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Ct. 654
D/L 17
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICTION
APPELLATE SIDE

FMA 1061 of 2022
With
CAN 2 of 2022

Reliance General Insurance Co. Ltd.
-Vs-
Suchitra Bera & Ors.

Mr. Sanjay Paul,
... for the appellant-Insurance Company
Mr. Amit Ranjan Roy
... for the respondents -claimants

This appeal is preferred against the judgment and award dated 19th April, 2022 passed by the learned Additional District Judge–cum-Judge, Motor Accident Claims Tribunal, Fast Track, 2nd Court, Tamluk, Purba Medinipur in MAC Case No. 26 of 2016 granting compensation of Rs. 14,75,200/- together with interest in favour of the claimant Nos. 1 to 4 under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 14th January, 2016 at about 1.30 p.m. while the victim was going towards bazar from Daspur bus stand keeping left side of Ghatal-Panskura pitch road at that time the offending vehicle bearing registration No. WB-34AP/5837 (Motorcycle) in a rash and negligent manner dashed the victim from behind, as a result of which the victim sustained grievous injury on his person. Immediately, the victim was shifted to Daspur B.P.H.C. and thereafter, he was taken to Ghatal S.D. Hospital where the attending doctor declared him brought dead. On account of sudden demise of the victim, the claimants being the widow, minor son, minor daughter and the parents of the victim filed application for compensation of Rs. 10,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined two witnesses and produced documents, which have been marked as **Exhibits 1** to **7** respectively.

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

The respondent no. 6, owner of the offending vehicle is unrepresented.

Upon considering the materials on record and the evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs.14,75,200/- together with interest in favour of the claimant nos. 1 to 4 under Section 166 of the Motor Vehicles Act, 1988. However, no such compensation was allowed in favour of the respondent no. 5, father of the deceased.

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

Mr. Sanjay Paul, learned advocate for the appellant-insurance company submits that the driver of the offending motorcycle though had valid licence to drive Light Motor Vehicle-Transport and Non-Transport, yet on the relevant date of accident, the driver did not have valid and effective driving licence to drive the motorcycle with gear. The driving licence of the driver as per the seizure list was produced by the owner of the offending vehicle, which clearly indicates that the owner was aware that the driver was not having valid and effective driving licence to drive such motorcycle. Thus, there was violation of the terms and conditions of the insurance policy and as per the settled proposition of law, the insurance company may be directed to make payment of the compensation amount with liberty to 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 ***S. Iyyapan versus United India Insurance Company Limited and Another*** reported in ***(2013) 7 SCC 62***. He further submits that the learned Tribunal erred in granting Rs. 1,60,000/- towards of loss of consortium which needs to be modified in view of decision of the

Hon'ble Supreme Court passed in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700***. In the light of his aforesaid submissions, he prays for passing necessary order for modification of the impugned award with a direction to pay and recovery of the compensation amount from the owner of the offending vehicle.

Mr. Amit Ranjan Roy, learned advocate for the respondents-claimants leaves the matter to the discretion of the Court.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether on the relevant date of accident, the driver of the offending vehicle was holding a valid and effective driving licence to drive the offending vehicle and *secondly*, whether the learned Tribunal erred in granting Rs. 1,60,000/- towards loss of consortium.

With regard to the first issue relating to the question of valid and effective driving licence of the driver of the offending vehicle, it is found from the written statement that the insurance company has craved leave to take all protection under Section 149(2) of the Motor Vehicles Act. In order to establish the fact that the driver of the offending vehicle was not holding valid and effective licence to drive such vehicle on the relevant date, the insurance company has adduced the evidence of one staff of Regional Transport Office, Paschim Medinipur namely Sri Dipak Kumar Shaw as O.P.W.-1, who produced the details of driving licence of the driver of the offending vehicle, which has been marked as **Exhibit-B**. Upon perusal of the **Exhibit-B** (driving licence of the driver of the offending vehicle bearing No. WB33 20110057171), it appears that such driving licence has been issued in respect of LMV-TR (goods)-Transport and LMV-Non-Transport. The driving licence shows validity in respect of Non-Transport vehicle from 04.02.2017 to 03.02.2037 and in respect of Transport vehicle from 22.01.2020 to 21.01.2025. The said details of driving licence does not reflect of any driving licence to drive motorcycle with gear.

Be that as it may, the Investigating Agency during the course of investigation has seized one driving licence of the driver of offending vehicle being No. 65912 which was valid upto 3rd February, 2017. The insurance company did not lead any contrary evidence challenging the validity of the aforesaid driving licence.

It is pertinent to note that the details of the driving licence is issued on 12th September, 2021. The validity of the driving licence seized is upto 3rd February, 2017. In the event such driving licence is not renewed after 3rd February, 2017 the possibility of reflection of such driving licence in the details of the driving licence is remote. If the validity of the driving licence seized is taken into account, then in the absence of any contrary evidence, it safely suggests that on the date of accident i.e. on 14th January, 2016, the driver of the offending vehicle had valid an effective licence to drive such vehicle. In view of the above discussion, the argument advanced on behalf of appellant-insurance company falls short of merit. For such reason the principle laid down in *S. Iyyapan (supra)* does not apply to the facts and circumstance of the case.

With regard to the second issue relating to loss of consortium it is found that the learned Tribunal has granted Rs.1,60,000/- towards loss of consortium. However, following the observation of Hon'ble Supreme Court in *Pranay Sethi (supra),* the claimants are entitled to Rs.40,000/- only towards loss of consortium.

Other factors have not been challenged in this appeal.

Bearing in mind the above factors, calculation is made hereunder:

<u>Calculation of Compensation</u>

Monthly income	Rs.6,000/-
Annual income (Rs.6,000/- x 12)	Rs.72,000/-
Add: 40% of the annual income towards future prospect	Rs.28,800/-
	Rs.1,00,800/-
Less: 1/4th towards personal and living expenses	Rs.25,200/-
	Rs.75,600/-
Multiplier 17 (Rs.75,600/- x 17)	Rs.12,85,200/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs.70,000/-
Total compensation	Rs.13,55,200/-

Thus claimant nos. 1 to 4 are entitled to Rs.13,55,200/- together with interest @ 6% per annum from the date of filing of the claim application till payment.

It is informed that the Insurance Company has deposited a sum of Rs.20,26,993/- vide OD Challan no. 1645 dated 26th August, 2022 in terms of order of this Court and has also deposited statutory amount of Rs.25,000/- vide OD Challan no. 1147 dated 7th July, 2022. Both the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount and the interest thereon.

The learned Registrar General, High Court, Calcutta shall release the aforesaid amount in favour of the respondent nos. 1 to 4 (claimants), in equal proportion, after making payment of Rs.40,000/- in favour of respondent no.1-widow of deceased towards spousal consortium, upon satisfaction of their identity.

The respondent no.1, being the mother and natural guardian of minor respondent nos. 2 and 3, shall receive the share of the minors on their behalf and shall keep the same in a fixed deposit scheme of any nationalised bank or post office until attainment of majority of the said minors.

Upon full satisfaction of the award, if any amount is left over, the same shall be refunded to the insurance company.

With the aforesaid observations, the present appeal stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent. No order as to costs.

All connected applications, if any, are also disposed of.

Interim order, if any, stands vacated.

Let a copy of this order along with the lower Court records be transmitted to the learned Tribunal in accordance with Rules.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously upon compliance of all necessary legal formalities.

(**Bivas Pattanayak, J**.)