

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 468 of 2000

Appellant :- National Insurance Co. Ltd. Thr. Its Asstt Manager.
Ald.

Respondent :- Sri Chhoteylal And Anr.

Counsel for Appellant :- M.S. Haq

Counsel for Respondent :- Vashitha Tewari

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant
2. The present appeal has been preferred by the appellant-insurance company challenging the award dated 03.01.2000 passed by the Motor Accident Claims Tribunal/Vth Additional District Judge, Deoria (hereinafter referred to as 'Tribunal') in M.A.C.P. No.303 of 1997 whereby Tribunal has awarded Rs.2,35,378/- along with 12% interest as compensation to the claimants/respondents.
3. Challenging the aforesaid award, learned counsel for the appellant has contended that Tribunal has erred in law in fixing the liability upon the appellant-insurance company to pay compensation. It is submitted that Commander Jeep No.U.P.-53-F-6044 was insured with the appellant for private purposes whereas it was being used for commercial purposes at the time of the accident, and therefore, the owner of the Jeep has committed breach of insurance policy and insurance company cannot be made liable to pay compensation.
4. Be that as it may, the Tribunal on the basis of the pleadings between the parties framed following issues:-

"1. Whether on 10.5.97 at 5.00 a.m. when Chhotey Lal was leading from Gauri Bazar to Deoria and had reached bear village Deokunwan (Langari) in front of the Chotha of Gorakh Nishad the driver of Commander Jeep No.U.P.53F/6044 driving the said vehicle with carelessly and fast speed dashed against the petitioner?

2. Whether the Jeep was insured by O.P. No.2 at the time of the accident?

3. Whether the driver of the Jeep was not holding a valid and effective driving licence at the time of accident? If so, its effect?

4. *Whether the petitioner is entitled for any compensation and if so to what amount and from whom?"*

5. Perusal of the issues reveals that the insurance company did not get any issue framed on the point of breach of insurance policy that Jeep was insured for private purposes and it was being used for commercial purposes. Since the insurance company did not raise such plea before the Tribunal, therefore, it is not open to the appellant-insurance company to raise such plea for the first time in appeal.

6. It is also stated that quantification of compensation is also on higher side. This Court is not inclined to interfere with the quantification of compensation inasmuch as even if it is a case of injury, the claimant is entitled to future prospect which in the instant case has not been awarded by the Tribunal.

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

Order Date :- 13.10.2023

Sattiyarth