

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 112 of 2001

Appellant :- The Oriental Insurance Co. Ltd. Alld.

Respondent :- Karim And Others

Counsel for Appellant :- Amaresh Sinha

Counsel for Respondent :- Shri Chandra, Rakesh Kumar

Hon'ble Saral Srivastava, J.

1. Heard Sri Anubhav Sinha, learned counsel for the appellant and Sri Shree Chandra, learned counsel for the respondents.

2. The present appeal has been filed by the appellant-Insurance Company against the award dated 27.11.2000 passed by Motor Accident Claims Tribunal/IIIrd Additional District Judge, Banda in M.A.C.P. No.121/70 of 1998.

3. Challenging the said award, learned counsel for the appellant has contended that once the Tribunal has recorded a finding that the driver of the offending vehicle was not holding a valid driving licence, the Tribunal ought to have given right of recovery to the appellant Insurance Company. Accordingly, it is submitted that the award of Tribunal needs modification and right of recovery be given to the appellant.

4. The law is settled that in order to avoid the liability on the breach of insurance policy, the Insurance Company has not only to establish that the owner of the offending vehicle has committed breach of insurance policy but also has to establish that the owner of the offending vehicle has committed breach of insurance policy deliberately.

5. In the instant case, the second ingredient to avoid the liability that the breach committed by the owner was deliberate, was not established by the appellant Insurance Company. The appellant Insurance Company has not taken such plea nor led any evidence on the point that the breach committed by the owner was deliberate. In such view of the fact, this Court is not inclined to accept the contention advanced by the learned counsel for the appellant.

7. Thus, for the reasons given above, the appeal lacks merit, and is, accordingly **dismissed** with no order as to costs.

Order on Cross Objection No.298829 of 2008

1. Heard Sri Shri Chandra, learned counsel for the claimants/appellants and Sri Anubhav Sinha, learned counsel for the Insurance Company.

2. The present appeal has been filed by the claimants/appellants for enhancement of award.

3. In the instant case, the claimants claimed for enhancement of award for the death of a child Kalloo Khan aged about 15 years.

4. The Tribunal has awarded Rs.1,50,000/- lump sum along with interest.

5. Challenging the aforesaid award, learned counsel for the claimants/appellants has contended that in the case of **Kurvan Ansari alias Kurvan Ali and another Vs. Shaym Kishore Murmu and another (20) 1 SCC 317**, the Apex Court has awarded compensation of Rs.4,70,000/- in case of death of a minor child. Accordingly, it is submitted that as the controversy in hand

is squarely covered by the judgement of the Apex Court in **Kurvan Ansari alias Kurvan Ali (supra)**, therefore, the same amount of compensation shall be awarded to the claimants/appellants.

6. Per contra, learned counsel for the Insurance Company has contended that the deceased was only 15 years of age and, therefore, no loss of income was suffered by the claimants/appellants and the Tribunal has rightly awarded Rs.1,50,000/- lump sum as compensation to the claimants/appellants.

7. The Apex Court in the case of **Kurvan Ansari alias Kurvan Ali (supra)** has awarded in case of death of a minor child Rs.4,70,000/- as compensation. Considering the fact that the controversy in hand is squarely covered by the judgement of the Apex Court in the case of **Kurvan Ansari alias Kurvan Ali (supra)**, this Court also enhances the compensation from Rs.1,50,000/- to Rs.4,70,000/-.

8. The enhanced amount shall carry 6% interest from the date of institution of claim petition till the amount is paid. The Oriental Insurance Company is directed to pay the enhanced amount of compensation to the claimants/appellants within a period of three months from the date of production of certified copy of this order.

9. For the reasons given above, the appeal is partly **allowed** and the award is modified to the extent indicated above.

Order Date :- 16.10.2023

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