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(2003) 09 AHC CK 0312

In the Allahabad High Court

New India Assurance Company Ltd. APPELLANT

Vs

Smt. Surwati Devi and Others RESPONDENT

Date of Decision : 25-09-2003

Acts Referred:

Citation : (2004) 1 ACC 213 : (2003) 6 AWC 5091

Hon'ble Judges : Onkareshwar Bhatt, J

Bench : Single Bench

Judgement

Onkareshwar Bhatt, J.—The appellant has preferred this appeal against order dated 19.12.1984 passed by the Motor Accident Claims Tribunal (IV Addl. District Judge), Gorakhpur in Motor Accident Claims Case No. 126 of 1983.

2. Heard Mr. Amaresh Sinha, learned Counsel for the appellant, and Mr. P.K. Misra assisted by Mr. H.K. Misra, learned Counsel for the respondents.

3. Opposite parties moved claim petition in respect of death of Yamuna Prasad Pandey, which took place on 11.7.1983 at about 9 a.m. It was alleged that Yamuna Prasad Pandey was going to his office on a cycle and at the crossing of Rustampur he was dashed by a motor truck No. UPQ 838, due to which he died on the spot. Rash and negligent driving by the truck driver was alleged. The Tribunal found that the accident took place by truck No. UPQ 838 due to its rash and negligent driving resulting in death of Yamuna Prasad Pandey. The Tribunal also found that the truck was driven by Prem Nath who had a valid driving licence on the date of accident. The Tribunal allowed compensation of Rs. 22,000/- with Rs. 300/- as costs together with interest @ 10% per annum.

4. The learned Counsel for the appellant has challenged the finding of the Tribunal given on issue No. 3. Issue No. 3 was "Whether the vehicle in question was not duly insured, if so, its effect?". The Tribunal decided the issue in affirmative. The learned Counsel for the appellant has contended that the vehicle was insured on 11.7.1983 and accident had also taken place on the same day. In the statement of S.N. Shukla, OPW 3, it was found that premium was paid on

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11.7.1983 at about 11.45 a.m. The finding of the Tribunal shows that in the certificate of insurance no time is mentioned. The Tribunal has relied upon two decisions, wherein it has been held that the time not having been mentioned in the insurance policy it shall be deemed to be effective from the mid night. Apart from the two decisions mentioned in the judgment, the case New India Assurance Co. Ltd. Vs. Ram Dayal and Others, the Supreme Court has laid down that when the policy is taken on a particular date, its effectiveness is from the commencement of that date, i.e. from the previous mid night. Since the accident in question took place on 11.7.1983 and the policy was also taken on that very date, its effectiveness will be from the previous mid night. In above view of the matter, the finding of the Tribunal on issue No. 3 calls for no interference. The appeal has got no force and is liable to be dismissed.

5. The appeal is dismissed. Interim order dated 22.2.1985 which was confirmed on 8.7.1985 is vacated.

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