

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 1166 of 2002

Appellant :- Oriental Insurance Co. Ltd.

Respondent :- Smt. Mohammadi And Others

Counsel for Appellant :- Manish Goyal, Parv Agarwal

Counsel for Respondent :- Madhusudan Dikshit, Avanish Mishra, Bhual Vishwakarma, Nigamendra Shukla, S K Mishra, Vipul Kumar

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant and learned counsel for the respondents.
2. The present appeal has been filed by the appellant-insurance company challenging the award dated 26.04.2002 passed by Motor Accident Claims Tribunal/Additional District Judge, Court No.7, Meerut in M.A.C.P. No.948/2000.
3. Challenging the award learned counsel for the appellant has contended that it was a case of accident of two vehicles namely Maruti Van No.D.D. V-8872 and Bus No.U.P.7G-4236 coming from opposite direction, and therefore, the manner in which the accident took place reveals that the driver of both the vehicles were negligent. Accordingly, it is contended that the Tribunal should have apportioned the compensation to the extent of negligence of driver of both the vehicles i.e. Maruti Van and Bus.
4. Per contra, learned counsel for the respondents would contend that the deceased was travelling in a van, and therefore, it was a case of composite negligence and it is the choice of the claimant to claim compensation from either of the tortfeasor. In such view of the fact, the Tribunal has not committed any illegality in fixing the

liability to pay compensation upon the appellant.

5. It is not in dispute that the deceased was travelling in car. Therefore, it was a case of composite negligence. The Apex Court in the case of **Khenyei Vs. New India Assurance Company Limited and others (2015) 9 SCC 273** has held that in case of composite negligence, it is the choice of claimant to claim compensation from either of the tortfeasor. As the same is covered by the judgment of the Apex Court in the case of **Khenyei (supra)**, therefore, contention of learned counsel for the appellant with respect to negligence is misconceived and is not sustainable in law and is accordingly rejected.

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

Order on Cross Objection.

Stamp reporter has reported delay of 6315 days. No delay condonation application has been filed in filing the cross objection.

In such view of the fact, the cross objection is not maintainable and is accordingly ***dismissed***.

Order Date :- 16.10.2023

R.S. Tiwari