

19.07.2023
SL No.22
Court No. 551
Ali

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

**FMA 2178 of 2014
IA No.:CAN/1/2014 (Old No.:CAN/5213/2014)**

**Nirapada Das
Vs.
Navdeep Kaur & Ors.**

Mr. Ali Imam Shah
..... for the appellant-claimant.

Mr. Arabindu Kundu
...for the respondent No 2-insurance Co.

A very short point involved in this appeal.

The instant appeal is preferred against the judgment and award dated 7th November, 2013 passed by learned Judge, Motor Accident Claims Tribunal, 2nd Court, Burdwan in M.A.C. Case no. 104/2021 of 2009.

The claimant preferred a claim application before the learned tribunal under Section 163-A of the M.V. Act.

The insurance company contested the claim case by filing written statement. The owner of the offending vehicle did not contest the case. The learned tribunal after hearing the parties and after perusing the evidences on record both oral and documentary allowed the claim application of the claimant and awarded a compensation amounting to Rs. 1,96,500/- but directed the owner of the offending vehicle to pay the compensation only on

the ground that at the time of accident the driver of the offending vehicle was carrying a fake driving licence.

The learned advocate for the appellant filed this appeal only on the ground that in case of fake licence the Hon'ble Supreme Court has observed several times in case of **Swaran Singh** and **Baljit Kaur** that the claimant is entitled to get the compensation from the insurance company as the offending vehicle was well covered under the policy of the insurance company at the time of accident but in turn the insurance company should have a liberty to recover the same amount from the owner of the offending vehicle. Learned advocate for the appellant submitted before this court that the instant appeal is preferred as because the claimant cannot recover the amount from the owner of the offending vehicle.

Learned advocate for the insurance company raised an objection and submitted before this court that the owner had the knowledge that the driver was driving the vehicle having no valid licence. The learned advocate for the insurance company further submitted before this court that the policy terms and conditions was violated by the owner of the offending vehicle thus learned tribunal has committed no error in passing the impugned order

by fixing responsibility upon the owner to pay the compensation.

Heard the learned advocate perused the materials on record also perused the judgment of the Hon'ble Apex Court passed in **Swaran Singh** as well as **Baljit Kaur**. It appears from the judgment of the Hon'ble Apex Court that the Hon'ble Apex Court has directed in violation of terms of the insurance policy the insurance company is at liberty to recover the compensation amount from the owner of the vehicle. In that score the Hon'ble Apex Court has also observed that the third party i.e. the claimant should not have harassed much for getting the compensation when the vehicle was well covered under the policy of the insurance company at the time of accident. So after considering the submission and after considering the observation of the Hon'ble Apex Court passed in **Baljit Kaur** and **Swaran Singh**. I think it necessary that the impugned order passed by the learned tribunal need be modified.

The impugned award passed by the learned tribunal is hereby modified to the effect that the award of compensation should be paid by the insurance company; in turn, the insurance company is at liberty to recover the same from the owner of the vehicle according to the procedure as laid down by the Hon'ble Supreme Court in **Swaran Singh**.

Hence the respondent no. 2-insurance company is directed to pay compensation amounting to Rs. 1,96,500/- alongwith interest @ 6% per annum from the date of filing of this application within four weeks from the date of passing of this order with the office of the learned Registrar General, High Court, Calcutta. On such deposit the claimant is at liberty to withdraw the same according to prevalent rules.

The instant FMA 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.)

