

**Court No. - 35**

**Case :-** FIRST APPEAL FROM ORDER No. - 671 of 2023

**Appellant :-** Mohd. Avid

**Respondent :-** National Insurance Company Ltd. And 2 Others

**Counsel for Appellant :-** Ansar Ahmad, Pavitra Kumar Pathak

**Counsel for Respondent :-**

**Hon'ble Vipin Chandra Dixit, J.**

1. Heard Sri Pavitra Kumar Pathak, learned counsel for the appellant and perused the record.

2. This first appeal from order under Section 173 of the Motor Vehicles Act 1988 has been filed on behalf of appellant, who is owner of the vehicle against the judgment and award dated 21.09.2015, passed by Presiding Officer, Motor Accident Claims Tribunal / Special Judge (SC/ST Act), Mainpuri in Motor Accident Claim Petition No. 346 of 2010 (Salim Ali and another vs. Mohd. Abid and another) by which compensation of Rs. 4,12,500/- along with 7% interest, has been awarded in favour claimants-respondents and the liability has been fixed upon the Insurance Company to pay compensation to the claimants with liberty to recover the same from the owner of the vehicle.

3. It is submitted by learned counsel for the appellant that the Maruti Van of the appellant was insured as a private vehicle with the insurance company / respondent no. 1. The driving license filed and relied by the appellant was valid and effective on the date of incident. The claims tribunal has committed gross illegality in giving right to recovery to the insurance Company on the ground that there was breach of terms and conditions of the insurance policy as the vehicle was being used for commercial purposes. It is further submitted that there was no evidence before the tribunal

that the vehicle was being used for commercial purposes.

4. Matter requires consideration.

5. Admit.

6. Issue notice to respondents.

7. Steps be taken within one week by registered post.

8. Summon the record of claims tribunal concerned on the expenses of appellant.

9. List after two months.

10. Until further orders of this Court, the effect and operation of impugned judgment and award dated 21.09.2015 passed by the Tribunal in the aforesaid case shall remain stayed to the extent by which the right of recovery has been given to the Insurance Company subject to condition that the appellant shall furnish the surety of entire awarded amount, other than cash, or bank guarantee before the tribunal within two months from today.

11. The statutory amount of Rs.25,000/- deposited by the appellant shall be invested in fixed deposit scheme with any nationalized bank till disposal of this appeal.

**Order Date :- 31.7.2024**

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