Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ananya Bandyopadhyay

FMA 580 of 2020

Kalpana Malo & Ors.
Versus
IFFCO Tokio General Insurance Company Limited & Anr.

For the appellants/claimants : Mr. Saidur Rahaman

For the respondent nos. 1 : Mr. Rajesh Singh

Heard & Judgment on : 3rd April, 2025

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present.
2. The instant appeal had been filed against the judgment and award dated 01.07.2014 passed by the learned Judge, Motor Accident Claims Tribunal, 3rd Court, Balurghat, Dakshin Dinajpur in M.A.C. Case No. 09 of 2010.
3. An application under Section 166 of the Motor Vehicles Act, 1988 had been filed on account of accident which occurred on 27.11.2009 at about 7.45 p.m. near Mission More on State Highway, Kaldighi with the involvement of the offending vehicle

being a ‘Bolero’ bearing registration No. WB-61/4568 which proceeded at an exceeding speed rashly and negligently hit a bi-cycle which due to impact of such collision dashed with a rickshaw which thereafter collided with the shop of one Utpal Basak and in course of such collision the victim along with others were injured and on transmission to the Gangarampur S. D. Hospital, the victim was declared dead along with four others.

4. The Learned Advocate representing the appellants/claimants submitted that the Learned Tribunal erroneously considered the monthly income of the victim to be Rs. 3,000/- contrary to the claim of Rs.4,000/- per month being a rickshaw van puller. Moreover, the compensation amount on account of future prospect was not granted which should have been to the extent of 10%. A meager amount of Rs.7,000/- was accorded for general damages instead of Rs.84,000/-. The learned Advocate representing the appellants/claimants further submitted the grievance of the appellants/claimants, since the learned Tribunal had directed the owner of the offending vehicle to compensate the claim amount instead of the respondent/Insurance Company exonerating the same on the ground of lack of route permit issued in favour of the offending vehicle which was registered as a light commercial vehicle as per the records of the RTO and

accordingly prayed for a modified order from this Court with a direction upon the respondent No.1/Insurance Company to pay the compensation awarded by the learned Tribunal and, thereafter, recover the same from the owner of the offending vehicle.

5. The Learned Advocate representing the respondent No.1/insurance company submitted the offending vehicle was not issued with valid route permit as per the records of the RTO as well as the evidence of the RTO being OPW 1 which corroborated the fact of non-issuance of valid route permit in favour of the offending vehicle through oral as well as the documentary evidence and the learned Tribunal had rightly exonerated the respondent/Insurance Company from paying the compensation amount. Moreover, the Tribunal had also granted interest at the rate of 8% per annum which had been excessive.
6. Considered the rival contentions of the learned Advocate representing both the parties.
7. Since the occurrence of the accident etc. and other ancillary issues are not disputed by the learned advocate representing the respondent No.1/insurance company, this Court restricts itself only to the points agitated by the learned Advocates representing both the parties.

8. The evidence of OPW 1 is replicated as follows:-

"*I am RTO in charge of Balurghat Circle and on receipt of summon from the Court I have come to adduce evidence in this case. I have come here along with documents relating to the vehicle bearing no. WB61/4568(Bolero). This vehicle has been registered as light commercial motor vehicle. No such permit was given to the vehicle as necessary for it's plying.*
This is the necessary entry in the register of the motor vehicles. This is the attested extract copy of said register. Let the entry made in the register along with it's attested copies be marked as Exhibit – 'A' simultaneously.
Code no. WB-61/ is meant for the commercial motor vehicle registered within the territorial jurisdiction of Dakshin Dinajpur and Code No. WB-62 is meant for private vehicle".

9. The deposition of OPW 1 evinced the fact that the Motor Vehicles Authority did not issue a valid route permit in favour of the offending vehicle which had been registered in accordance with the documents marked exhibit- 'A' to be a light commercial motor vehicle bearing code no. WB-61. It was further stated that route permit was not issued in favour of the offending vehicle which was necessary for its conveyance and the same was not controverted by the learned Advocate representing the respondent/Insurance Company before the learned Tribunal.

10. In Amrit Paul Singh v. TATA AIG General Insurance Co. Ltd, the Hon'ble Supreme Court held the following:-[1]

> *24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the*

time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and Lakhmi Chand [Lakhmi Chand v. Reliance General Insurance, (2016) 3 SCC 100 : (2016) 2 SCC (Civ) 45] in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus

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[1] **(2018) 7 SCC 558**

cannot be cast on the insurer. Therefore, the Tribunal as well as the High Court had directed that the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and other cases pertaining to pay and recover principle

11. The Hon'ble Supreme Court held the following in Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd.[2]:-

> ***11.*** *To reiterate, since a vehicle cannot be used as a transport vehicle on a public road unless there is a permit issued by the Regional Transport Authority for that purpose and since in the instant case there is neither a pleading to that effect by any party nor is there any permit on record, the vehicle in question would remain a light motor vehicle. The respondent also does not say that any permit was granted to the appellant for plying the vehicle as a transport vehicle under Section 66 of the Act. Moreover, on the date of the accident, the vehicle was not carrying any goods and though it could be said to have been designed to be used as a transport vehicle or a goods carrier, it cannot be so held on account of the statutory prohibition contained in Section 66 of the Act.*

[2] **1999) 6 SCC 620**

12. *It was pointed out by the appellant that the legal representative of Jadhav, the driver, had filed a petition for compensation under the Act. The insurer had resisted the claim taking the stand that the driver of the vehicle did not possess a valid driving licence to drive the vehicle. The plea of the insurer was rejected by the Claims Tribunal and the petition for compensation was allowed and compensation paid to the legal representative of the driver. No appeal was preferred by the insurer in that case.*

3. *In the present case, the insurer alleged that the appellant had committed breach of the terms of the insurance policy and had violated the provisions of the Act by entrusting a "transport vehicle" to a person who did not hold a valid licence and the insurer was, thus, not liable to indemnify the appellant. Under the policy firstly a light motor vehicle meant the gross weight of which did not exceed 6000 kilograms and secondly against the column "driver" the policy stated:*

"Drivers clause.—Persons or classes of persons entitled to drive: any person including the insured.

Provided that a person driving is holding an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence:

Provided also that if a person holding an effective learner's licence may also drive the vehicle when not used for the transport of goods at the time of the accident and that such a person satisfies the *requirements of Rule 3 of the Central Motor Vehicles Rules, 1989."*

14. *Now the vehicle in the present case weighed 5920 kilograms and the driver had the driving licence to drive a light motor vehicle. It is not that, therefore, the insurance policy covered a transport vehicle which meant a goods carriage. The whole case of the insurer has been built on a wrong premise. It is itself the case of the insurer that in the case of a light motor vehicle which is a non-transport vehicle, there was no statutory requirement to have a specific authorisation on the licence of the driver under Form 6 under the rules. It has, therefore, to be held that Jadhav was holding an effective valid licence on the date of the accident to drive a light motor vehicle bearing Registration No. KA-28-567.*

12. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr3 and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.4 the impugned award of Rs. 2,66,000/- is modified as follows:

Monthly Income	Rs. 3,000/-
Annual Income	Rs. 36,000/-
Add : 10% future prospect	Rs. 3,600/-
	Rs. 39,600/-
Less : 1/3rd personal expenses	Rs. 13,200/-
	Rs. 26,400/-
Multiplier to be 11	X 11
	Rs. 2,90,400/-

1 2017(4)TAC 673(S.C)

[4] **(2009) 6 SC 121**

Add : General Damages	Rs. 2,90,400/- Rs. 84,000/- Rs. 3,74,400/-

13. The appellants/claimants are entitled to a sum of Rs. 3,74,400/- along with interest at the rate of 6% per annum to be paid from the date of filing of the application till the date of its actual realization.

14. The Learned Advocate for the respondent No.1/insurance company is to deposit the sum of Rs. 3,74,400/- along with interest as aforesaid before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order .

15. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the appellants/claimants in equal proportion as mentioned in the award passed by the learned Judge, Motor Accident Claims Tribunal, 3rd Court, Balurghat, Dakshin Dinajpur in M.A.C. Case No. 9 of 2010 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Court's fees within four weeks.

16. The respondent No.1/insurance company shall recover the same from the owner of the vehicle subject to strict proof of the fact that the valid route permit was not possessed by the owner of the offending vehicle.

17. The instant appeal is disposed of accordingly.

18. The pending applications if any stands disposed of.

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

(Ananya Bandyopadhyay, J.)

Srimanta, A.R.(Ct) /c.m. A.R. Ct.