

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 563 of 2001

Appellant :- The New India Assurance Co. Ltd. And Others

Respondent :- Smt. Amita Shukla And Others

Counsel for Appellant :- K.S. Amist,Poonam Srivastava

Counsel for Respondent :- S.K.Srivastava,M.N. Siddique

Hon'ble Saral Srivastava,J.

1. Heard Sri K.S. Amist, 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 12.02.2001 passed by the Motor Accident Claims Tribunal/Ist Additional District Judge, Kanpur Dehat (hereinafter referred to as 'Tribunal') in M.A.C.P. No.98 of 2000 whereby the Tribunal has awarded Rs.2,71,200/- along with 15% interest as compensation to the claimants/respondents.

3. Challenging the aforesaid award, learned counsel for the appellant has contended that owner has committed breach of insurance policy inasmuch as deceased was travelling as gratuitous passenger on a goods carrying vehicle. It is submitted that deceased was not covered under the insurance policy and in such view of the fact, no liability can be fastened upon the appellant-insurance company to pay compensation. It is further submitted that the question whether deceased was travelling on a goods vehicle with the consent of the owner would arise only when owner appears before the Tribunal and states that he had no knowledge about travelling of deceased on the offending vehicle whereas in the present case, the owner of the offending vehicle did not appear before the Tribunal. Accordingly, it is submitted that the Tribunal has erred in law in holding that insurance company did not prove that owner had knowledge about the fact that deceased was travelling as gratuitous passenger on the offending vehicle. Accordingly, it is submitted that appellant-insurance company is not liable to pay compensation.

4. Per contra, learned counsel for the claimants/respondents would contend that breach of insurance policy is an issue between the owner and insurance company for which claimants should not

suffer and claimants shall be paid compensation.

5. Be that as it may, the Tribunal in deciding the issue no.3 against the appellant-insurance company recorded a categorical finding that appellant-insurance did not prove that deceased was travelling on a goods vehicle with the consent of the owner of the offending vehicle or owner of the offending vehicle had knowledge about the fact of travelling of deceased on goods vehicle.

6. The law is settled that if the insurance company wants to avoid its liability to pay compensation on the ground of breach of insurance policy, the insurance company not only to establish the breach of insurance policy by the owner, but it also has to establish that breach of insurance policy was committed with the consent of the owner of the offending vehicle.

7. In the instant case, the appellant-insurance company has failed to prove the fact that breach of insurance policy was committed by the owner deliberately, therefore, this Court does not find any illegality committed by the Tribunal in deciding the issue no.3 against the appellant-insurance company.

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

Order Date :- 30.10.2023

Sattyarth