

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 462 of 2005

Appellant :- New India Assurance Co Ltd

Respondent :- Smt. Meena And Others

Counsel for Appellant :- Parv Agarwal, Parv Agarwal

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the appellant.
2. The present appeal has been filed by appellant challenging the award dated 17.11.2004 passed by Motor Accident Claims Tribunal/ Additional District Judge, Court No.15, Agra in M.A.C.P. No.173/2004.
3. Challenging the award, learned counsel for the appellant has contended that it was an accident of two trucks i.e. truck No.J25G/915 insured with the appellant-insurance company and another truck No.RJ05G/948. It is contended that there was negligence of driver of another truck No.RJ05G/948 in the accident and the tribunal should have reduced the compensation to the extent of negligence of driver of another truck No.RJ05G/948. Accordingly, it is submitted that the award of the tribunal is not sustainable in law.
4. Be that as it may, admittedly, the deceased was travelling in another truck No.RJ05G/948 and it was a case of composite negligence. The Apex Court in the case of **Khenyei Vs. New India Assurance Company Limited and others (2015) 9 SCC 273** has held that in case of composite negligence, it is the choice of claimant to claim compensation from either of the

tortfeasor. As the same is covered by the judgement of the Apex Court in the case of **Khenyei (supra)**, therefore, contention of learned counsel for the appellant with respect to negligence is misconceived and is not sustainable in law and is accordingly rejected. The insurance company, if so advised, may institute a proceeding against the owner of another truck No.RJ05G/948 to recover the compensation paid under award to the extent of negligence of driver of another truck No.RJ05G/948.

5. For the reasons given, the appeal lacks merit and is accordingly **dismissed**.

Order Date :- 28.10.2023

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