

21.2. 2024
item No.4 & 5
n.b.
ct. no. 551

FMA 1738 of 2019

**with
COT 3 of 2020**

**Keya Chatterjee & Ors.
Vs.
Magma HDI General Insurance Co. Ltd. & Anr.
With
COT 3 of 2020
Magma HDI General Insurance Co. Ltd
Vs.
Keya Chatterjee & Ors.**

Mr. Saidur Rahaman,
.....for the appellant.
Mr. Parimal Kumr Pahari,
.... For the respondent.

The instant appeal has been preferred against the judgment and award dated July 15, 2019 passed by the learned Tribunal, Additional District & Sessions Judge, First Court, Barasat 24 Parganas(North), in M.A.C. case No. 39 of 2016.

It appears that the claimants were also preferred one appeal being FMA 1738 of 2019 which was disposed by this Court on January 8, 2024.

The paper book was filed along with the memo of FMA and the cross appeal but the cross appeal was not listed on the date of disposal of the appeal. Accordingly, the cross appeal is taken up for hearing today.

The Insurance Company, namely, Magma HDI General Insurance Co. Ltd. has preferred the instant cross

appeal. The grounds for preferring the cross appeal is that the offending vehicle had no valid permit to ply the vehicle on the relevant date of accident at the relevant place. To substantiate the plea, the Insurance Company has placed one witnesses i.e. D.W. 1. The D.W. 1 deposed before the learned Tribunal and also produced one document wherefrom it would be revealed that the offending vehicle bearing no.WB 25C-8180 had no valid permit at the date of accident.

Mr. Pahari, learned advocate for the appellant submits that the learned Tribunal has not considered the issue and passed the order directing the Insurance Company to pay the compensation. He argued that as the owner of the offending vehicle had no valid permit in terms of the policy. So, the Insurance Company may not be directed to pay the compensation.

Hared the learned advocate for the claimant, perused the paper book and the evidence of D.W. 1; also perused the impugned judgment and award passed by the learned Tribunal. It appears that the pleas of Insurance Company regarding the absence of permit of the offending vehicle has been substantially proved. The order passed by the learned Tribunal directing the Insurance Company to pay the compensation is appears to me not justified. However, by virtue of decision of the Hon'ble Supreme Court passed in **National Insurance Co. Ltd. Vs. Swaran Singh**, the Insurance Company may pay the

compensation and they are at liberty to recover the same from the owner of the offending vehicle. On that score, the instant cross appeal is appears to me meritorious and it is allowed. The award passed by this Court in order dated January 8, 2024 in FMA 1378 of 2019 in favour of the claimant has to be paid by the Insurance Company and after the payment being made, the Insurance Company is at liberty to recover the entire awarded sum from the owner of the offending vehicle bearing no. WB 25C-8180 according to the procedure laid down by the Hon'ble Supreme Court in **Swaran Singh(supra)**.

The cross appeal being COT 3 of 2020 is disposed of.

Connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)