

03.01.2023
SL No.2
Court No. 654
Ali

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

F.M.A.1969 of 2014

IA No: CAN/2/2018 (Old No.:CAN/8634/2018)

National Insurance Co. Ltd.

Vs.

Mahmood Alam Razvi

Mr. Rajesh Singh

.....for the appellant-Insurance Company.

Mr. Laltu Mohan Ghosh

.....for the respondent-claimant.

This appeal is directed against the judgment and award dated 30th November 2013 passed by learned Judge, Bench-VIII, City Civil Court, Calcutta in M.A.C Case no. 704 of 2009 granting compensation of Rs.1,78,541/- together with interest under Section 166 of the Motor Vehicles Act,1988.

The brief fact of the case is that on 17 September 2009 in between 21:35 hours and 21:45 hours while the victim was travelling by a car bearing registration no. WB-02G/0367 along the Garden Reach Road in the direction of East to West and when the said car reached the western slope of Buskel bridge it dashed against a truck bearing registration no.WB-03A/6447 as a result of which both the petitioner and the driver of the said car sustained serious injuries on their person and they were removed to S.S.K.M hospital wherefrom they were discharged after necessary medical treatment.

Subsequent thereto on 18 September 2009 the petitioner had to be admitted to Kothari Medical Centre where he remained as an in-patient till 19 October 2009. The injured sustained fracture injuries on his right tibia and had broken tooth and incurred expenses for medical treatment. On account of such injuries and subsequent treatment the claimant injured filed application for compensation under Section 166 of the Motor Vehicles Act, 1988.

Upon consideration of materials on record and the evidence produced before it, the learned tribunal granted compensation of Rs.1,78,541/- along with interest under Section 166 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 appellant insurance company submits that the driver of the offending vehicle on the relevant date of accident was not holding proper and effective license to drive transport goods vehicle and therefore the insurance company should not be held responsible to pay compensation amount. He further submits that assessment of compensation by the learned tribunal is erroneous in view of the fact that the

victim other than medical expenses is not entitled to any other compensation. In light of his aforesaid submissions he prays for setting aside of the impugned judgment and award.

In reply, Mr Latu Mohan Ghosh, learned advocate for respondent no.1-claimant submits that as per the settled proposition of law the insurance company is to satisfy the award in the circumstances of the case and thereafter recover from the insured. He further submits that the learned tribunal considering the extent of injuries and the disablement of the victim assessed the compensation which does not call for interference. In view of his above submissions he prays that the appeal be dismissed.

Having heard the learned advocates of both the sides it is found that the insurance company has challenged the award of the tribunal on two-fold grounds *firstly* that it is not liable to pay compensation as on the relevant date of accident the driver of the offending vehicle did not hold any proper and effective driving licence to drive the vehicle and *secondly* excepting medical expenses the injured is not entitled to get any other compensation.

With regard to the first issue, it is found from the impugned judgment that the learned tribunal from the available materials on record came

to this finding that the driver of the offending vehicle did not have effective and valid license to drive the offending vehicle. In the ordering portion of the judgment of the learned tribunal has directed the insurance company to satisfy the award and also given liberty to realize the amount from the opposite party no. 1-owner and/or driver of the offending truck in accordance with law. Such findings of the tribunal do not call for any interference in view of the decision of Hon'ble Supreme Court passed in ***National Insurance Co. Ltd. versus Swaran Singh and others*** reported in **(2004) 3 SCC 297**, which has also been followed in another decision of Hon'ble Supreme Court passed in ***Amrit Paul Singh versus TATA AIG General Insurance Com. Ltd & Ors.*** reported in **2018 SAR (Civil) 768** upholding the principle of pay and recovery. Thus the direction of the learned tribunal to pay and recover from the insured or the driver is affirmed.

So far as the second issue regarding assessment of quantum of compensation is concerned, it is found that the learned tribunal after considering the two disability certificates namely **Exhibit 20** and **21** one showing disablement of 38% and another showing disablement of 50% respectively, held that authenticity and correctness of both the disablement certificate is doubtful. However, it considered the factual matrix of the case and

assessed loss of earning capacity at 38%, which in my opinion does not call for inference.

The other findings relating to assessment of compensation had not been challenged in this appeal.

Accordingly in view of the above the assessment of compensation amount by the learned tribunal does not call for interference.

It is informed that the insurance company has deposited the entire awarded sum along with interest amounting to Rs.2,21,865/- before the Registry of this court vide OD Challan no. 937 dated 18.7.2014 as well as statutory deposit of Rs. 25,000/- vide OD challan no.382 dated 15.5.2014. Accordingly, learned Registrar General, High Court, Calcutta is directed to disburse the aforesaid deposits along with accrued interest to the injured-claimant upon satisfaction of his identity.

Respondent no.1-claimant is directed to deposit deficit court fees, if not already paid.

With the aforesaid observation the appeal stands disposed of.

All connected applications if any stands 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.

Urgent photostat certified copy if applied for
be given to the parties upon compliance of all legal
formalities.

(Bivas Pattanayak, J.)