

12.03.2025
(D/L-56)
Ct.-655
(Nandita)

F.M.A. 72 of 2017

With

**IA No. CAN 1 of 2016
(Old No: CAN 7500/2016)**

Future General India Insurance Company Ltd.

-Vs-

Padma Barui & Ors.

Mr. Rajesh Singh
.... For the appellant/Insurance Co.

(Dictated in open court)

1. The impugned judgement and award dated 26th April, 2016 passed by the learned Motor Accident Claims Tribunal, Additional District Judge, 1st Court, Bankura, in MAC Case No. 114 of 2011 (M.A.C. Case No. 02 of 2014) is assailed in this appeal by the appellant.
2. Appellant Insurance Company is represented by the learned Advocate Mr. Rajesh Singh. It appears from the report submitted by the Superintendent, F.M.A. Section dated- 01.09.2017 that learned Advocate for the Respondents No(s) 1 to 5 has entered appearance by filing vokalatnama but today nobody is present on behalf of the respondents.
3. By passing the impugned judgment and award, the learned Tribunal awarded compensation to the tune of Rs. 4,94,000/- in favour of the respondents/claimants. Being aggrieved and dissatisfied with the said impugned judgment and

award the present appeal is preferred at the behest of the appellant/insurance company.

4. The application under Section 166 of the Motor Vehicles Act, 1988 was taken out by the heirs/legal representatives of the deceased, who faced unnatural death in a motor accident which was happened on 20.11.2010. On the fateful date the deceased was riding on a cycle and was coming from his in-law's house at village Saluni and was proceeding towards the village Monihara and as soon as he reached on Jhantipahari, Saltora pitch road then at that time the offending vehicle being no. WB-67-7899 which was coming from Jhantipahari and proceeding towards Saltgora side with a rash and negligent manner dashed the deceased from behind and a resultant effect, the victim sustained several injuries on his person and he was immediately taken to Bankura Sammeloni Medical College and Hospital. Thereafter he was shifted to SSKM Hospital, Kolkata, where he succumbed to injuries. Over the death of the said victim the instant case was filed by the appellants/claimants with prayer for getting compensation. The said claim case was disposed of by the tribunal awarding compensation to the tune of Rs.4,94,000/- with an interest at the rate of 6% per annum from the date of filing of the petition till the date of payment in favor of the claimants.
5. This appeal is filed on behalf of the appellant/ Insurance Company challenging the said

judgment and award passed by the Tribunal on two counts- that the claimants have failed to prove the rash and negligent driving of the case vehicle and another is that the driver of the offending vehicle was holding a fake driving licence at the time of incident. As such, the appellant insurance company being the insurer of the case vehicle may not be held responsible to pay compensation. Learned Tribunal failed to appreciate those facts in the impugned award and as such the impugned award is liable to be set aside.

6. Learned Counsel appearing on behalf of the appellant submits that as the claimants failed to prove rash and negligent driving of the offending vehicle (Pick Up Van) no compensation can be awarded against the insurer of the said offending vehicle. In a proceeding initiated under Section 166 of the Motor Vehicles Act, 1988 proof of negligence of the driver of the vehicle is indispensable and the said fact was not proved beyond reasonable doubt in this case.
7. Mr. Singh, learned Advocate for the Insurance Company says that the Assistant Manager of the Appellant deposed as DW1 who confirmed that the driving license held by the driver of the case vehicle was a fake licence and it violated the terms and conditions of insurance policy. It is said by the learned Advocate that failure of an effective or valid driving licence would exonerate the Insurance Company from all liabilities and no

compensation should have been awarded against the appellant.

8. In this case before the Tribunal petitioner no. 1 was examined as P.W.1 being the wife of the deceased. It has come out from her deposition that her husband met an accident due to rash and negligent driving of the offending vehicle (Pick Up Van) and due to such accident he expired. Her husband was a daily labour and he used to earn Rs.4,000/- per month and these claimants were dependants upon him
9. One witness being P.W. 2 was cited as a witness to the incident. It is said by the said witness that on the fateful date he witnessed the entire incident and narrated the same before the Tribunal at the time of giving deposition.
10. One witness was examined on behalf of the Insurance Company being DW1, who was the Assistant Manager of the Company. It is stated by this witness that on enquiry he came to know that the driver of the offending vehicle had no valid licence at the time of accident. The offending vehicle had an insurance coverage.
11. It appears that immediately after the accident a police case being Chhatna P.S. Case No. 121/2010 dated-20.11.2010 under sections 279/338/427 of I.P.C. was registered and after completion of investigation charge sheet was submitted by the prosecuting agency which shows about the involvement of the case vehicle in the

accident and prima facie due to fault of the driver of the case vehicle the accident took place.

12. It further appears from the deposition of DW1 wherein he stated that the driver had no valid driving licence at the time of accident but to substantiate his claim no document was filed by the appellant in the Court. On the other hand, P.W. 1 and P.W. 2 supported the entire contentions of the claimants as made out in the petition. DW1 deposed that the offending vehicle was under the coverage of insurance.
13. After appreciation of the entire evidences both oral and documentary and after scanning of it the learned Tribunal hold that the petitioners/claimants are entitled to get compensation to the tune of Rs. 4,94,000/- (Rupees Four Lakhs Ninety Four Thousand) from this appellant/insurance company. On the other hand, nothing has come out from the side of the appellant that the offending vehicle was not involved in the accident and the driver had no valid licence at the time of the incident. So, this court is constrained to hold that the offending vehicle being No. WB-67/7899 was involved in the accident which was happened on 28th October, 2020 and due to fault of the driver the said accident took place. The claimants are the widow and children of the deceased and after considering all aspects the learned tribunal awarded the said quantum of compensation in favour of these appellants/claimants.

14. There is nothing illegality or irregularity in the impugned judgement and award passed by the Tribunal. Under such circumstances this court is not inclined to interfere in the impugned judgment and award passed by the Tribunal.
15. It is said by the learned advocate appearing on behalf of the appellant that the instant appeal is preferred by depositing statutory amount of Rs. 25,000/- (Rupees Twenty-Five Thousand) vide O/D Challan No.1538 dated- 08.09.2016 and thereafter the amount to the tune of Rs. 6,24,734/- (Rupees Six Lakhs Twenty-Four Thousand and Seven Hundred Thirty-Four) was deposited vide O/D Challan No.2464 dated- 20.12.2016 before the office of this Court.
16. The Tribunal awarded compensation to the tune of Rs. 4, 94,000/- (Rupees Four Lakh Ninety-Four Thousand) along with interest at the rate of 6% per annum on the said sum from the date of filing of the main petition till the payment. It has already been stated that the amount to the tune of Rs. 6, 49,734 /- (Rupees Six Lakhs Forty-Nine Thousand Seven Hundred Thirty-Four) including accrued interest was deposited by the Insurance Company before the office of this Court. The claimants are entitled to get this amount of compensation including accrued interest thereon.
16. The learned Registrar General of this Court is hereby directed to disburse the said amount in favour of the appellants in the manner as stated by the Tribunal in the impugned judgment and

award in favour of the appellants/ claimants within one month from this date upon proper identification and subject to payment of ad valorem court fees on the total awarded compensation amount, if not already paid.

17. As no one is present at the time of disposal of this appeal on behalf of the respondent, the office is directed to serve the administrative notice upon the respondents/claimants with intimation that the present appeal has already been disposed of affirming the judgement and award of the Tribunal. Liberty is given to the claimants for withdrawing the awarded amount as deposited by the appellant/insurance company from the office of the learned Registrar General, High Court at Calcutta.
18. Accordingly, the instant appeal is dismissed with the above observation but without any order as to costs.
19. Consequently, the other application filed in connection with this appeal, if any, is also dismissed.
20. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)