(2011) 05 AHC CK 0062

In the Allahabad High Court

Case No : First Appeal From Order No. 1064 of 2002

New India Assurance Co. Ltd. APPELLANT

Vs

Smt. Bijauta Devi and Others RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Citation : (2011) 9 ADJ 77

Hon'ble Judges : Yatindra Singh, J;Abhinava Upadhya, J

Bench : Division Bench

Final Decision : Allowed

Judgement

THE FACTS

1. Sri Bikau Prasad Chaurasiya (the Deceased) was going on a Tempo No. UP-52-B/2579 (the Tempo) on 3.6.1997 in village Bhorawa within the limits of PS Kotwaii, district Deoria. The Tempo was being driven by its registered owner Sri Ajai Kumar Singh, son of Sri Dahuri Singh (the Owner).

2. The Tempo overturned. In this accident, the Deceased received injuries and subsequently succumbed to them on 25.8.1997. The widow and the children of the Deceased (the Claimants) filed Claim Petition No. 405 of 1997.

3. The aforesaid claim petition was allowed on 4.4.2002 by the Motor Accident Claims Tribunal/ Spl. Judge SC/ST Act, Court No. 3, Deoria (The Tribunal). A sum of Rs. 1,74,500/- alongwith 9% interest was awarded to the claimants from the date of filing of the claim petition. Hence the present appeal by the New India Insurance Company (the Copmpany).

THE DECISION

4. We have heard Sri AK Shukla, counsel for the company and Sri AK Pandey, counsel for the claimants and Sri S.K. Misra has put up appearance on behalf of the respondent.

5. The counsel for the appellant submits that:

The driving licence of the Driver/Owner was forged;

The Company cannot be asked to pay compensation;

It was the liability of the owner to pay compensation;

In any case, the right to recover should have been granted to the company.

6. The Tribunal had framed four issues. Issue No. 3 is as follows:

''Whether the driver of the Tempo was holding a valid driving licence at the time of accident?

7. While deciding the aforesaid issue, the Tribunal recorded the following finding:

The driver who is the owner of the Tempo has filed the photograph of the driving licence which has been sent for verification to the RTO office and the report in that connection has been obtained by the Insurance Company. It is on record. This report indicates that the driving licence bearing the said number was issued in favour of one Lai Bahadur and not in favour of the owner of the vehicle/ Tempo.''

8. There is nothing on the record to show that the report obtained from the RTO office is incorrect and the driving licence was in the name of the driver of the Tempo. In view of this, it is held that the Driver/Owner of the Tempo did not have valid lience.

9. The Tempo was insured. The premium was taken by the Company. In view of this; it was for the Company to pay compensation to the third party (the claimants) and the company had right to recover it from the owner of the Tempo.

10. In view of above, the appeal is partly allowed. The Company should pay entire compensation to the claimant as given in the award dated 4.4.2002 and thereafter it would be entitled to recover the same from the Owner of the Tempo.

