

27.09.2023
SL No.29
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

**F.M.A. 881 of 2013
IA No:CAN/1/2023**

**Tahura Bibi & Ors.
Vs.
Manager, Reliance General Insurance Co. Ltd. & Anr.**

Mr. Saidur Rahaman
...for the appellants-claimants.

Mr. Gopa Das Mukherjee
....for the respondent-Insurance Co.

The instant appeal is preferred against the judgment dated 27th day of March, 2012 passed by learned Additional District Judge, Motor Accident Claims Tribunal, Fast Track, 2nd Court, Malda, in M.A.C. Case no. 258 of 2011 under Section 163-A of the MV.Act.

The brief fact of the case is that the present appellants being the claimants have preferred an application under Section 163-A of the MV Act before the learned tribunal for getting compensation on the ground that the son of the claimant died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle.

The matter was contested by the insurance company and after hearing the parties the learned tribunal has awarded a sum of Rs. 4,12,500/- in favour of the claimants and directed the owner of the offending vehicle to pay the compensation.

The only single issue involved in this appeal; the appellant argued that the learned tribunal was erroneous in directing the owner of the offending vehicle to pay the compensation. Learned tribunal should have directed the award to be paid by the insurance company instead of the owner. The owner has paid nothing after passing of this award thus the appeal has been preferred.

The learned advocate appearing on behalf of the insurance company submits that the learned tribunal has not committed any error. The driver of the offending vehicle had no valid driving licence at the time of accident. Thus, the owner of the offending vehicle has violated the terms of the policy on that score the insurance company may not be liable to pay the compensation.

Heard the learned advocate perused the materials on record it appears that the driving licence of the driver of the offending vehicle was seized in connection with a police case registered on the basis of the said accident. However, the driving licence of the driver who is the accused of the police case appears to be not valid at the day of accident. Thus, the learned tribunal is of opinion that the insurance company is not liable to pay the compensation as the owner has intentionally violated the terms of the policy.

In considering the observation of the Hon'ble Apex Court passed in **Swaran Singh** as well as **Challa Bhrathamma**. It is true that in a case of violation of terms of the policy the insurance company may not be liable to pay the compensation; but at the same time, the Hon'ble Apex Court has settled the law that in those cases the insurance company may be liable to pay the compensation and in turn they are at liberty to recover the same from the owner. Considering the ratio of **Swaran Singh** as well as **Challa Bharathamma** and I am of the view that the principle laid down by the Hon'ble Apex Court as mentioned hereinabove should be followed of this case. On that score, the observation of the learned tribunal is erroneous and it need be set aside.

The quantum of compensation is not the merit of this appeal so I am of the view that the insurance company is liable to pay the compensation as awarded by the learned tribunal. Thus, the claim amount of Rs. 4,12,500/- is the award of this case and the insurance company i.e. the Reliance General Insurance Co. Ltd. is directed to pay the compensation alongwith with interest @ 6% per annum from the date of filing of the claim case i.e. from 25.8.2010 within eight weeks from the date of passing of this order with the office of the learned Registrar General, High Court Calcutta. On

such deposit the claimants are at liberty to recover the same according to the prevalent Rules subject to ascertainment of payment of requisite court fees.

In Re.:-CAN/1/2023

This is an application filed on behalf of the claimants/appellants contending, inter alia, that the claimant appellant No. 2 has expired during the pendency of the appeal. The present claimants/appellants are the surviving legal heirs. Thus, the name of the appellant No. 2 be deleted from the memo of the cause title of the appeal.

Heard the learned advocate perused the application being CAN 1 of 2023 also perused the copy annexed with the application being CAN 1 of 2023.

Considering the same, the CAN 1 of 2023 is disposed of with a direction that the department shall expunge the appellant No. 2 from the memo of the cause title of the memo of the appeal within a fortnight. It appears that the claimant appellant No. 1 is the mother and the claimant appellant No. 3 is the unmarried sister of the deceased.

In considering the facts and circumstances of this case, the office of the learned Registrar General, High Court Calcutta is directed to pay the compensation alongwith interest in favour of the claimant appellant No. 1.

Accordingly, the instant FMA 881 of 2013 is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)