IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 960 of 2012

Smt. Tandra Guha & Anr.

Vs.

The New India Assurance Co. Ltd. & Anr.

For the Appellants/ Claimants	:	Mr. Jayanta Kr. Mandal, Mr. Sayantan Rakshit.
For the Respondent No. 1/ Insurance Company	:	Mr. Sanjay Paul, Ms. Jaita Ghosh.
For the Respondent No. 2/ Owner	:	None.
Hearing concluded on	:	25.09.2024
Judgment on	:	25.09.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the Claimants/Appellants against the Judgment and/or Order/Award dated 30th June, 2011 passed by the learned Judge, Motor Accident Claims Tribunal, 14th Additional District Judge, Alipore, District-South 24 Parganas (hereinafter referred to as the Learned Judge) in M.A.C. Case No. 68 of 2010, **under Section 166 of the M.V. Act.**

2. **Facts :-**

> *"……….On 02.03.2008 at about 3.15 hrs the driver of the offending vehicle bearing registration No. HR/38-L-2681 was driving along Pune-Mumbai Road in a rash and negligent manner, endangering the human life and safety to others and suddenly the said offending Trailor entered into the Dehu Road violating the traffic Rules and dashed the Motor Cycle bearing Registration No. MH-14-BH/912 from the opposite direction and rolled over the road approximate 70 to 80 Feets as a result the victim 'Victor Guha' and his office Manager Mr. Kutty sustained severe injuries on their person and removed to Y.C.M. Hospital, Pune by the local police personnel, where Doctor declared them brought dead.*
>
> *The deceased, Victor Guha was the only son of his parents and due to sudden death of the victim, the claimants have suffered financial loss and also loss of association and moreover they lost next generation forever and the dreams of the parents regarding their son, broken out from their life. The claimants have claimed Rs.20,00,000/- including interest from the date of filing of the instant case.*
>
> *The claimant has impleaded the owner of the offending vehicle, Arvind Bangar as O.P. No. 1 and insurer of the offending vehicle, The New India Assurance Co. Ltd. as O.P. No. 2…….."*

3. The O.P. No. 1/Owner of the vehicle and O.P. No. 2/The New India Assurance Co. Ltd. have contested the instant case by filing their respective written statements and inter alia denying all the material contentions of the claimants.

4. The claimants examined **two witnesses** and proved relevant documents which were marked as **exhibits**.

5. The learned Tribunal on conclusion of hearing, granted compensation as follows :-

"…..MACC No. 68 of 2010

Dated 30th June, 2011

……….Therefore, Rs.2,29,000/- is multiplied by multiplier '12' comes to Rs.27,48,000/- only as total loss of dependency. 1/3rd of this amount come to Rs.9,16,000/- i.e. the amount would spent by the victim towards Personal expenses and maintenance during his life time if he would alive. Therefore, 1/3rd of this amount i.e. 9,16,000/- will be deducted from the total amount i.e. Rs.27,48,000/- = Rs.18,32,000/-. This amount is the total dependency. Apart from this loss of dependency, the claimant is also entitled to Rs.2000 towards Funeral expenses, Rs.2,500/- towards Loss of Estate.

Therefore, total amount of compensation run as follows :-

1. *Loss of dependency……………………………Rs.18,32,000/-*
2. *Funeral Expenses……………………………….Rs.2,000/-*
3. *Loss of Estate…………………………………….Rs.2,500/-*

…………………………………………………………………
Rs.18,36,500/-

Sd/-
MAC Tribunal Judge, Alipore
14th ADJ, Alipore, 24 PGS (S)….."

6. The tribunal directed the **opposite party no. 1/owner to pay the said compensation** as it was held that the driver of the offending vehicle **did not have a valid licence and the same was proved before the learned Tribunal by the O.P./Insurance Company by adducing witnesses and documents which were marked as exhibits.**

7. It was held by the learned Tribunal that on the date of accident i.e. on 02.03.2008, **the driving licence of the driver of the offending heavy goods vehicle was not valid** as per information given by the District Transport Officer, Bhilwada.

8. Being aggrieved, the present appeal has been preferred by the claimants on the following grounds :-

i) That the learned Tribunal did not appreciate the evidence on record properly and thus did not grant 'Just Compensation'.

ii) That the learned Tribunal wrongly directed that the compensation to be paid by the opposite party/owner.

9. Considering the materials including the evidence on record the following is evident :-

i) The income of the deceased which is not disputed is **Rs.19077/- per month.**

ii) As per the school certificate **(Exhibit-2 and Pan Card Exhibit-16)** of the deceased, it appears that the date of birth of the victim was 25.06.1984 and, as such, the victim was aged about **23 years** at the time of the accident. Thus, **Multiplier '18'** shall be applicable. ***(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121)***

iii) As the victim had a **permanent job, future prospects** shall be **50%** of the actual income. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

iv) Admittedly, the victim was a bachelor and, as such, **50% of his income** be deducted as his personal expense.

v) General damages of **Rs. 70,000**/- under the conventional heads of Loss of estate: **Rs.15,000**, Loss of consortium: **Rs.40,000**, Funeral expenses: **Rs.15,000** to be added. ***(National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)).*** General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/. (Being 20%).

10. Thus the **"*Just Compensation*"** in this case would be as follows :-

Monthly Income	***Rs. 19077****/-*
*Annual Income (**19077** x 12)*	*Rs. 2,28,924/-*
*Less : **50% of his income***	*Rs. 1,14,462/-*
	Rs. 1,14,462/-
*Add : Future prospects @ **50%** of the annual income of the deceased*	***Rs. 57,231/-***
	Rs. 1,71,693/-
Multiplier x 18 *(**1,71,693** x 18)*	***Rs. 30, 90, 474/-***
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)	***Rs. 84,000/-***
Total amount:-	***Rs. 31, 74, 474/-***

11. Admittedly, the Claimants have not received the amount of compensation in terms of order of the learned Tribunal directing the owner to pay. Accordingly, the claimants are now entitled to the **total amount of compensation of Rs. 31,74,474/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

12. The **Respondent No. 1/Insurance Company** shall deposit the total amount, along with the interest, with the learned Registrar General, High

Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the claimants in equal proportion, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.

13. The insurance company has proved that the driver of the offending vehicle did not have a valid licence.

14. **Exhibit D,** is the copy of the particulars for verification of driving licence issued by the District Transport Office, Bhilwara. On careful scrutiny, it appears that the licence was being renewed from time to time, once renewed up to 25.12.2004, and then renewed again on 28.01.2005 up to 27.01.2008 and lastly it was renewed on 05.04.2008 up to 04.04.2011. **So for the period from 27.01.2008 to 05.04.2008, the driver of the offending vehicle did not have a valid driver's licence and the accident in this case took place on 02.03.2008.**

15. Thus there has been a clear violation of the rules of the Insurance Policy.

16. **The Respondent No. 1/ The New India Assurance Co. Ltd. has now prayed for leave to recover** the compensation from the owner/respondent no. 2 of the offending vehicle **(being a Trailor) bearing no. HR/38-L-2681** (insured with the Respondent No. 1) on the ground that the driver of the offending vehicle did not have a valid licence. ***(Balu Krishna Chavan vs. The Reliance General Insurance Company Ltd. & Ors., in SLP (C) No. 33638 of 2017, on 3rd November, 2022)***

17. **It is proved from the** particulars for verification of driving license issued by the District Transport Office, Bhilwara **(Ext D) and by adducing witnesses and other documents which were marked as exhibits**, that the driver of the offending vehicle (bearing no. **HR/38-L-2681**, **Trailor**) did not have a valid licence at the time of accident, though the vehicle **had valid insurance** with the Respondent No. 1/Insurance Company/National Insurance Company Ltd. and thus there being a violation of the condition of the rules in the policy, **the Respondent No. 1/Insurance Company is to pay the total compensation and then recover the compensation paid, by due process of law, from the owner of vehicle no. HR/38-L-2681, the Respondent No. 2 herein.**

18. **The appeal being FMA 960 of 2012 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.**

19. All connected applications, if any, stand disposed of.

20. Interim order, if any, stands vacated.

21. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

22. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)