

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1703 of 2014

Haydar Ali Sekh & Anr.
Vs.
Allar Mallick @ Sk. Hossain & Anr.

Mr. Uday Sankar Chattopadhyay
Ms. Rajashree Tah
Ms. Trisha Rakshit
... For the appellants/claimants

Mr. Rajdeep Bhattacharya
... For the respondent no.2/Insurance Co.

This appeal is directed against the judgment and order dated 31st May, 2012 passed by the learned Judge, Motor Accident Claims Tribunal, Special Judge-cum-Additional District Judge, Burdwan, in connection with MAC Case No.09 of 2010/32 of 2010 whereby the learned Tribunal awarded compensation to the tune of Rs.3,16,500/- with a direction upon the owner of the offending vehicle to pay the compensation.

The claim petition under Section 163A of the Motor vehicles Act, 1988 was filed on account of death of one Sk. Kader Ali in a motor accident happened on 24th July, 2009 at about 1.30 p.m. by the involvement of one Truck, bearing registration no.WB-39/1506. At the time of accident, the said truck was going to Asansol from Kolkata and when reached at Jogibaba Sthan at Andal Police Station by NH-2, all on a sudden the front wheel of the

truck was burst out and the said truck capsized by the side of the road. The driver sustained serious injury but Sk. Kader Ali, being the khalasi of the said truck, died on the spot. The deceased was a man of 25 years of age having income of Rs.3,000/- per month. After the accident, Andal Police Station Case No.145 of 2009 dated 26th July, 2009 under Sections 279/304A/427 of the Indian Penal Code was started and ended with charge sheet.

The Insurance Company contested the case by filing written statement denying all material allegations in the claim petition contending, inter alia, that the Insurance Company is not liable to pay any compensation.

To prove the case, the claimants examined Maharani Begam @ Maharani Begam Sekh, mother of the deceased, as PW-1, who corroborated the entire averments of the claim petition and she claimed Rs.3,25,000/- as compensation. In course of her evidence, a good number of documents were admitted in evidence, viz., certified copy of First Information Report, charge sheet, seizure list, post-mortem report, insurance policy, voter identity card and one driving licence of Amir Ali Mondal, etc.

On behalf of the Insurance Company, one witness, namely, Rabindra Kumar Mondal, Lower Division Clear attached to the Additional Regional Transport authority, Durgapur, was examined in this case as OPW-1. He stated that the driving licence no.WB-40/016295 was issued by

the authority in favour of one Susanta Kumar Roy and the validity of the same till 11th June, 2009 which was admitted in evidence and marked as Exhibit-A. In his cross-examination, he specifically stated as follows:-

“This Driving licence bearing no. WB-40/016295 allegedly issued by the Licensing Authority, Durgapur, Dist. Burdwan, has not been registered in the Register Book R-68. This is a fake Driving Licence.”

Mr. Uday Sankar Chattopadhyay, learned advocate, appearing on behalf of the appellants/claimants has submitted that the Insurance Company may be directed to pay compensation and to recover it from the owner of the vehicle.

Mr. Rajdeep Bhattacharya, learned advocate, appearing on behalf of the respondent no.2/New India Assurance Company Limited has referred to the evidence of OPW-1 along with Exhibit-A and has submitted that the driving licence filed in the name of Amir Ali Mondal was fake, so the Insurance Company is not liable to pay any compensation. Accordingly, he supported the judgment passed by the learned Tribunal.

After carefully scrutiny of the evidence of OPW-1 together with Exhibit-A, I find that the driving licence no. WB-40/016295 was issued not in the name of Amir Ali Mondal but in the name of Susanta Kumar Roy. Therefore, it can be presumed that at the relevant point of time Amir Ali Mondal was driving the vehicle with a fake licence. It is

needless to mention that charge sheet has been filed in this case after the accident, against Amir Ali Mondal. So, it is a case of sheer violation of the insurance policy for which the Insurance Company is not at all liable to pay any compensation. In this regard, I am fully agreeable with the learned tribunal but considering the principle laid down by the Hon'ble Apex Court in **Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.** reported in **AIR 2018 SC 3726** and **Oriental Insurance Co. Ltd. v. Nanjappan & Ors.** reported in **AIR 2004 SC 1630 : (2004) 13 SCC 244**, it is now the duty of the Insurance Company to pay the compensation and to recover from the owner of the truck, bearing registration no.WB-39/1506.

In these circumstances, the respondent no.2/New India Assurance Company Limited is directed to deposit the awarded compensation amount of Rs.3,16,500/- along with interest as ordered by the learned Tribunal from the date of filing of the claim petition i.e., on 29th January, 2010, till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The respondent no.2/New India Assurance Company Limited is at liberty to recover the entire awarded sum with interest from the owner of the vehicle, bearing registration no.WB-39/1506, through execution proceeding in terms of the observations of the Hon'ble

Apex Court in **Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.** reported in **AIR 2018 SC 3726** and **Oriental Insurance Co. Ltd. v. Nanjappan & Ors.** reported in **AIR 2004 SC 1630 : (2004) 13 SCC 244.**

The learned Registrar General is requested to disburse the entire awarded amount with interest to Maharani Begam @ Maharani Begam Sekh, being the appellant/claimant no.2, on proper identification and proof.

With the above observations, the appeal, being FMA 1703 of 2014, is disposed of.

All pending applications, if there be any, stand disposed of.

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

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

(Bibhas Ranjan De, J.)