

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 579 of 1998

Appellant :- Oriental Insurance Co. Ltd.

Respondent :- Rajni And Others

Counsel for Appellant :- Kuldeep Shanker Amist

Counsel for Respondent :- Rajeev Sharma, Rajeev Sharma, Someshwari Prasad

with

Case :- FIRST APPEAL FROM ORDER No. - 580 of 1998

Appellant :- Oriental Insurance Co. Ltd.

Respondent :- Ravendra Singh And Others

Counsel for Appellant :- Kuldeep Shanker Amist

Counsel for Respondent :- Rajeev Sharma

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant and learned counsel for the respondents.
2. Since, these two appeals are arising out of same accident and involves common issues, therefore, both the appeals are being decided together with this common judgement.
3. Both the appeals i.e. F.A.F.O. No.579 of 1998 and F.A.F.O. No.580 of 1998 have been filed by the appellant-insurance company challenging the award dated 19.02.1998 passed by Motor Accident Claims Tribunal/1st A.D.J., Etawah in M.A.C. No.119/1993 and M.A.C. No.118/1993 respectively.
4. For the sake of convenience, the facts are being delineated from F.A.F.O. No.579 of 1998.
5. Learned counsel for the appellant has contended that the finding

of the Tribunal that the accident had taken place due to rash and negligent driving of driver of truck No.URR 1186 is perverse and against the record inasmuch as it is established on record that the accident had taken place due to the rash and negligent driving of rider of scooter and claim petition having been filed under Section 166 of the Motor Vehicles Act and since there was no negligence of driver of the truck in the accident, the appellant company cannot be fastened the liability to pay compensation.

6. It is further submitted that the driver of the offending truck denied the fact that he was driver of the offending truck at the time of accident. In such view of the fact, it was the duty of the owner to prove by leading cogent evidence on record that the actual driver of the truck was holding a valid driving licence at the time of accident. Accordingly, it is contended that the owner has committed breach of policy and the appellant insurance company should have been given right of recovery.

7. Per contra, learned counsel for the respondents would contend that the Tribunal after appreciating the testimony of eyewitness PW-2 Udaivir Singh Chauhan recorded a finding that the accident had taken place due to rash and negligent driving of driver of truck. The testimony of PW-2 was also corroborated by other documentary evidence on record. In such view of the fact, it is submitted that the finding of the Tribunal on the issue of negligence is a finding of fact based upon proper appreciation of evidence on record and does not call for any interference by this Court in appeal.

8. Be that as it may, the Tribunal after considering the testimony of PW-2 and other documentary evidence on record concluded that the accident was the result of rash and negligent driving of driver

of truck No.URR 1186. The insurance company did not lead any evidence in rebuttal to the testimony of PW-2. The testimony of PW-2 was consistent and was also supported by other documentary evidence on record.

9. In such view of the fact, the finding of the Tribunal on the issue of negligence based upon the testimony of PW-2 is a finding of fact and does not call for any interference by this Court in its appellate jurisdiction.

10. So far as the issue of driving licence is concerned, the law is settled that the burden is upon the insurance company to prove that the driver of the offending vehicle was not holding a valid driving licence at the time of accident which the insurance company failed to discharge in the instant case. Since the controversy on the issue of driving licence is covered by judgment of Apex Court in the case of *National Insurance Company Ltd. Vs. Swaran Singh & Others*, AIR 2004 SC 1531, therefore, contention of learned counsel for the appellant in respect to driving licence is misconceived and is rejected.

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

Order Date :- 1.11.2023

R.S. Tiwari