

In The High Court At Calcutta  
Civil Appellate Jurisdiction  
Appellate Side

**Present:-**

**The Hon'ble Justice Ananya Bandyopadhyay**

FMA No.354 of 2021  
National Insurance Co. Ltd.  
vs.  
Sukuntala Show & Anr.

Mr. Saswata Bhattacharjee

... for the appellant/insurance company

Mr. Joydeep Bhattacharya

... for the respondent No.1/claimant.

Heard on: December 11, 2024.

Judgment on: December 11, 2024.

**Ananya Bandyopadhyay, J:-**

The Learned Advocates representing the appellant/insurance company as well as respondent No.1/claimant are present.

The instant appeal had been preferred against the judgment and award dated 7<sup>th</sup> April, 2018 passed by the learned Judge, Motor Accident Claims Tribunal, 7<sup>th</sup> Court, Alipore in M.A.C. Case No. 65 of 2011.

The Learned Tribunal after recording the evidence, disposed of the issues framed and awarded a sum of Rs.3,54,000/- along with an interest @ 6% per annum from the date of filing of the claim application i.e. 30.06.2011 till the date of its realization.

The learned advocate representing the appellant/insurance company submitted the driver of the offending vehicle did not possess valid driving licence. Therefore, the learned tribunal erred in not granting right to pay and recover the awarded sum from the owner of the offending vehicle.

Since the learned advocates representing both the parties did not dispute the computation of the compensation amount, this Court would restrict itself only to the issue of right being granted in favour of the appellant/insurance

company to pay and recover in absence of driving licence being possessed by the driver of the offending vehicle. The cross-examination of OPW 1 being the authorized person to depose on behalf of the Barasat Motor Vehicles Department in his cross examination stated *“Since 2013 this computerized license started to issued. But before that license used to be issued manually, I have no such document regarding manual issuance of the licence”*. He further stated he could not state anything about licence issued in the name of Rabindranath Karmakar which was shown to the OPW 1 on behalf of the claimant. The aforesaid witness did not controvert or denied or refuted the driving licence to have not been issued to the driver of the offending vehicle. Therefore, it cannot be sacrosanct and indubitably stated that the driver did not possess the driving licence in absence of proper evidence to that effect wherein OPW.1 stated that the driving licence issued prior 2013 would be prepared manually and not computerized. Therefore, the appellant/insurance company is not entitled to pay and recover the same from the owner of the offending vehicle for lack of evidence contrary to the claim of the appellant/insurance company.

In view of the judgment of the Hon’ble High Court in Urmila Halder v. The New India Assurance Company Ltd. and the same being affirmed by the Supreme Court on 08/02/2024 and the notification dated 22<sup>nd</sup> May, 2018, the appellants/claimants are entitled to Rs.5,00,000/- of just compensation with regard to second schedule 1(a) and notification dated 22<sup>nd</sup> May, 2018 and also the aforesaid observations of the High Court at Calcutta and the Hon’ble Supreme Court.

*“Fatal Accidents:*

*Compensation payable in case of Death shall be five lakh rupees.”*

The appellants/claimants are entitled to receive the balance amount of Rs. 5,00,000/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

The office of the Registrar General, High Court, Calcutta shall disburse the statutory amount i.e. 25,000/- through a cheque to the learned advocate representing the appellant/insurance company for the accounts of the insurance company immediately.

The Learned Advocate for the appellant/insurance company is to further deposit the balance sum of Rs. 5,00,000/- along with interest as aforesaid before the office of the Learned Registrar General, High Court, Calcutta within four weeks from the date of passing of this order.

The office of the Registrar General, High Court, Calcutta shall encash the cheque and thereafter disburse the same to the present respondent No.1/claimant as mentioned in the award passed by the learned Judge, Motor Accident Claims Tribunal, 7<sup>th</sup> Court, Alipore in M.A.C. Case No.65 of 2011 on proof of proper identification of the appellant/claimant subject to payment of *ad valorem* Courts fees.

The instant appeal is disposed of accordingly.

Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

*c.m.*

**(Ananya Bandyopadhyay, J.)**