IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. 151 of 2024

National Insurance Co. Ltd.
-Vs-
Smt. Sulochana Mahata & Ors.

For the Appellant : Mr. Gopa Das Mukherjee

For the Respondents : Mr. Amit Ranjan Roy

Heard & Judgment on : 20.06.2025

Ananya Bandyopadhyay, J.:-

1. The Learned Advocates representing the appellant/Insurance Company as well as respondents/claimants are present in Court.
2. The instant appeal had been preferred by the appellant/Insurance Company against the impugned judgment and award dated 09.10.2023 passed by the Learned Additional District and Sessions Judge, Motor Accident Claims Tribunal, 3rd Court, Paschim Medinipur in M.A.C. Case No. 381 of 2018.
3. The learned Advocate representing the appellant/Insurance Company submitted to have filed the instant appeal exclusively on the ground to claim the right to recover the compensation awarded in favour of the claimants after disbursing the same from the owner of the offending vehicle. It was further submitted that the offending vehicle was being driven by the son of the owner of the offending vehicle who did not

possess any valid driving licence which entitled the appellant/Insurance Company to pay the awarded compensation and, thereafter, recover the same from the owner of the offending vehicle.

4. The learned Advocate representing the respondents/claimants submitted that the Insurance Company being the opposite party before the learned Tribunal did not raise the issue that the driving licence was not possessed by the driver of the offending vehicle and, therefore, the appellant/Insurance Company had no scope to agitate the issue at this stage of appeal.

5. Considered the rival contention of the learned Advocates representing the respective parties.

6. Since the occurrence of the accident, involvement of the offending vehicle, Insurance certificate etc. are not disputed by the learned advocate representing the appellant/insurance company, this Court restricts itself only to the point of pay and recovery as raised by the learned Advocate representing the appellant/Insurance Company. The written statement filed by the Insurance Company before the learned Tribunal did not categorically mention that the driver of the offending vehicle or else the owner of the offending vehicle did not possess the driving licence. It was further submitted that the charge-sheet did not mention seizure of the driving licence which had been marked exhibit-1. It appeared that the properties/articles/documents mentioned in serial no. 11 of the charge-sheet did not refer to the driving licence to have been seized. However, it had been mentioned, inter alia, that "*during*

investigation of this case on 19.07.2017 motor cycle owner, namely Anil Mahata came to Police Station and produce valid document in respect of said motor cycle, I prepared proper seizure list duly signed by witnesses. I received source information the FIR named accused roaming at Bazer I informed O/C, Sankrail Police Station. On 24.07.2017 myself along with force held raid and the FIR named accused person, namely, Rabindra Nath Mahata (Gaju), S/o – Anil Mahata, Village – Bhaudi, P.O.-Chingur Kosa, P.S.-Jhargram, Dist.-Jhargram I mentioning all arrest formalities. Accused driver confessed his guilt. Driver no produces any driving license and forwarded to Ld. AJM, Jhargram Court on 24.07.2017 and also send a prayer to the R.T.A., Jhargram for mechanical examination seized motor cycle registration bearing no. WB34AZ2903". Failure on the part of the driver to produce the driving licence cannot generally be presumed that the driver did not possess the driving licence. It was incumbent upon the appellant/Insurance Company to have adduced evidence through the concerned R.T.O. to prove that the driver did not possess a driving licence. Moreover, this issue was not agitated before the learned Tribunal and the impugned Judgment and order did not mention an iota of the issue of driving licence to be fake, invalid or not possessed by the driver which was never a part of the pleadings or evidence or arguments. Therefore, this Court is not inclined to interfere with the impugned judgment and order.

7. The learned Advocate representing the appellant/Insurance Company submitted to have deposited the entire awarded amount as per challan

filed by the learned advocate representing the appellant/insurance company.

8. The Respondent/claimant is entitled to receive the amount of Rs. 6,14,500/- along with interest at the rate of 4% per cent per annum from the date of filing of the claim application till the date of actual realization.

9. The office of the learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse the entire awarded amount so deposited with accrued interest directly Bank accounts of the respondents/claimants as mentioned in the impugned judgment of the Learned Additional District Judge, Motor Accident Claims Tribunal, 3rd Court, Paschim Medinipur in M.A.C. Case No. 381 of 2018 on proof of proper identification of the respondents/claimants subject to payment of ad valorem Court fees and refund the balance amount, if any, along with accrued interest through a cheque to the Learned Advocate for the Appellant/Insurance Company for the accounts of the insurance company. The office of the learned Registrar General, High Court at Calcutta will instruct the claimants to provide details of their Bank accounts with relevant documentary proof, prior to such disbursal as aforesaid.

10. The instant appeal is disposed of accordingly.

11. The pending applications, if any, stands disposed of.

12. 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.)