

**Court No. - 2**

**Case :-** FIRST APPEAL FROM ORDER No. - 2575 of 2002

**Appellant :-** United India Insurance Co. Ltd.

**Respondent :-** Smt. Vijay Laxmi Agarwal And Others

**Counsel for Appellant :-** Amaresh Sinha

**Counsel for Respondent :-** Shailesh Rai, A K Pandey, Rishi Bhushan Jauhari

**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 against the award dated 01.10.2002 passed by the Motor Accident Claim Tribunal/Additional District Judge, Shahjahanpur in MACT No.216 of 1997.
3. Challenging the award, learned counsel for the appellant has contended that in the instant case, the accident had taken place between the car and the truck. The appellant insurance company is insurer of the car. It is submitted that the deceased was driving the car at the time of accident. It is further contended that the tribunal has held 50% negligence of the deceased in the accident and accordingly, fastened the liability of payment of compensation upon the appellant insurance company. It is submitted that the insurance company indemnifies the liability of the owner and in the instant case, the owner of the car was not arrayed as party as respondent and since, there was no liability of the owner of the car under the award to pay compensation, therefore, the

appellant insurance company cannot be fastened with the liability to pay any compensation.

4. Be that as it may, the issue as to whether the occupant of the car was covered under the insurance policy is a relevant issue in the context of the argument advanced by learned counsel for the appellant inasmuch as if the occupant of the car under the insurance policy was covered, the insurance company cannot deny its liability of compensation on the ground that no liability has been fixed upon the owner of the car inasmuch as by virtue of contract with the owner, the appellant insurance company has agreed to indemnify the damages suffered by the occupant of the car.

5. In the instant case, the insurance company has not raised the aforesaid plea before the tribunal. The question whether there was any contract of insurance company covering occupant of the car could be decided only on the basis of evidence on record. Since, the insurance company did not set up this plea nor raised any point in this regard before the tribunal, therefore, the said plea cannot be raised for the first time in appeal.

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

**Order Date :- 9.11.2023**

S.Sharma