

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 543 of 2000

Appellant :- Hem Dutt Tripathi And Another

Respondent :- National Insurance Co. Ltd. Mirzapur And Others

Counsel for Appellant :- S.D.N.Singh,B.N. Chaturvedi,Shri
Prakash Dwivedi

Counsel for Respondent :- S.N.Singh

Hon'ble Saral Srivastava,J.

1. Learned counsel for the appellants is present. However, learned counsel for the respondents is not present.

2. Heard learned counsel for the appellants.

3. The present appeal has been preferred by the appellants-owner challenging the award dated 20.01.2000 passed by the Motor Accident Claims Tribunal/Vth Additional District Judge, Varanasi (hereinafter referred to as 'Tribunal') in M.A.C.P. No.188 of 1995 whereby the Tribunal has awarded Rs.69,500/- along with 10% interest as compensation to the claimants/respondents.

4. Challenging the aforesaid award, learned counsel for the appellants has contended that finding of the Tribunal that offending vehicle i.e. Tractor No.U.P.-63-3109 was being used in breach of insurance policy is perverse and against the record. It is contended that Tribunal has erred in law in concluding the issue of breach of insurance policy against the owner of the offending vehicle by placing reliance upon the written statement of the appellants/owner wherein he has stated that his son had taken the tractor for personal use. It is submitted that burden is upon insurance company to prove that tractor was being used in breach of insurance policy, and in the absence of any evidence led by the insurance company in respect to breach of insurance policy, the Tribunal has erred in law in holding that the appellant has committed breach of insurance policy.

5. Be that as it may, finding of the Tribunal on the issue nos.3 & 4 reveals that Tribunal has placed reliance only on one sentence in the written statement of the owner wherein he stated that his son had taken the tractor for personal use. There is no evidence on record that offending tractor was being used for commercial

purposes or not connected with agriculture purposes. The burden to prove that owner has committed breach of insurance policy is upon the insurance company. In the instant case, the insurance company has failed to discharge its burden.

6. In such view of the fact, the finding of the Tribunal in deciding the issue of breach of insurance policy against the owner is perverse and not sustainable in law.

7. Accordingly, award is modified and insurance company is directed to pay the award.

8. Thus, for the reasons given above, the appeal of the appellant-owner is partly ***allowed***. There shall be no order as to costs.

Order Date :- 12.10.2023

Sattiyarth