

**IN THE HIGH COURT AT CALCUTTA****Civil Appellate Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****F.M.A No. – 3695 of 2015****With****IA No. CAN 1 of 2016 (Old No. CAN 766 of 2016)****In the Matter of****Smt. Pratima Maji & Ors.****Vs.****M/s. Choramandalam General Insurance Co. Ltd. & Anr.****For the Appellant/Claimants : Mr. Krishanu Banik, Adv.****For the Respondent no.1 Ins. Co. : Mr. Debanjan Mukherjee Adv.****Heard on : 04.09.2023****Judgment on : 07.02.2024****Subhendu Samanta, J.**

1. The instant appeal has been preferred against the Judgment and Award dated 7th July of 2015 passed by the Learned Judge, Motor Accident Claims Tribunal ADJ 1<sup>st</sup> Court Paschim Medinipur in MAC Case No. 173 of 2010.

2. The brief fact of the case is that the present appellants being the claimants have preferred an application u/s- 166 of MV Act before the Learned Tribunal for getting compensation on the ground that their predecessor was died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle due to insured under the policy of the Insurance company.

3. The claim case was contested by the Insurance Company by filing the written statement. After hearing the parties the Learned Tribunal has awarded a sum of Rs. 5,29,500/- in favour of the claimants towards the compensation and directed the owner of the offending vehicle to pay the compensation.

4. The owner has not paid the compensation, so the instant appeal has been preferred by the claimants for enhancement of the award and for necessary direction.

5. Learned Advocate for the appellants submits that there are only two points to be decided in this appeal.

Firstly, the Learned Tribunal has committed error by directing the owner of the offending vehicle to pay the compensation on the ground that the driver of the offending vehicle had no valid driving license at the time of the accident.

Secondly, the Learned Tribunal has not considered the principle of future prospects and general damages by virtue law laid down by the Hon'ble Supreme Court in **National Insurance Company Vs. Prany Sethi (2017) 16 SCC 680**.

6. Heard the Learned Advocate.

7. Perused the materials on record and also perused relevant decisions cited by the rival parties.

8. The admitted fact of the case is that the driver of the offending vehicle did not possess the valid driving license at the time of accident.

9. The Learned Tribunal by virtue of decision of the Hon'ble Division Bench of this Court passed in FMAT 856 of

2011 has decided the issue that the Insurance Company is not liable to pay compensation, and the owner must be directed to pay the compensation.

10. Learned Advocate for the appellant submits that by virtue of decision of Hon'ble Supreme Court passed in **National Insurance Company Limited Vs. Swaran Singh AIR 2004 SC 1531**, the order of pay and recovery may be made, The law laid down by the Hon'ble Supreme Court in **Swaran Singh (Supra)** is a good law and well accepted by of all concern. So, he submits that the decision of Learned Tribunal is erroneous.

11. Learned Advocate for the Insurance Company submits that the Division Bench of this court in FMAT 856 of 2011 as considered the ratio laid down by the Hon'ble Supreme Court in **Swaran Singh (supra)** and of opinion that the view cannot be accepted.

12. Heard the Learned Advocates.

13. Perused the observation of Hon'ble Supreme Court in **Swaran Singh (supra)**

14. **Summary of findings:**

***(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.***

***(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988***

*inter alia* in terms of Section 149(2)(a)(ii) of the said Act.

(iii) *The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in subsection (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.*

(iv) *The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.*

(v) *The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.*

(vi) *Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act.*

(vii) *The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the*

***driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.***

***(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.***

***(ix) The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.***

***(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the***

***insurer within thirty days from the date of announcement of the award by the tribunal.***

***(xi) The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.***

***For the reasons aforementioned, these petitions are dismissed but without any order as to costs.***

15. It appears to me that the ratio laid down by the Hon'ble Supreme Court in *Saran Singh* as occupied the field as a good law. The sole purpose of legislature to enact the Chapter X, XI and XII of the MV Act to enable the third party of an accident may not be deprived from just and proper compensation. The confront of importance is binding between the insurer and insured. Whoever may have the liability to pay, the claimants (third) party to the contract cannot be suffered for getting compensation. Thus, the Learned Tribunal must have considered the ratio of the judgment passed in *Saran Singh*. On that score I am of a view that the just and proper compensation of this case has to be paid initially by the Insurance Company thereafter, Insurance Company may be at liberty to recover the same according to the law laid by the Hon'ble Supreme Court in ***Swaran Singh (Supra)***.

16. In deciding the second issue, it appears to me that by virtue of decision of Hon'ble Supreme Court in **Pranay Sethi (Supra)**. The present claimants are entitled to get the future prospects and general damages. It appears from the Post mortem report of the deceased disclosed that the deceased was 49 years old at the time of accident and he was a tube well mistri, accordingly, the claimants are entitled to get the future prospects to the tune of 25% of his established income. The claimants are also entitled to get the general damages to the tune of Rs. 70,000/-.

Considering of head the award passed by the Learned Tribunal requires to be modified.

17. **Assessment of Compensation**

|                                                    |              |
|----------------------------------------------------|--------------|
| 1. Monthly Income be assessed as                   | Rs. 5,000/-  |
| 2. Annual Income be assessed As (Rs. 5,000/- X 12) | Rs. 60,000/- |
| 3. Future Prospect be assessed as 25%              | Rs. 15,000/- |
| 4. Total                                           | Rs. 75,000/- |
|                                                    | --           |
| 5. 1/4 <sup>th</sup> Deduction                     | Rs. 18,750   |
|                                                    | -----        |
|                                                    | Rs. 56,250/- |
| 6. Use of multiplier as per age 13                 | X 13         |
|                                                    | -----        |
|                                                    | 7,31,250/-   |
|                                                    | +            |
| 7. General Damages                                 | 70,000/-     |
|                                                    | -----        |
|                                                    | 8,01,250/-   |

Total award comes to Rs. 8,01,250/-

The award shall carry the 6%/- per annum from the date of filing of the claim application. i.e. from 03.05.2010.

18. The Insurance Company is directed to pay the compensation together with the interest through the office of

Learned Registrar General High Court, Calcutta within 06 weeks. On such deposit the Office of the Learned Registrar General High Court Calcutta shall disburse the same amount in the name of the claimant vide equal account payee cheques.

19. The payment of compensation is subject to the ascertainment of payment of deficit Court fees.

20. The LCR be sent down at once. The office of the Learned Tribunal shall act upon. The certified copy of this order to receive the DCF, if any.

21. After such payment being made the Insurance Company is at liberty to recover the awarded amount from the owner of the offending vehicle according to the procedure laid down by the Hon'ble Apex Court in **Swaran Singh (Supra)**

22. FMA disposed of. Connected CAN Applications if pending are also disposed of.

23. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

**(Subhendu Samanta, J.)**