01 **08.02.23**
Ct. No.654
Sws.M

FMA 2441 of 2014

The Oriental Insurance Co. Ltd.

versus

Sumitra Dey & Anr.

Mr. Parimal Kumar Pahari
...for the Appellant

Mr. Jayanta Kumar Mandal
...for the respondents

Inadvertent typographical mistake has crept into order dated 31st August 2023 mentioning the name of respondent no. 1 as *"Sumitra Roy"* instead of *"Sumitra Dey"*. The name of respondent no. 1 in the aforesaid order be read as *"Sumitra Dey"* instead of "*Sumitra Roy"*.

The order dated 31st January, 2023 is modified to the above extent.

Other portions of the order shall remain unaltered.

This appeal is preferred against the judgment and award dated 29th May, 2014 passed by the Learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, Fast Track, 1st Court, Barrakpore, 24-Parganas (North) in M.A.C. Case No. 775 of 2009 granting compensation in favour of claimant to the tune of Rs.9,77,025/- together with interest under Section 166 of the Motor Vehicles Act.

The brief fact of the case is that on 30th September, 2009 at about 11.45 a.m. while the victim was proceeding as pedestrian on B.T. Road, at that time the offending vehicle bearing registration no. WB 23B/3346 (Truck) in high speed and in rash and negligent manner lost control and dashed the victim as a result of which he sustained grievous injury on his person. Immediately the victim was shifted to Dr. B.N. Bose S.D. Hospital, Barrackpore, wherefrom he was taken to Apollo Geneagles Hospital, Kolkata, where he succumbed to his injuries. On account of sudden demise of the victim, the claimants being his widow and mother of the deceased filed an application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.10,55,000/- together with interest.

During the pendency of the claim application, the mother of the deceased, namely, Shyama Sundari Dey died on 12.11.2013.

The claimants in order to establish their case examined three witnesses and produced documents which have been marked as **Exhibits 1 to 16** respectively.

The appellant-insurance company also adduced the evidence of Cashier of Motor Vehicles Department, Barrackpore and produced documents which have been marked as **Exhibits A and B** respectively.

Upon considering the materials on record and the evidence adduced on behalf of the parties, the learned Tribunal granted compensation in favour of widow of the deceased to the tune of Rs.9,77,025/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

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

Mr. Parimal Kumar Pahari, learned advocate for appellant-insurance company submits that from the materials and the evidence adduced on behalf of the insurance company it manifest that on the date of accident the driver of the offending vehicle did not hold valid and effective driving licence to drive such vehicle and therefore the learned Tribunal ought to have granted liberty to the insurance company to recover the amount of compensation directed to be paid by it to the claimants in view of the decision of the Hon'ble Supreme Court passed in ***National Insurance Company Limited versus Swaran Singh & Ors.*** reported in ***(2004) 3 SCC 297.*** In the light of his aforesaid submissions he prays for modification of the impugned judgment and award.

Mr. Jayanta Kumar Mondal, learned advocate for the respondent No. 1-claimant submits that in the event of breach of policy of insurance it is settled proposition of law that principles of pay and recovery may be applied.

Inspite of due service of notice of appeal, none appears on behalf of respondent no. 2, owner of the offending vehicle.

Having heard learned advocate for respective parties, it is found that the insurance company has raised a solitary issue in the present appeal, that since the driver of the offending vehicle was not holding effective and valid driving licence on the relevant date of accident to drive such vehicle, in breach of condition of insurance policy, the principles of pay and recovery be applied in the facts and circumstances of the case.

With regard to the aforesaid issue, it is found from the seizure list **(Exhibit 3)** that DL being no.WB-053351 standing in the name of one Rambilas Yadav (Driver of the offending vehicle) has been seized and such licence is valid till 2.10.2009. The letter of authority at page 49 of the paperbook shows that the driver Rambilas Yadav holding DL no.WB-23-05331 was authorized by the owner to drive the offending vehicle bearing registration no. WB-23B-3346 (Truck). The insurance company examined one Subrata

Mukherjee, Cashier of Motor Vehicles Department, Barrackpore, who produced answers in response to summon in relation to said driving license **(Exhibit B)**. It is held by the learned tribunal while dealing with issues no. 6 & 7 that as per **Exhibit B** such driving license was not issued from the office of Motor Vehicles Department, Barrackpore. It manifests from the particulars of driving licence bearing No. WB-23-053351 at page 50 of the paperbook, that the said driving licence was issued in the name of one Avijit Saha for driving Motor-cycle and Light Transport Vehicle and its validity expired on 26.12.2008. Considering the above, it is found that the driver of the offending vehicle did not have effective and valid driving licence on the relevant date of accident to drive such vehicle. Now the question arises as to what would be the effect of such breach. In ***Swaran Singh's Case (supra)*** the Hon'ble Court observed where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149 (2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. In ***Amrit Paul Singh***

versus TATA AIG General Insurance Company Limited reported in ***(2018) 7 SCC 558***, following the observation in *Swaran Singh's Case* the Hon'ble Court upheld the principle of pay and recovery in a case of breach of condition of insurance policy. Bearing in mind the aforesaid observations of the Hon'ble Court, since it is found that the driver of the offending vehicle was not holding effective driving license to drive such vehicle on the relevant date of accident, hence principles of pay and recovery is to be applied in the facts and circumstances of the present case.

Accordingly, the appeal of the insurance company stands allowed. The impugned judgment and award of the learned Tribunal is modified to the extent that the insurance company shall be at liberty to recover the compensation amount which it has been directed to pay, by the learned Tribunal, from the owner and the driver of the offending vehicle.

It is found that the appellant-insurance company has already deposited the statutory amount of Rs.25,000/- vide OD Challan No. 998 dated 28.07.2014 and an amount of Rs.9,52,025/- vide OD Challan No. 1519 dated 18.09.2014 with the Registry of this Court. However, it is informed that the interest on awarded sum has not been deposited.

Appellant-insurance company is directed to deposit interest on the compensation amount of Rs.

9,77,025/- @ 6% per annum from the date of filling of the claim application till deposit, by way of cheque before the learned Registrar General, High Court Calcutta within a period of six weeks from date.

The respondent no.1-claimant is directed to pay *ad valorem* Court fees on the compensation assessed, if not already paid.

Upon deposit of the aforesaid amount towards interest, the learned Register General, High Court Calcutta shall release the compensation amount and the interest in favour of respondent no. 1-claimant along with accrued interest, upon satisfaction of her identity and payment of *ad valorem* Court fees, if not already paid.

With the aforesaid observations the appeal stands disposed of.

All connected applications, if any, stands disposed of.

Interim order, if any, stands vacated.

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

(Bivas Pattanayak, J)