

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 2210 of 2003

Appellant :- Oriental Insurance Co Ltd

Respondent :- Smt. Lalita Devi And Others

Counsel for Appellant :- Ashok Kumar Srivastava, Ramesh Singh

Counsel for Respondent :- Arun Kumar Gupta, Dilendra Pratap Singh

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant and learned counsel for the respondents.
2. The present appeal has been preferred by the appellant insurance company against the award dated 24.04.2003 passed by the Motor Accident Claim Tribunal/Additional District Judge, Court No.9, Deoria in MACP No.213 of 1999.
3. Challenging the award, learned counsel for the appellant insurance company has contended that the offending vehicle was insured for private purpose whereas it was being used for commercial purpose. It is submitted that the deceased was travelling as fair paying passenger and thus, the owner has committed breach of insurance policy and the appellant insurance company should have been given the right of recovery.
4. Per contra, learned counsel for the claimants-respondents has contended that the insurance company did not raise the plea of breach of insurance policy on the ground that the offending vehicle was being used for commercial purpose. It

is submitted that no issue with regard to breach of policy was got framed by the insurance company nor the insurance company led any evidence to prove that the offending vehicle was being used for commercial purpose. Such issue cannot be raised for the first time in appeal.

5. Be that as it may, this Court perused the record and finds that the insurance company has not set up a plea that the offending vehicle was being used for commercial purpose.

6. The plea of breach of insurance policy is set up by the insurance company and therefore, the burden was upon the insurance company to prove by leading cogent evidence that the offending vehicle was being used for commercial purpose. In the instant case, the insurance company did not get any issue framed on the point that the offending vehicle was being used in breach of terms and conditions of the insurance policy since the offending vehicle was being used for commercial purpose and not private purpose nor it led any evidence on record to prove the breach committed by the owner. In such view of the fact, the contention advanced by learned counsel for the appellant insurance company is misconceived.

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

Order Date :- 9.11.2023

S.Sharma