 Santosh Kumar. It is submitted that since verification report filed by the insurance company was duly proved in accordance with law and there was no evidence in rebuttal to the testimony of DW-1 & DW-2, therefore, the Tribunal has erred in law in deciding the issue of driving licence against the insurance company. It is also submitted that the Tribunal in recording a finding that the testimony of DW-1 & DW-2 are not credible since they are interested witnesses is also illegal. Accordingly, it is submitted that since the owner has committed breach of insurance policy, therefore, the Tribunal should have given right of recovery to awarded amount from the owner.

6. Be that as it may, the owner of the offending truck has filed written statement stating that the driving licence of driver was valid on the date of accident. It appears from the judgment that insurance company has filed investigation report and has proved that the driving licence was not valid on the date of accident. The

insurance company also proved the said report by producing DW-1 & DW-2, however, the Tribunal disbelieved the testimony of DW-1 & DW-2 on the ground that they are interested witnesses. In the opinion of Court, the Tribunal has rightly disbelieved the testimony of DW-1 & DW-2 who are the employees of the insurance company. The insurance company ought to have filed a verification report issued by the licensing authority and proved the same by producing an officer authorised by the transport authority which has not been done in the present case.

7. It is also pertinent to note that the owner has filed written statement stating that the driving licence of the driver was valid on the date of accident. It is settled in law that the insurance company in order to succeed on the issue of breach of policy not only has to prove that the driver of the offending vehicle was not holding valid driving licence but also to prove that the breach of insurance policy was committed by the owner deliberately. In the instant case, the insurance company did not set up a case that the breach of insurance policy was committed by the owner deliberately nor it led any evidence on record to establish that the breach of insurance policy committed by the owner was deliberate. In such view of the fact, this Court does not find any illegality committed by the Tribunal in deciding the issue of driving licence against the insurance company.

8. For the reasons given above, the appeals lack merit and are accordingly ***dismissed*** without any order as to costs.

Order Date :- 26.10.2023
R.S. Tiwari