

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. No. 148 of 2023
The Oriental Insurance Co. Ltd.
Versus
Aysa Khatoon & Ors.

Mr. Sanjay Paul
Ms. Jaita Ghosh

...for the Appellant/Insurance Company.

Mr. Amit Ranjan Roy

...for the Respondents/Claimants.

Heard on: September 18, 2024.

Judgment on: September 26, 2024.

Ananya Bandyopadhyay, J:- Both the learned Advocates for the appellant/insurance company and the respondents/claimants are present.

The instant appeal has been filed against the judgment and award dated 15th July, 2022 passed by the learned Motor Accident Claims Tribunals, 3rd Court, Tamluk, Purba Medinipur in M.A.C. Case No. 01 of 2017.

The learned advocate for the appellant/insurance company submitted that the amount of compensation granted by the learned tribunal is not disputed. However, the ground of driving licence have not been proved in the instant case belonging to the driver of the offending vehicle. The appellant/insurance company should be granted the right to pay and recover the same from the owner of the offending vehicle.

The learned advocate for the respondents/claimants submitted that the claimants are suffering for want of the compensation amount granted by the learned tribunal and did not refute the contentions of the learned advocate for the appellant/insurance company in case he succeeded to recover the paid amount of compensation from the owner.

The victim aged about 27 years died out of an accident which occurred on 30.12.2011 at about 12.05 a.m. at NH-41 near Hirapur. The owner of the offending vehicle bearing registration No. JH-10-AA/1002(Pick-up-van) which collided with the offending vehicle being lorry being Registration No. WB-29/3576.

The learned Advocate for the appellant/insurance company did not dispute the occurrence of the accident, the involvement of the offending vehicle, the route permit, the insurance policy, etc.

The evidence of O.P.W.1 is replicated as follows:

In his cross-examination by the appellant/insurance company the O.P.W.1 stated as follows:

“I posted in the office in the year 1992. This is my third phase in this department, I came here November, 2015. In the year 2006 I was not in licensing department. Dharmendra Singh may have license from another office.

Not a fact that my evidence is false”.

The evidence of the O.P.W.1 did not categorically state that the driving licence bearing registration No. JH-10-AA/1002 was fake, forged or indubitably non-existent since he produced the record from one of the officers within his jurisdiction having domain of the custody of the documents therein. The presence of the registration on the driving licence in a document can be obtained or be available from other officers of the Motor Vehicles Department. Under such

circumstances, the claim regarding the absence of the driving licence cannot be absolutely acceptable. Under the facts and circumstances of the case, the appellant/insurance company is to pay the compensation to the respondents/claimants in view of the conclusive evidence adduced before the learned tribunal. The appellant/insurance company can initiate the necessary steps to prove that the driving licence as aforesaid has been absent in the name of the victim i.e. Dharmendra Singh with regard to the Pick-up-van bearing No. JH-10-AA/1002 to its benefit.

It was further submitted by the learned advocate for the appellant/insurance company that the appellant/insurance company had deposited the entire awarded amount with an interest of 6 % per annum from the date of filing of the claim application i.e. 11,79,956/- as per the challan filed by the learned advocate for the appellant/insurance company. The respondents/claimants are entitled to receive the balance amount of Rs. 7,44,000/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

During the pendency of the appeal the respondents/claimants have expired. Vide order dated 13.06.2024 the respondents/claimants i.e. Aysa Khatoon and Saifuddin Ansari have been substituted by the following persons being respondent Nos.1(b) Akhtari Bano, 1(c) Mustari Bano, 1(d) Mahjabeen Khatoon and 1(e) Noorjahan Khatoon was the share of the deceased respondents/claimants.

The present respondents/claimants are entitled to receive the balance amount of Rs. 7,44,000/- along with interest at the rate of 6% per cent per annum from the date of filing of the application till the date of actual realization.

The office of the learned Registrar General, High Court, Calcutta shall encash the cheque stipulating the entire calculated amount as aforesaid and thereafter disburse the same to the present respondents/claimants in the proportion as mentioned in the impugned judgment dated 15th July, 2022 passed by the learned Motor Accident Claims Tribunals, 3rd Court, Tamluk, Purba Medinipur in M.A.C. Case No. 01 of 2017 on proof of proper identification of the present respondents/claimants subject to payment of ad valorem Court fees and refund the balance amount if any through a cheque to the learned advocate for the appellant/insurance company for the accounts of the insurance company.

The interest accrued on the sum of money deposited by the appellant/insurance company at the office of the learned Registrar General, High Court at Calcutta which was further deposited in the Nationalized Bank by the office of the learned Registrar General, High Court at Calcutta is to be apportioned and the sum of interest accrued on Rs. 7,44,000/- is to be disbursed in favour of the respondents/claimants and the balance sum of interest to be refunded to the Insurance Company through distinct account payee cheques.

The instant appeal being FMA 148 of 2023 disposed of.

Accordingly, the application if any stands disposed.

Interim order if any stands vacated.

Copy of the judgment be sent to the Department as well as concerned tribunal for compliance.

(Ananya Bandyopadhyay, J.)