

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 848 of 1996

Appellant :- The New India Insurance Co. Ltd.

Respondent :- Km. Jyoti Sharma Alias Jyotsna Sharma

Counsel for Appellant :- Vinod Swarup

Counsel for Respondent :- ,Ajay Sharma

With

Case :- FIRST APPEAL FROM ORDER No. - 908 of 1996

Appellant :- The N.I.I. Co. Ltd. Allahabad

Respondent :- Raghunath Prasad Sharma And Others

Counsel for Appellant :- Vinod Swarup, Kuldeep Shanker Amist

Counsel for Respondent :- Ajay Sharma, Dharmendra Dhar Dubey

With

Case :- FIRST APPEAL FROM ORDER No. - 847 of 1996

Appellant :- The New India Insurance Co. Ltd.

Respondent :- Latika Sharma Alias Gujjan

Counsel for Appellant :- Vinod Swarup

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant and learned counsel for respondent
2. Since all the appeals arise out of the same accident and involve common issues, therefore, they are being decided by this common judgement.
3. The FAFO No.848 of 1996 has been filed challenging the award dated 31.07.1996 passed by Motor Accident Claims Tribunal/Ist Additional District Judge, Rampur in M.A.C.P. No.126 of 1990, FAFO No.908 of 1996 has been filed challenging the award passed in M.A.C.P. 127 of 1990 & FAFO No.847 of 1996 has been filed challenging the award passed in M.A.C.P. No.128 of 1990.
4. For the sake of convenience, the facts are being delineated from FAFO No.848

of 1996.

5. Challenging the award, learned counsel for the appellant has contended that the deceased was travelling in maruti van No.HNG-2048. It is submitted that the vehicle was insured for private purpose whereas it was being used for commercial purpose at the time of accident. It is submitted that the owner has committed breach of policy inasmuch as maruti van was hired, which is evident from the testimony of PW3-Prakeep Kaushik, who unequivocally stated that the maruti van was taken on hire. Accordingly, it is submitted that the owner of maruti van had committed breach of insurance policy and the Tribunal should have given right of recovery to the appellant. It is lastly urged by the learned counsel for the appellant that the appellant cannot be made liable to pay compensation as the policy in respect to maruti van was only "liability policy", and therefore, occupants of maruti van was not covered under the insurance policy, therefore, the appellant cannot be saddled with any liability to pay compensation.

6. Be that as it may, the Tribunal on the issue no.3 in respect of breach of policy that the maruti van was being used for commercial purpose held that it was specific case of the owner in written statement that the maruti van was being used for private purpose. He also appeared as DW1 before the Tribunal and deposed that the maruti van was being used for private purpose and was not given on rent. The Tribunal disbelieved the testimony of PW1 on the ground that PW1 had not stated the fare on which the maruti van was hired, and accordingly, Tribunal held liability upon the Insurance Company to pay compensation.

7. The Court may note that the issue in respect to breach of policy was got framed by the Insurance Company. The Insurance Company did not lead any independent witness on record in rebuttal to the testimony of DW1, owner of the maruti van that the maruti van was being used for commercial purpose at the time of accident.

8. Since, the Insurance Company failed to discharge its burden of proving that the offending vehicle was being used for commercial purpose at the time of accident,

therefore, this Court is of the view that the Tribunal has rightly held liability of the Insurance Company to pay compensation.

9. So far as the contention of learned counsel for the appellant that the policy in respect to maruti van was only "liability policy" is concerned, the said contention has been advanced by the learned counsel for the appellant only in appeal. The record reveals that no such plea was set up by the Insurance Company in the written statement nor the Insurance Company got any issue framed on the said point. The Insurance Company also did not lead any evidence on record proving that the policy was only "liability policy" and did not cover the occupants of the maruti van. In such view of the fact, the aforesaid submissions advanced by the learned counsel for the appellant is misplaced and is not sustainable in law and is liable to be rejected. Consequently, the said contention is rejected.

10. Thus, for the reasons given above, all the appeals lacks merit and are accordingly, **dismissed** with no order as to costs.

Order Date :- 18.10.2023

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