(2013) 10 AHC CK 0105

In the Allahabad High Court

Case No : F.A.F.O. No. 529 of 2006

New India Assurance Co. Ltd. APPELLANT

Vs

Smt. Sobha Devi and Others RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2014) 1 AWC 563

Hon'ble Judges : Satish Chandra, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : Dinesh Kumar, for the Appellant; Shailendra Kanaujia, Anand Mohan, Raj Kumar Verma, Rakesh Kumar Tripathi, Sunil Kumar Singh and Pawan Nigam, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma and Dr. Satish Chandra, JJ.—Both the present appeals have been filed by the appellant-insurance company u/s 173 of the Motor Vehicles Act, 1988, against the different Judgments and orders dated 1.4.2006 passed by the Motor Accident Claims Tribunal, Sitapur in Claim Petition No. 321/2002. Smt. Sobha Devi and others v. Bagga Singh and others and Claim Petition No. 301/2002, Smt. Daisy Khan and others v. Divisional Manager, New India Assurance Company Ltd. and others, where a total compensation of Rs. 12,58,900 and Rs. 8,91,361 respectively was awarded alongwith interest @ 6% per annum from the date of filing of the claim petition. The facts and circumstances of both the cases are identical as the claim arises from the common accident. Hence, both the appeals are disposed of by this consolidated judgment.

2. The brief facts of the case are that on 2.9.2002, at about 7.20 in the morning, the deceased Sri Atama Ram and Sri Jaleem Khan were traveling in the Tanker No. G.J.-13T-5331. When the Tanker reached on the Hempur Railway Gate, from the opposite direction a Truck No. C.H.O.R. 8277 was coming, whose driver was driving it rashly and negligently. The accident occurred between the vehicles

where the deceased Sri Atama Ram and Sri Jaleel Khan died on the spot. Necessary F.I.R. was lodged in the police station. The truck was insured by the appellant, i.e., M/s. New India Assurance Company Ltd. On the date of the accident, the policy was alive. The Tanker was insured by M/s. United India Insurance Company Ltd. and its policy was also alive, on the date of the accident. The Tribunal has awarded a total compensation of Rs. 12,58,900; and a sum of Rs. 8,91,361 against the appellant-insurance company. Though in both the cases, the right of recovery was given to the appellant-insurance company to recover amount from the Truck owner, nonetheless, the appellant-insurance company has filed the present appeals.

3. With this background, heard Sri Dinesh Kumar, learned counsel for the appellant-insurance company and gone through the material available on the record.

4. During the course of arguments, learned counsel for the appellant submits that the deceased were traveling in the Tanker as gracious passenger.

5. On specific query, learned counsel admits that both the drivers were holding valid driving licence.

6. From the record, it appears that both the deceased were traveling in the Tanker as unauthorised passengers and this is the violation of the terms and conditions of the insurance policy. There was no permit to ply the Tanker. No fitness certificate was produced.

7. Regarding the compensation, there is no dispute as the income of each deceased was taken into consideration. The multiplier was rightly applied. Out of the total income, 1/3rd was deducted for the personal purposes. Funeral charges and consortium etc., were also given.

8. In the circumstances mentioned above, the impugned judgments and orders passed by the Tribunal appear reasonable. Hence, no interference is required by this Court in the orders passed by the Tribunal specially when the right of recovery is given to the appellant-insurance company. Thus, nothing survives in the present appeals. When it is so, then we decline to interfere with the impugned judgments and orders passed by the Tribunal.

9. The registry of this Court is directed to transmit the amount/record, if any, deposited in this Court to the concerned Tribunal, within a period of one month. The appellant-insurance company is also directed to deposit the full/remaining amount with the Tribunal, if not already deposited, within a period of one month. The Tribunal is further directed to disburse the same within a period of three months thereafter, in terms of the award. In the result, both the appeals filed by the appellants-insurance company are hereby dismissed.