

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 154 of 2000

Appellant :- National Insurance Co.Ltd.

Respondent :- Banshidhar And Another

Counsel for Appellant :- Arvind Kumar

Counsel for Respondent :- Brij Raj Singh, Hari Narain Singh
(Senior Adv.)

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 against the award dated 06.11.1999 passed by Motor Accident Claims Tribunal/Ind Additional District Judge, Firozabad in M.A.C.P. No.31 of 1997.

3. Challenging the said award, learned counsel for the appellant has contended that the driver and owner of the tempo No.U.P.83-A/9198 ((hereinafter referred to as the 'offending tempo') appeared before the Tribunal and stated that no accident had taken place by the offending tempo. Accordingly, it is submitted that the Tribunal has erred in law in believing the testimony of PW1 i.e. claimant/respondent, namely, Banshidhar and PW2 who is son of the claimant/respondent, inasmuch as PW1 and PW2 are interested witness. It is further contended that the offending tempo was being driven by a person not holding a valid driving licence inasmuch as the tempo being a passenger carrying vehicle comes within the definition of transport vehicle, and therefore, the driver should have been authorized by the licensing authority to drive the commercial vehicle.

4. Per contra, learned counsel for the respondents would contend that the claimant/respondent (PW1) suffered injuries in the accident and there was ample evidence on record which proved that PW1 suffered injuries in the accident. PW2 was also an eye witness of the accident and as there was no inconsistency in the testimony of PW1 and PW2, and further the testimony of PW1 and PW2 are corroborated by the other documentary evidence on record, therefore, the Tribunal has rightly believed the testimony of PW1 and PW2. It is submitted that DW1 and DW2 being owner and driver of the offending tempo are also interested witnesses and as their testimony was not consistent and was not corroborated by documentary evidence on record, therefore, the Tribunal has rightly disbelieved the testimony of DW1 and DW2 in concluding that the claimant/ respondent suffered injuries in the accident. It is further contended that the breach of policy is an issue between the owner of the offending vehicle and the Insurance Company, for which claimant should not suffer.

5. Be that as it may, the accident was proved by PW1. There was ample evidence on record which shows that the claimant/respondent i.e. PW1 suffered injuries in the accident. The testimony of PW1 and PW2 are consistent and are supported by the documentary evidence on record, whereas testimony of DW1 and DW2 was not supported by any documentary evidence on record. In such view of the fact, this Court is of the view that the the Tribunal has rightly believed the testimony of PW1 and PW2 in concluding that the claimant/respondent i.e. PW1 suffered injuries in the accident by offending tempo.

6. So far as the issue of breach of policy on the ground of driving licence is concerned, it is not disputed that the driver of the

offending tempo was holding a valid driving licence to drive the light motor vehicle. Since, the laden weight of the tempo was less than 7000 Kgs., therefore, in view of the judgement of the Apex Court of **Mukund Dewangan Vs. Oriental Insurance Company Ltd, (2017) 14 SCC 2017**, the driver of tempo holding a valid driving licence to drive the Light Motor Vehicles is also authorized to drive the tempo, and no separate endorsement is required from the licensing authority to drive the commercial vehicle, thus, the submission of learned counsel for the appellant in respect to breach of policy is also not sustainable in law.

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

Order Date :- 16.11.2023

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