

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 221 of 2000

Appellant :- National Insurance Company Ltd.

Respondent :- Smt.Tetari Devi And Others

Counsel for Appellant :- Arvind Kumar

Counsel for Respondent :- Anil Kumar Panday, Anil Kumar Panday, Arun Kumar Shukla

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant and learned counsel for the respondent.
2. The present appeal has been filed by the appellant insurance company challenging the award dated 14.11.1999 passed by Motor Accident Claims Tribunal/1st Additional District Judge, Deoria in M.A.C.P. No.52 of 1997.
3. Challenging the award, learned counsel for the appellant has contended that the finding of the Tribunal that the driver of the offending vehicle was holding a valid driving licence at the time of accident is perverse and against the record. It is contended that a report was filed which proved that the driver of the vehicle was not holding valid driving licence at the time of accident, and therefore, the Tribunal should have given right of recovery to the appellant.
4. Per contra, learned counsel for the respondents would contend that the Tribunal has recorded a specific finding that the documents presented before the licensing authority for verification was returned by the licensing authority and there was no material on record from which it could be inferred that the driving licence of the driver was not valid on the date of accident. It is submitted that the finding of the Tribunal on the issue of driving licence is a

finding of fact based upon proper appreciation of facts and evidence on record and does not call for any interference by this Court.

5. The Tribunal in deciding the issue of driving licence has held that there was nothing on record to prove that the driver of the offending vehicle was not holding valid driving licence on the date of accident. The relevant extract of the finding of the Tribunal on the issue of driving licence is reproduced hereinbelow:

"On behalf of the Insurance Company, papers No. 34-C and 35-C have been filed. On perusal of paper No.34-C it is clear that in paper No.34-C has written that for want of original copy of the driving licence it is very difficult to verify the driving licence alleged to have been issued in favour of the driver. In this way, paper No.34-C does not go to help the Insurance Company. Paper No. 35-C also does not help the Insurance Company because the licencing authority had returned all the papers to the Insurance Company. In this way, there is nothing on record to show that on the date of the accident the driver of the vehicle was not possessing valid driving licence. When the vehicle was insured, therefore, the presumption is that on the date of the insurance the driver of the vehicle was possessing valid driving licence because after verification of this fact the Insurance Company had insured the vehicle."

6. The finding extracted above reveals that the Tribunal has not committed any illegality in deciding the issue of driving licence against the insurance company inasmuch as it is settled in law that the burden to prove that the driving licence of the driver of the offending vehicle was not valid is upon the insurance company which the insurance company has failed to discharge.

7. Thus, for the reasons given above, the appeal lacks merit and is accordingly ***dismissed*** without any order as to costs.

Order on Cross Objection.

Heard learned counsel for the cross objector.

There is delay of 8279 days in filing the cross objection.

The cross objector has explained the delay in paragraph Nos.3 to 6, which are quoted hereinbelow:

"3. That at the time of filing of appeal the deponent and his sisters were minor and Vakalatnama was filed by his mother as guardian.

4. That in March 2023 counsel of deponent informed to his mother to file Vakalatnama of her children who have become major.

5. That on 05.04.2023 deponent came to Allahabad and handed over Vakalatnama to the counsel Sri Anil Kumar Pandey who engaged Sri Arun Kumar Shukla Advocate.

6. That after perusal of the file Sri Arun Kumar Shukla advised to file cross objection as compensation awarded by the Tribunal was on lower side."

On perusal of the aforesaid paragraphs, it appears that delay has not been properly explained. Consequently, delay condonation application is dismissed.

In such view of the fact, the cross objection is dismissed.

Order Date :- 9.11.2023

R.S. Tiwari