

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 211 of 1999

Appellant :- The Oriental Insurance Co. Ltd.

Respondent :- Sarla Devi And Others

Counsel for Appellant :- S.K. Srivastava,A.K. Shukla

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellant and learned counsel for the respondents.
2. The present appeal has been preferred by the appellant-insurance company challenging the award dated 30.11.1998 passed by the Motor Accident Claims Tribunal/VIIth Additional District Judge, Kanpur Nagar (hereinafter referred to as 'Tribunal') whereby the Tribunal has awarded Rs.4,08,000/- along with 12% interest as compensation to the claimants/respondents.
3. Challenging the aforesaid award, learned counsel for the appellant is contended that compensation awarded by the tribunal is excessive. It is submitted that the accident had taken place in the year 1996 and there was no evidence with regard to the income of the deceased. Therefore, the tribunal has erred in law in holding that the income of the deceased Rs.3,000/- p.m.. It is further submitted that the age of the deceased was 35 years. Therefore, the multiplier of 16 should have been applied by the tribunal for computing the compensation in place of 17. It is further contended that the award of 14% interest is also excessive. Lastly, it is urged that no driving licence of the driver of the offending vehicle was

filed on record. It is submitted that the burden to prove that the driver of offending vehicle was holding a valid driving licence at the time of accident was upon the owner of the offending vehicle, and owner once discharges the burden, the burden would shift 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. Accordingly, it is submitted that the owner of the offending vehicle had committed the breach of the insurance policy and, therefore, the tribunal should have given right of recovery to the insurance company.

4. Be that as it may, so far as the issue of quantum of compensation is concerned, as per law the claimant-respondents are entitled to 40% future prospects in view of the judgment of the Apex Court in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi and others, 2017 LawSuit (SC) 1093.**

5. The tribunal has not awarded any amount towards future prospects. It is the bounded duty of the Court to award just and adequate compensation. In such view of the fact, this court is not inclined to interfere with the quantification of compensation.

6. 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.

7. Since the issue involved with regard to driving licence is concluded by the judgment of the Apex Court in the case of ***National Insurance Company Ltd. Vs. Swaran Singh & Others, AIR 2004 SC 1531***, therefore, the contention of learned counsel for the appellant with regard to the driving licence is also rejected.

8. Thus, for the reasons given above, the appeal lacks merit and is accordingly, ***dismissed***. There shall be no order as to cost.

Order Date :- 2.11.2023

A.N. Mishra