

06.09.2023

Ct. no.654

Sl. No.229-230

Sn/KB

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

F.M.A. 1121 of 2022

Bajaj Allianz Insurance Co. Ltd.

-vs-

Saraswati Dutta and others

with

COT 79 of 2022

Bajaj Allianz Insurance Co. Ltd.

-vs-

Saraswati Dutta and others

Mr. Rajesh Singh

... For appellant-Insurance Co.

Mr. Jayanta Banerjee

Mr. Sandip Bandopadhyay

... For the claimants-respondents
and cross objector

This appeal is preferred against the judgment and award dated 20th March, 2018 passed by the learned Judge, Motor Accident Claims Tribunal, Kalna, Burdwan in MAC Case No. 27 of 2014 granting compensation of Rs. 2,01,500/- together with interest in favour of the claimant no.1 under Section 163A of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 26th April, 2014, while the victim was proceeding towards his house on a bicycle and when he reached near Lichutala More suddenly the offending vehicle bearing registration no. WB-41E/9566 dashed the victim from behind due to which the victim sustained injuries and died on the spot. On account of sudden demise of the victim, the claimants being the widow and sons of the deceased filed

application for compensation of Rs.4,50,000/- under Section 163A of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined one witness and produced documents, which have been marked as **Exhibits 1 to 13** respectively.

The appellant-insurance company did not contest the claim application.

Since the respondent no. 3, owner of the offending vehicle did not contest the claim application, service of notice of appeal upon the said respondent stands dispensed with.

Upon considering the materials on record and the evidence adduced on behalf of the claimants-respondents, the learned Tribunal granted compensation of Rs.02,01,500/- together with interest in favour of the claimant no. 1 under Section 163A of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the insurance company has preferred the present appeal.

Mr. Rajesh Singh, learned advocate for the appellant-insurance company submits that the premium paid through cheque was dishonoured for insufficient funds and thus on the date of accident the offending vehicle did not have the valid insurance policy. Due to the aforesaid reasons, the insurance company cannot

held liable to pay compensation in respect of the vehicle which was not insured at all. In the light of his aforesaid submissions, he prays for setting the order of the learned Tribunal.

In reply to the contentions raised on behalf of the appellant-insurance company, Mr. Jayanta Banerjee, learned advocate for the respondents-claimants submits that the insurance company in spite of receipt of notice did not contest the claim application to establish grounds taken in the appeal and therefore the impugned order passed by the learned Tribunal should be affirmed.

Having heard the learned advocates for the respective parties, the only issue that has fallen for consideration is whether on the relevant date of accident there was valid policy of insurance company.

With regard to the aforesaid issue, though, Mr. Singh, learned advocate for appellant-insurance company has argued that due to dishonour of the cheque issued towards premium of policy of the insurance company, there was no existing policy of the vehicle, yet, it is found from the materials on record that the insurance company did not appear to contest and place such ground before the learned Tribunal. In view of the above, arguments advanced on behalf of the insurance company fall short of merit.

No other ground that has been placed into service in this appeal.

Mr. Jayanta Banerjee, learned advocate for the respondents-claimants submits that the respondents-claimants do not intend to press the cross-objection and submits for withdrawal of the Cross Objection filed by the respondents-claimants.

Accordingly, the Cross-Objection being COT 79 of 2022 stands dismissed as withdrawn.

In view of the above discussion, the appeal also fails.

The impugned judgment and award of the learned Tribunal is affirmed.

It is found that the insurance company has already deposited the awarded sum together with interest amounting to Rs.2,65,331/- before the registry of this Court vide O.D. challan no.657 dated 27th September, 2021 and Rs.25,000/- towards statutory deposit vide O.D. challan no.3484 dated 18th February, 2021.

The learned Registrar General, High Court, Calcutta, shall release the aforesaid amount together with accrued interest in favour of the respondent no.1, widow of the deceased, upon satisfaction of her identity.

The appeal and the Cross-Objection thus stand disposed of. No order as to costs.

All the connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Let a copy of this order along with the Lower Court Records be sent to the learned Court below for information in accordance with the rules.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)