

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 3070 of 2003

Appellant :- Oriental Insurance Co Ltd

Respondent :- Bheem Lal And Others

Counsel for Appellant :- Nagendr Kumar Srivastava

Counsel for Respondent :- Amit Kumar Singh, Komal Mehrotra, M.B. Yadav, P.K. Mukherji, Rajeev Ojha, Ram Singh

with

Case :- FIRST APPEAL FROM ORDER No. - 2963 of 2003

Appellant :- Oriental Insurance Co Ltd

Respondent :- Smt. Kanchan Devi And Others

Counsel for Appellant :- Nagendr Kumar Srivastava

Counsel for Respondent :- Komal Mehrotra, Mohammad Jalal Uddin Siddiqui, Ram Singh, Surendra Sharma, Vivek Ratan

with

Case :- FIRST APPEAL FROM ORDER No. - 2964 of 2003

Appellant :- Oriental Insurance Co Ltd

Respondent :- Stm. Kesha Devi And Others

Counsel for Appellant :- Nagendr Kumar Srivastava

Counsel for Respondent :- Komal Mehrotra, M.B. Yadav, Mohammad Jalal Uddin Siddiqui, Ram Singh, Vinay Khare, Vivek Ratan

with

Case :- FIRST APPEAL FROM ORDER No. - 2965 of 2003

Appellant :- Oriental Insurance Co Ltd

Respondent :- Sri Amar Nath And Others

Counsel for Appellant :- Nagendr Kumar Srivastava

Counsel for Respondent :- Komal Mehrotra, Mohammad Jalal Uddin Siddiqui, Ram Singh, Surendra Sharma, Vivek Ratan Agrawal

with

Case :- FIRST APPEAL FROM ORDER No. - 2966 of 2003

Appellant :- Oriental Insurance Co Ltd

Respondent :- Smt. Phoola Devi And Others
Counsel for Appellant :- Nagendr Kumar Srivastava
Counsel for Respondent :- Komal Mehrotra,Amit Kumar Singh,Harish Kumar,Ram Singh

with

Case :- FIRST APPEAL FROM ORDER No. - 3071 of 2003

Appellant :- Oriental Insurance Co Ltd
Respondent :- Musai Ram
Counsel for Appellant :- Nagendr Kumar Srivastava
Counsel for Respondent :- P. K. Mukherjee,Amit Kumar Singh,Komal Mehrotra,Rajeev Ojha,Ram Singh

with

Case :- FIRST APPEAL FROM ORDER No. - 3072 of 2003

Appellant :- Oriental Insurance Co Ltd
Respondent :- Asharfi Lal And Others
Counsel for Appellant :- Nagendr Kumar Srivastava
Counsel for Respondent :- Komal Mehrotra,Amit Kumar Singh,P. K. Mukherjee,Rajeev Ojha,Ram Singh

with

Case :- FIRST APPEAL FROM ORDER No. - 2967 of 2003

Appellant :- Oriental Insurance Co Ltd
Respondent :- Shiv Lal Gupta And Others
Counsel for Appellant :- Nagendr Kumar Srivastava
Counsel for Respondent :- Komal Mehrotra,Mohammad Jalal Uddin Siddiqui,Ram Singh,Vivek Ratan

with

Case :- FIRST APPEAL FROM ORDER No. - 2968 of 2003

Appellant :- Oriental Insurance Co Ltd.
Respondent :- Raj Hind Yadav And Others
Counsel for Appellant :- ,N.K. Srivastava
Counsel for Respondent :- Komal Mehrotra,Mohammad Jalal Uddin Siddiqui,Ram Singh

with

Case :- FIRST APPEAL FROM ORDER No. - 413 of 2008

Appellant :- The Oriental Insurance Company Ltd.

Respondent :- Smt. Usha Devi And Others

Counsel for Appellant :- Nagendra Kumar Srivastava

Counsel for Respondent :- Ram Singh, Amit Kumar Singh, Mohammad Farooque Ansari

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant and learned counsel for the respondents.
2. The F.A.F.O. Nos.3070 of 2003 & 2964 of 2003 have been preferred against the award dated 18.08.2003, F.A.F.O. Nos.3071 of 2003 & 2968 of 2003 have been preferred against the award dated 14.08.2003, F.A.F.O. Nos.2966 of 2003 & 2967 of 2003 have been preferred against the award dated 19.08.2003, F.A.F.O. No.2965 of 2003 & 3072 of 2003 have been preferred against the award dated 16.08.2003, F.A.F.O. No.2963 of 2003 has been preferred against the award dated 13.08.2003 and F.A.F.O. No.413 of 2008 has been preferred against the award dated 26.10.2007.
3. Since all these appeals preferred by the appellant-insurance company involve common issues, therefore, all the appeals are being decided together by this common judgement.
4. For the sake of convenience, the facts are being delineated from F.A.F.O. No.3070 of 2003.
5. Challenging the award, learned counsel for the appellant has contended that it was a case of accident of two vehicles namely Jeep No.UP 70 R/3602 and Truck No.MP 19A/9659 coming from opposite direction and the accident had taken place in the middle of road, therefore, the manner in which the accident had taken

place shows that there was negligence of the driver of jeep in the accident, and accordingly, the Tribunal should have reduced the compensation to the extent of negligence of driver of jeep in the accident. It is further contended that driving licence of the driver of truck was fake and insurance company proved the same by filing the verification report in form 54 issued by the licensing authority i.e. R.T.O., Bilaspur, and thus, in such view of the fact, the Tribunal should have given right of recovery to the appellant as the owner has committed breach of insurance policy.

6. Per contra, learned counsel for the respondents would contend that the Tribunal in concluding that the accident had taken place due to rash and negligent driving of driver of truck has placed reliance upon the testimony of eyewitness PW-2 of the accident. Testimony of PW-2 was also corroborated by the other documentary evidence on record namely F.I.R. and charge-sheet etc. It is submitted that the insurance company did not lead any evidence in rebuttal to the statement of eyewitnesses i.e. PW-2 and PW-3, therefore, the finding of the Tribunal on the issue of negligence is a finding of fact based upon the proper appreciation of evidence on record and does not warrant any interference by this Court. It is further contended that the insurance company though has filed a verification report, but has not proved the same, and thus, non consideration of verification report filed by the appellant to prove that the driving licence of driver of truck was fake does not prejudice the appellant and as such the finding of the Tribunal on the issue of driving licence is not liable to be interfered with.

7. Be that as it may, the Tribunal in concluding that the accident had taken place due to rash and negligent driving of driver of truck

No.MP 19A/9659 has placed reliance upon the testimony of PW-2 and PW-3, other documentary evidence namely charge-sheet against the driver of offending truck which also supports the testimony of PW-2 and PW-3. The insurance company did not lead any evidence in rebuttal to the testimony of PW-2 and PW-3. The finding of the Tribunal on the issue of negligence is based upon testimony of eyewitnesses i.e. PW-2 and PW-3 and in the absence of any rebuttal to their testimony, the finding of the Tribunal on the issue of negligence based upon the testimony of PW-2 and PW-3 is finding of fact and does not call for any interference by this Court.

8. So far as the issue of driving licence is concerned, though the insurance company has filed verification report issued by the transport authority, Bilaspur to demonstrate that the driving licence of the driver was fake on the date of accident, but the verification report was not proved in accordance with law. In such view of the fact, even if the Tribunal failed to consider the verification report in deciding the issue of driving licence, no prejudice has been caused to the appellant by non consideration of verification report. In such view of the fact, the finding of the Tribunal on the issue of driving licence is not liable to be interfered with.

9. For the reasons given above, all these appeals lack merit and are accordingly dismissed without any order as to costs.

Order on Cross Objection in F.A.F.O. No.413 of 2008.

Heard learned counsel for the cross objector.

Stamp reporter has reported the delay of 4253 days in filing the cross objection.

The cross objector has explained the delay in paragraph Nos.4 to 7,

which are quoted hereinbelow:

"4. That the deponent is semi literate lady and is residing in rural area and she has no knowledge of the procedure of law.

5. That on 23.10.2019 the deponent contacted to her local counsel and collected all the related documents for filing appeal for enhancement before this Hon'ble Court.

6. That on 24.10.2019 the deponent came to High Court, Allahabad and contacted to Mr. Ram Singh, Advocate and handed over all the related documents and counsel of the deponent immediately prepared the Cross Objection/Cross Appeal without any further delay.

7. That if any delay in filing the Cross Objection is bonafide, unintentional and is liable to be condoned."

On perusal of the aforesaid paragraphs, it appears that inordinate delay has not been properly explained.

In such view of the fact, delay condonation application is dismissed. Consequently, the cross objection is dismissed.

Order on Cross Objection in F.A.F.O. No.2967 of 2003.

Heard learned counsel for the cross objector.

Stamp reporter has reported the delay of 6 years 32 days in filing the cross objection.

The delay in filing the cross objection is an inordinate. The delay condonation application has been filed today whereas the Stamp Reporter reported Cross Objection on 18.11.2019 i.e. after more than 3 years from the reporting of cross objection. The cross objector has explained the delay in paragraph Nos.5 to 7, which are quoted hereinbelow:

"5. That on 13.10.2023 the deponent contacted to his counsel and enquired about status of aforesaid appeal then came to know there was some delay in filing the aforesaid Cross Objection/Cross Appeal filed by claimants/respondents and hence the counsel for the deponent immediately prepared the Delay Condonation Application along with affidavit and same is being filed without any further delay.

6. That the deponent is semi literate person and is residing in rural area and he has no knowledge of the procedure of law.

7. That the delay if any in filing the Cross Objection/Cross Appeal is unintentional bonafide and is liable to be condoned."

On perusal of the aforesaid paragraphs, it is evident that inordinate delay has not been properly explained.

In such view of the fact, delay condonation application is dismissed. Consequently, the cross objection is dismissed.

Order on Cross Objection in F.A.F.O. No.2968 of 2003.

Stamp reporter has reported the delay of 6 years 32 days in filing the cross objection.

The cross objection has been filed on 23.03.2010 and learned counsel for the cross objector-claimant has not filed any application for condonation of delay in filing the cross objection.

As there is no application for condonation of delay in filing the cross objection, therefore, the cross objection is not maintainable without any application for delay condonation. Consequently, cross objection is **dismissed**.

Order Date :- 16.10.2023

R.S. Tiwari