

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1159 of 2000

Appellant :- United India Insurance Co. Ltd. Alld.

Respondent :- Ghanshyam And Others

Counsel for Appellant :- K.S. Amist

Counsel for Respondent :- Ashok Kumar, Satya Deo Ojha, S.D. Ojha

Hon'ble Saral Srivastava, J.

1. Heard Sri K.S. Amist, learned counsel for the appellant and Sri S.D. Ojha, learned counsel for the respondents.

2. The present appeal has been preferred by the appellant-insurance company challenging the award dated 20.06.2000 passed by the Commissioner, Employees Compensation Act, 1923/Assistant Labour Commissioner, Muzaffar Nagar (hereinafter referred to as 'Commissioner') in W.C.A. Case No.18 of 1999 whereby the Commissioner has awarded Rs.1,99,233/- along with 18% interest as compensation to the claimants/respondents.

3. The appellant has preferred the present appeal challenging the award on the ground that during the pendency of the claim petition, owner of the offending vehicle i.e. Bus No.15-C-4403 had died and his heirs have not been substituted. It is submitted that claim petition against a dead person was not maintainable and since heirs of the owner have not been substituted, no liability upon the owner arises in the claim petition. It is submitted that in the absence of non-substitution of heirs of owner, the insurance company cannot be saddled with the liability to pay compensation inasmuch as the insurance company indemnify the liability of the owner. In such view of the fact, the following question of law is being framed:-

'Whether in the absence of substitution of heirs of owner, claim petition could be allowed against the insurance company.'

4. Learned counsel for the respondents has called upon to address on the aforesaid question of law. However, he could not dispute the fact that the owner of the offending vehicle had died during the pendency of claim petition and his heirs have not been substituted.

5. This Court also perused the record of the case and finds that heirs of the owner have not been substituted.

6. The claim petition would not lie against a dead person and liability to pay compensation would fall upon the insurance company only when liability of the owner under the award is determined. The insurance company indemnifies the liability of the owner under the contract of insurance policy.

7. In such view of the fact, this Court finds that Tribunal has erred in law in allowing the claim petition and passing the award without substituting the heirs of owner of the vehicle.

8. Accordingly, the question of law framed above is answered in favour of the appellant-insurance company and award is set aside. However, in the interest of justice, it is provided that the amount released to the claimants/respondents under the interim order passed by this Court will not be recovered. So far as the balance amount deposited with the Commissioner is concerned, the same shall be refunded to the appellant-insurance company by the Commissioner expeditiously, preferably within a period of two months from the date of production of certified copy of this order.

9. Accordingly, the appeal is partly ***allowed*** and there shall be no order as to costs.

Order Date :- 16.10.2023

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