

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1259 of 2000

Appellant :- The New India Assurance Co. Ltd.

Respondent :- Smt. Suman Tiwari And Ors.

Counsel for Appellant :- Amaresh Sinha

Counsel for Respondent :- Rajiv Lochan Shukla, Rajiv Lochan Shukla

Hon'ble Saral Srivastava, J.

1. List has been revised. None for the respondents.
2. Heard learned counsel for the appellant.
3. The present appeal has been filed by the appellant-insurance company challenging the award dated 30.05.2000 passed by Motor Accident Claims Tribunal, Etawah in M.A.C.P. No.292/1999.
4. Challenging the award, learned counsel for the appellant has contended that the offending vehicle i.e. fiat car No.UHL/6886 was insured for private purpose whereas the deceased was travelling in the car as fare paying passenger. It is submitted that since the offending vehicle was being used for commercial purpose, therefore, the owner has committed breach of policy and the insurance company should have been given right of recovery.
5. Be that as it may, the insurance company has set up a plea in the written statement that the deceased was travelling as a gratuitous passenger and the offending vehicle was being used for commercial purpose which was breach of terms and condition of the policy but the insurance company did not get any issue framed on the

said point nor led any evidence before the tribunal to prove that the deceased was travelling as a gratuitous passenger.

6. Since, the issue of breach of policy on the ground that the offending vehicle though insured for private purpose was being used for commercial purpose was not proved before the tribunal. The submission advanced by learned counsel for the appellant is misconceived and it is therefore rejected.

7. Consequently, the appeal lacks merit and is **dismissed**.

Order Date :- 12.10.2023

SS