2026:AHC:231664

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 402 of 2017

The New India Assurance Co. Ltd.

.....Appellant(s)

Versus

Smt. Nirmala Devi And 4 Ors.

.....Respondent(s)

Counsel for Appellant(s)	:	Nagendra Kumar Srivastava
Counsel for Respondent(s)	:	Kripa Shanker Yadav, Lakshmi Kant Pandey, Manvendra Narain Pathak, Shiv Lal

Court No. - 54

HON'BLE ANIL KUMAR-X, J.

1. Notices have been duly served upon all the respondents. Accordingly, service of notice is held sufficient. None has appeared on behalf of the respondents to oppose the appeal.

2. Heard Sri N.K. Srivastava, learned counsel for the appellant.

3. The applicants have challenged the judgment and award dated 29.10.2016 passed by the learned Motor Accident Claims Tribunal in MACP No. 27 of 2013, Smt. Nirmala and Others Vs. Ramashankar and Others, whereby compensation of Rs.9,19,750/- has been awarded in favour of the respondent-claimants and the liability to satisfy the award has been fastened upon the appellant Insurance Company.

4. Learned counsel for the appellant submitted that the evidence adduced by the respondent-claimants indicates that the deceased was travelling in Bolero Jeep No. UP-66-K-1622, which met with an accident on 06.07.2013 when its driver lost control over the vehicle after it skidded and collided with a tree situated alongside the road.It was further submitted that claimant PW-2, Nanhe Halwai, who was also travelling in the said Bolero Jeep, stated in his cross-examination that the vehicle had been hired by them from Pratapgarh for attending a marriage ceremony of a relative on 06.02.2013. Learned counsel, therefore, submitted that the aforesaid evidence establishes that the vehicle, which was insured for private use, was being used for commercial purposes at the time of the accident. This amounted to a breach of the terms and conditions of the insurance policy. Accordingly, even if the liability to satisfy the award is fastened upon the appellant Insurance Company, it ought to have been granted the right to recover the compensation amount from the owner of the offending vehicle.

5. None appeared on behalf of Respondents.

6. Perused the findings recorded by the learned Tribunal. It is evident that the admission made by the witness in his deposition , to the effect that the Bolero Jeep was booked by them on hire, has also been noticed by the learned Tribunal. However, the learned Tribunal discarded the said admission on the ground that the appellant Insurance Company had not specifically pleaded this fact in its written statement.The aforesaid finding cannot be sustained. Once a party makes a specific admission regarding a material fact during the course of proceedings, the opposite party is not required to plead or independently prove the fact so admitted. The admission made by the claimants and their witness was, therefore, required to be considered on its own merits, irrespective of the absence of a specific pleading by the Insurance Company. The learned Tribunal has committed an error in discarding such material evidence merely on the aforesaid ground. Its finding, to this extent, is perverse.

7. Accordingly, the appeal is **allowed in part**. The impugned judgment and award shall stand modified to the extent that the appellant Insurance Company, after satisfying the award, shall have the right to recover the amount so paid from the owner of the offending vehicle, in accordance with law. The remaining findings and directions of the learned Tribunal shall remain unaltered.

November 3, 2026
Mukesh

(Anil Kumar-X,J.)

Digitally signed by :-
MUKESH SRIVASTAVA
High Court of Judicature at Allahabad