

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 171 of 2005

Appellant :- United India Insurance Co Ltd

Respondent :- Smt. Krishna Devi And Others

Counsel for Appellant :- Arvind Kumar

Counsel for Respondent :- Rakesh Kumar, Rishikesh Tripathi

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 against the judgement and award dated 06.11.2004 passed by the Motor Accident Claims Tribunal/Special Judge (E.C. Act), Banda in M.A.C.P. No.56/70 of 2003, by which the Tribunal has awarded Rs.6,11,000/- along with 6% interest as compensation to the claimants/respondents from the date of filing of the claim petition.
3. It is contended by learned counsel for the appellant that the offending vehicle i.e. Jeep No. U.P.90/7951 was insured for private purpose whereas at the time of accident it was being used for commercial purpose, thus, the owner has committed breach of insurance policy and the insurance company should have been given right of recovery to the appellant.
4. Per contra, learned counsel for the respondents submitted that the breach of insurance policy is the matter between the insured and the insurer for which the claimants/ respondents should not suffer. It is submitted that it is settled in law that in the case of breach of insurance policy, the Insurance Company is liable to pay the award, and after paying the award is entitled to recover the same, thus, the submission of learned counsel for the appellant is not sustainable in law.
5. Be that as it may, the owner has appeared before the Tribunal and has denied the fact that the offending vehicle was being used for commercial purpose. The

Insurance Company did not lead any evidence on record to prove that the offending vehicle was being used for commercial purpose. In such view of the fact, the Tribunal has not committed any error in holding the liability upon the appellant Insurance Company to pay the compensation.

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

Order Date :- 2.11.2023

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