

25.07.2023
SL No.18
Court No. 551
Ali

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

**FMAT 949 of 2015
IA No.:CAN/1/2016 (Old No.:CAN/4330/2016)
CAN/2/2018 (Old No.:CAN/6104/2018)
CAN/3/2021**

**Soma Sen & Ors.
Vs.
IFFCO TOKIO General Insurance Co. Ltd. & Anr.**

Mr. Shamik Chatterjee,
Mr. Aditya Bikram Mahata,
Mr. Sahil Kabir
..... for the appellants-claimants.

Mr. Rajesh Singh
...for the respondent-insurance Co.

The instant appeal is preferred against the judgment dated 5th September, 2014 passed by learned Judge, Motor Accident Claims Tribunal, Nadia, in M.A.C. Case no. 310 of 2012 under Section 166 of the Motor Vehicles Act, 1988.

The appellants being the claimants filed the claim case before the learned tribunal on the ground that their predecessor was died in a road traffic accident. The learned tribunal has considered the case before him and after perusing the pleading and proof both oral and documentary passed by the impugned order directing the owner of the offending vehicle to pay the compensation amounting to Rs. 2,73,500/-. Instead of insurance company, the owner was directed to pay on the ground that at the time of the alleged accident the offending vehicle had no valid route permit to ply the vehicle as the terms

of the policy was violated thus the learned tribunal directed the owner to pay the compensation.

As the owner is not paying the compensation, the claimants are before this appellate court to get a favourable order. It is the submissions of the learned advocate for the claimants-appellants that the insurance company may be directed to pay the compensation and as per view of the Hon'ble Apex Court and they may have at liberty to recover the same from the owner. No argument was advanced on behalf of the claimants regarding the quantum of compensation.

Now consider this point of pay and recovery it appears from the judgment passed by the Hon'ble Apex Court in ***Swaran Singh, Baljit Kaur*** and ***Challa Bharathamma*** that in case of any breach of policy the insurance company may pay the compensation to the claimants and in turn they are at liberty to recover the same from the owner according to the procedure laid down by the Hon'ble Apex Court in ***Swaran Singh*** and ***Challa Bharathamma***.

Learned advocate for the insurance company raised an objection and submit before this court that there are evident of clear violation of the terms of the policy. The owner is well aware of the fact that the offending vehicle was playing without following the terms of the policy. At this juncture, the

insurance company cannot bind to follow the terms and conditions laid down in the policy so he prayed for dismissal of the instant appeal.

It is the further submission of the learned advocate for the insurance company that the pay and recovery order was passed regularly by this court but the recovery of the amount from the owner is a futile exercise of the insurance company. By such huge public money is being wasted. So he prayed for necessary order.

It is the further submission of the learned advocate for the insurance company that one person was died in the self-same accident wherein another insurance claim case was filed. In the same case the learned tribunal has directed the insurance company to pay the compensation to the claimants and liberty was given to the insurance company to realize the award of compensation from the owner of the vehicle.

In considering the entire circumstances of this case, the instant appeal is hereby disposed of with a direction that the respondent no. 1- IFFCO TOKIO General Insurance Co. Ltd. is directed to pay the compensation amount as awarded by tribunal to the appellants by virtue of the judgment of Hon'ble Supreme Court passed in ***Swaran Singh, Baljit Kaur and Challa Bharathamma***. The insurance company is at liberty to recover the same from the

owner according to the procedure laid down in

Swaran Singh and Challa Bharathamma.

The insurance company is directed to pay the compensation amounting to Rs.2,73,500/- alongwith interest @ 6% per annum from the date of filing of the claim application with the office of learned Registrar General, High Court, Calcutta within eight weeks from the date of passing of this order. On such deposit the claimants are at liberty to withdraw the same according to prevalent rules.

The instant FMAT 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.)

