**03.01.2023**
**sayandeep**
**Sl. No. 03**
**Ct. No. 654**

**FMA 3982 of 2014**
**With**
**IA NO: CAN 1 of 2014, (Old No. CAN 10634 of 2014),**
**CAN 2 of 2017(Old No: CAN 11140 of 2017)**

**The Oriental Insurance Company Ltd.**

**-Versus-**

**Kalpana Ojha & Anr.**

Mr. Parimal Kr. Pahari
.....for the appellant-Insurance Co.

Mr. Jayanta Kumar Mandal
.....for the respondents-claimants

Mr. Afroz Alam
.....for the respondent no. 4

This appeal is directed against the Judgment and award dated 15th July, 2014 passed by learned Judge, Motor Accident Claim Tribunal, Fast Track, 1st Court, Contai in MAC case No. 18/2009(119/2007) granting compensation in favour of the claimants to the tune of Rs. 3,64,500 along with interest under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 12th July, 2005 the victim was travelling in a pick-up van bearing registration No. WB31-2509 from Naihati and when the vehicle reached near Keshurkunda on Kanthi Mecheda Pitch road at 9:30 AM another vehicle bearing registration No. WBG-4916 (Omni bus) coming from opposite direction collided head on with the pick-up van in which the victim was travelling. As a result of such forceful impact, the victim sustained serious injuries and was taken to Darua Hospital (Contai Sub-Divisional hospital) by the local people. However, the victim succumbed to his injuries and died. On account of sudden demise of victim the claimants being the widow and son of the deceased filed application under Section 166 of the Motor Vehicle Act claiming compensation of Rs. 4,50,000/- along with interest.

In order to establish its case, the claimants adduced the evidence of three witnesses including widow of the deceased and proved number of documents which has been marked as **Exhibits 1 to 4** respectively.

The appellant-Oriental Insurance Company Limited also adduced the evidence of one Angshuman Sinha, Clerk, Motor Vehicles Department and also proved documents which has been marked as **Exhibit A and B** respectively.

The respondent No. 4-National Insurance Company Limited, the insurer of pick up van bearing registration No. WB31-2509 did not adduce any evidence.

Upon consideration of materials on record and the evidence adduced by the claimants and appellant-Oriental insurance Company Limited, the learned Tribunal granted compensation in favour of the claimants to the tune of Rs. 3,54,500/- along with interest and directed Oriental insurance Company Limited to satisfy the award.

Being aggrieved by and dissatisfied with the impugned judgment and award the Oriental Insurance Company Limited has preferred the present appeal.

Mr Parimal Kumar Pahari, learned advocate for the appellant-Oriental Insurance Company Limited submits that the averments in the claim application, written complaint and the charge-sheet clearly shows involvement of both the vehicles namely the pick up van bearing registration No. WB31-2509 and the Omni Bus bearing registration No. WBG-4916 and both the drivers were equally negligent in the said accident. He further submits that bearing in mind the aforesaid materials, the learned Tribunal ought to have ordered for apportionment of compensation amount between the owner and/or insurer of both the vehicles as the driver of both the vehicles were guilty of composite negligence, however, it erroneously directed only the Oriental Insurance Company Limited to satisfy the award.

He further submits that from the evidence of Angshuman Sinha (OPW1) and the document namely the details of driving licence of the driver of the bus bearing no. WBG-4916 **(Exhibit-A)**, the licence of the said driver was valid till 30.12.2004 and was renewed only on 18.01.2008. Thus on the relevant date of accident on 12.07.2005, the driver of the offending vehicle did not have valid and effective driving licence to drive the vehicle. In light of his aforesaid submissions, he prayed for setting aside of the impugned Judgment and award.

In reply to the aforesaid contentions raised on behalf of the appellant-Oriental Insurance Company Limited, Mr Jayanta Kumar Mondal, learned advocate for the respondent nos. 1 and 2 (claimants) submits that the appellant-Oriental Insurance Company Limited has not made out any specific case of composite negligence of both the vehicles nor any evidence has been led in support of composite negligence of both the vehicles. So far as the issue that the driver did not have valid driving licence on the relevant date is concerned, he submits that as per settled position of law where there is evidence of driver not holding proper, effective and valid driving licence to drive such vehicle the principle of pay and recovery can be resorted to since the claimants should not be deprived from receiving the benefit of the award.

Mr. Afroz Alam, learned advocate for respondent No. 4-National Insurance Company Limited submits that the Tribunal has rightly not passed any order against the National Insurance Company Limited being the insurer of the pick up van in the absence of specific pleadings of composite negligence and he submits for affirming the order of the learned Tribunal.

Inspite of due service of notice of appeal respondent no.3-owner of the Omni bus and respondent no.5-owner of the pick-up van did to appear.

Having heard learned advocates for the appellant-Oriental Insurance Company Limited as well as the respondents-claimants and respondent No. 4-National Insurance Company Limited, it is found that the appellant has thrown challenge to the award of the learned Tribunal on two fold grounds, *firstly,* the drivers of both the vehicles were guilty of composite negligence which should lead to equal apportionment of the compensation amount between the insurer or owner of both the vehicles and *secondly,* the driver of the offending vehicle on the relevant date was not holding valid and effective driving licence to drive such vehicle and therefore the insurer of the said vehicle cannot be saddled with the liability to pay compensation.

With regard to the first issue of composite negligence of both the vehicles, it is found that the appellant–Oriental Insurance Company Limited filed written statement and subsequent thereto with leave of the Court also filed additional written statement. Upon perusal of both the written statement as well as additional written statement, it is found that there is no specific plea of composite negligence of both the vehicles taken by the appellant. Further it is relevant to note that no cogent evidence has been led from the side of appellant-Oriental Insurance Company Limited before the learned Tribunal to establish the fact of composite negligence. Mr. Pahari, learned advocate for the Appellant-insurance Company indicated that FIR and charge-sheet shows involvement and negligence of driver of both the vehicles. It is a fact that FIR as well as the charge-sheet shows involvement of both the vehicles. Further upon completion of investigation charge-sheet has been filed against the both the drivers of respective vehicles. Be that as it may, neither the FIR nor the chargesheet is substantive piece of evidence. Thus in the absence of specific pleadings and cogent evidence with regard to composite negligence from the side of appellant-Orient Insurance Company Limited, the aspect of composite negligence of both the vehicles in the said accident so far as the facts and circumstances of the case is concerned, has not been proved by the appellant. Therefore, the question of apportionment of the compensation amount does not arise.

With regard to the second issue that the driver of the offending vehicle on the relevant date of accident was not holding valid and effective driving licence, it is found from the evidence of OPW1 Angshuman Sinha, L.D. Clerk, Motor Vehicle Department, Contai that the driving licence of the driver of the offending vehicle namely Ranjan Kumar Giri having licence No. 1456 was valid till 30.04.2004 and the said driving licence was renewed on 18.01.2008. The details of the driving licence **(Exhibit A)** also support such contentions. Since the accident having taken place on 12.07.2005, it is manifest that on the relevant date of accident, the driver of the offending vehicle was not holding effective and valid driving licence to drive such vehicle. Bearing in mind the decision of Hon'ble Supreme Court passed in ***National Insurance Company Limited versus Swaran Singh and others*** reported in ***(2004) 3 SCC 297*** as well as ***Amrit Paul Singh and another versus TATA AIG General Insurance Company Limited*** reported in ***(2018) 7 SCC 558*** as it is found that the driver was not having valid and effective driving licence to drive such vehicle on the relevant date of accident, the principle of pay and recovery can be applied directing the insurer of the offending vehicle to pay the compensation amount to the claimants and thereafter recover the same from the owner and the driver.

In the light of the above discussion, the appeal is allowed in part.

The impugned judgment and award of the learned Tribunal is modified to the extent that the appellant-Oriental Insurance Company Limited shall satisfy the award by making payment of the compensation amount to the claimants along with interest as directed by the learned tribunal and is given liberty to recover the same from the owner and/or driver in accordance with law.

It is found that the appellant-Oriental Insurance Company Limited has already deposited entire awarded sum along with interest amounting to Rs. 5,04,693/- vide OD challan No. 1998 dated 21.11.2014 and statutory deposit of Rs. 25,000/- vide OD challan no. 1854 dated 31.10.2014. Learned Registrar General, High Court, Calcutta is directed to disburse the aforesaid deposits along with accrued interest to the claimants in equal proportion upon satisfaction of their identity.

With the aforesaid observations, the appeal stands disposed of.

All connected applications, if any, stands disposed of.

Interim orders, if any, shall stand vacated.

Let a copy of this order be sent to the learned Tribunal along with the Lower Court records.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon compliance with the necessary formalities.

**(Bivas Pattanayak, J.)**