

14.06.2023
Ct. 654
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**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

FMA 619 of 2019
With
CAN 1 of 2019 (Old No. CAN 4072 of 2019)

National Insurance Company Limited
-Vs-
Smt. Pampa Saha & Ors.

Mr. Parimal Kumar Pahari
... for the appellant-insurance company

Mr. Krishanu Bank
... for the respondents -claimants

This appeal is preferred against the judgment and award dated 24th September, 2018 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track, 2nd Court, Alipore, South 24 Parganas in MAC Case No. 05 of 2017 granting compensation of Rs. 1,50,000/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 27th September, 2016 at about 11:40 hours near Landmark Hotel on E.M. By-pass at Uttar Panchannagram under Tiljala Police Station the driver of the offending vehicle bearing registration no. WB-04C-7663 in rash and negligent manner dashed the victim, as a result of

which, he sustained severe injuries on his person and was immediately shifted to Calcutta National Medical College & Hospital where he succumbed to his injuries and died on 01.10.2016. On account of sudden demise of the deceased, one unmarried daughter and two married daughters of the deceased filed application for compensation of Rs. 2,05,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The respondents-claimants in order to establish their case examined two witnesses and produced documents, which have been marked as **Exhibits 1** to **15** respectively.

The appellant- insurance company also adduced the evidence of one witness and produced documents, which have been marked as **Exhibits A** to **C** respectively.

The respondent No. 4, owner of the offending vehicle, did not contest the claim application despite service of notice. The notice of appeal sent to respondent No. 4 returned with endorsement “*incomplete address*”. Thereafter, learned advocate for the appellant-insurance company informed the Court that upon enquiry by the investigator of the insurance company, it is found that the respondent No. 4, owner of the offending vehicle has already expired. In the aforesaid conspectus the appeal is proceeded with

dispensing service of notice of appeal upon respondent no.4-owner of the offending vehicle.

Upon considering the materials on record and the evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs. 1,50,000/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

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

Mr. Parimal Kumar Pahari, learned advocate for the appellant-insurance company submits that it is the specific case of the insurance company that route permit, registration and fitness of the vehicle had already expired on the date of accident. Such fact has been established by the witness D.W.1 and the documentary evidence namely, the letter being Memo No. PVD/207/RTI/G dated 19.05.2017, vehicle particulars and the vehicle permit namely **Exhibits - A, B & C** respectively. Furthermore he submits that in a case where there is evidence of expiry of route permit, defence is available to the insurance company and in such event, the insurance company is to satisfy the award and thereafter recover the same from the owner of the offending vehicle. In support of his contentions, he relies on the decision of the Hon'ble Supreme Court

passed in ***National Insurance Co. Ltd versus Swaran Singh & Ors.***, reported in ***(2004) 3 SCC 297*** and another decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. versus Challa Bharathamma and others*** reported in ***2004 ACJ 2094***. He submits that although the learned Tribunal has considered such fact and evidence produced in support and has also held that the insurance company is to indemnify the claimants at the first instance and then to recover the same from the original owner of the offending vehicle, yet in the ordering portion of the judgment, it did not grant any liberty to the insurance company to recover the compensation amount from the owner of the offending vehicle. In the light of the aforesaid submissions, he prays for modification of the award to the extent of granting liberty to the insurance company to recover the compensation amount from the owner of the offending vehicle.

Mr. Krishanu Banik, learned advocate for the respondents-claimants leaves the matter to the discretion of the Court.

Having heard the learned advocates for the respective parties, it is found that the appellant-insurance company has raised a sole issue as to whether the appellant-insurance company is entitled to recover the amount of compensation satisfied in the

event of expiry of route permit, registration and fitness of the vehicle on the date of accident.

In order to examine and appreciate the aforesaid issue, it would be appropriate to refer to the written statement filed by the insurance company. Upon perusal of the written statement, it is found that the insurance company has taken a specific plea that on the date of accident, the alleged offending vehicle did not have valid route permit which had already expired on 22.11.2015 and registration and fitness of vehicle had also expired on 08.04.2016. In order to establish such fact, the appellant-insurance company has adduced the evidence of one Record Supplier attached to Public Vehicles Department, Beltala as D.W.1 who produced the letter being Memo No. PVD/207/RTI/G dated 19.05.2017, vehicle particulars and the vehicle permit namely **Exhibits - A, B & C** respectively. Upon going through the **Exhibit - A**, the letter being Memo No. PVD/207/RTI/G dated 19.05.2017 and the **Exhibit - C** being the vehicle permit, it is found that the route permit had expired on 22.11.2015. **Exhibit - B** shows that the registration and fitness of the vehicle was valid till 08.04.2016. The accident has taken place on 27.09.2016. Therefore, the aforesaid materials clearly suggest that on the date of accident, the permit of the vehicle as well as the registration and fitness of the vehicle had expired.

The learned Tribunal has taken note of the aforesaid fact as well as the proposition laid down by the Hon'ble Supreme Court in *Swaran Singh (supra)* and also observed that the insurance company is required to indemnify the claimants at the first instance and then recover the same from the original owner of the offending vehicle. However, in the ordering portion of the judgement and award, no such liberty was granted to the insurance company to recover the amount of compensation. Following observations of the Hon'ble Supreme Court in *Swaran Singh (supra)* and in *Challa Bharathamma (supra)*, the insurance company is entitled to recover the amount of compensation satisfied from the owner of the offending vehicle in the facts and circumstances of the present case.

In view of the above discussions, the appeal stands allowed. The compensation assessed by the learned Tribunal is affirmed. The impugned judgment and award of the learned Tribunal is modified to the extent that the appellant-insurance company will be at liberty to recover the amount of compensation satisfied from the owner of the offending vehicle.

It is found that the insurance company has deposited the entire awarded sum together with interest amounting to Rs.1,82,773/- vide O.D. challan no. 699 dated 28.06.2019 in terms of the order dated 14th June, 2019 and Rs.25,000/- as statutory deposit vide O.D.

challan no.236 dated 20.12.2019 before the registry of this Court.

Respondents-claimants are directed to deposit *ad valorem* Court fees on the compensation amount, if not already paid.

The learned Registrar General, High Court, Calcutta is directed to release the aforesaid amount together with accrued interest in favour of the respondent nos. 1, 2 & 3 in the proportion mentioned by the learned Tribunal upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

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 Tribunal in accordance with rules.

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

(**Bivas Pattanayak, J.**)