Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ananya Bandyopadhyay

FMA 220 of 2023

HDFC ERGO General Company Limited
Versus
Susama Saha & Ors.

With

COT/3/2023

Susama Saha & Ors.
-Vs.-
HDFC ERGO General Company Limited & Anr.

For the Appellant	:	Mr. Rajesh Singh
For the Respondent No.1 to 4	:	Mr. Jayanta Kumar Mondal Mr. Sayantan Rakshit
Heard & Judgment on	:	11th June, 2025.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellant/Insurance Company and the respondent No.1 to 4/claimants are present in Court.

2. The instant appeal had been filed against the judgment and award dated 6th December, 2022 passed by the Learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, Fast Track 3rd Court, Paschim Medinipur in M.A.C. Case No. 412 of 2020.
3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimants due to death of the victim in an accident which occurred on 23.08.2020 at about 7.30 p.m. on NH6 Road at Bargai near Rasmi within the jurisdiction of Kharagpur police station with the involvement of the offending vehicle being Alto Maruti bearing registration No. 50A/2396 which approaching from opposite side of the road at an excessive speed rashly and negligently, hit the victim stationed on the road sustaining severe injuries and was declared brought dead at Kharagpur Sub Divisional Hospital.
4. The learned Advocate representing the appellant/Insurance Company submitted the driver of the offending vehicle did not possess the valid driving licence to drive a dumper/heavy goods vehicle. Therefore, on violation of the terms and conditions of the insurance policy the appellant/insurance company was not liable to pay the compensation award. Moreover, the parental consortium was granted in excess by the learned Tribunal.

5. The Learned Advocate representing the respondent No.1 to 4/claimants submitted to have filed a cross objection being COT 3 of 2023 claiming that the father of the victim was dependent on the earning of the same and, therefore, the learned Tribunal had erroneously deducted 1/3rd towards personal expenses instead of 1/4th.

6. Since the occurrence of the accident, the driving license, the Insurance policy, the route permit etc. and other ancillary issues have not been disputed by the learned advocate representing the respondent No.1/insurance company, this Court restricts itself only to the extent of issues agitated by the learned Advocates representing the respective parties. The evidence of OPW 1 stated on 23.08.2020 the driver of the offending vehicle had valid driving licence for driving LMV(TR) and LMV(NT) which was marked as Ext. B. The OPW.1 being the Supervisory Head Clerk of RTO, Paschim Medinipur had categorically stated that on the date of the accident the driver of the offending vehicle as aforesaid had valid driving licence to drive transport light motor vehicles. The vehicle bearing registration No. WB-31A/2451 had been Triper/dumper which happened to be heavy goods vehicle. The learned Tribunal in the impugned judgment and order, *inter alia* observed as follows:

> "***in the case, the offending vehicle is a dumper/tipper and gross vehicle weight of which is 16200, as transpired from policy insurance certificate-EXBt.7. It is indisputably, thus, found that the offending vehicle is a heavy goods vehicle. Exbt. B firmly suggests that the driver of the offending vehicle had valid driving license to drive only light motor vehicle on the date of accident that is 23.08.2020. It is, therefore, found that the driver of the offending vehicle had valid driving license to drive different class of vehicle that is light motor vehicle and had no valid driving license to drive heavy goods vehicle on the date of accident. So, the entire issue hinges upon the only determination whether the driving license of different class of vehicle of the driver would absolve the Insurance Company from paying compensation arising out of an application preferred u/s 166 of MV Act".***

7. The learned Tribunal further relied on the decisions of the Hon'ble Apex Court in National Insurance Co. Ltd. V. Swaran Singh & Ors[1]. as held in Paragraph 102 is quoted below:

> ***102. The summary of our findings to the various issues as raised in these petitions are as follows:***
> ***(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 163A of 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 conditions e.g. disqualification of driver or invalid driving license of the driver, as contained in sub-section (2)(a)(ii) of***

[1] (2004)3 SCC 297

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 license or disqualification of the driver for driving at 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 circumstances 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 license 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 of the condition of driving license is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunal in interpreting the policy conditions would apply 'the rule of main purpose' and the concept of 'fundamental breach' to allow defences available to the insurer 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. 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 proved 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 without any order as to costs".***

8. It is not in dispute that the driver of the offending vehicle exceeded his liability to drive a heavy motor vehicle by dint of licence issued in his favour violating the policy and conditions. The appellant/insurance company is, therefore, at liberty to pay the compensation assessed by the learned Tribunal and recover the same from the owner of the offending vehicle on strict proof of its claim of invalid driving licence. The evidence was not sufficient enough to prove that the father of the victim was dependent on him, and, therefore, the learned Tribunal was justified in deducting 1/3rd of the personal expenses.

9. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr2 and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.3 The impugned award of Rs. 76,43,600/- is modified as follows:

Monthly Income	Rs. 51,364/-
Future Prospect to be added(30%)	Rs. 15,409/-
	Rs. 66,773/-
Personal Expenses (1/3)	Rs. 22,258/-
	Rs. 44,515/-
Annual Income	x 12
	Rs. 5,34,180/
Multiplier to be "14"	X 14
	Rs.74,78,520

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

[3] (2009) 6 SC 121

General Damages	Rs.74,78,520/ Rs. 77,000/-
Entitlement	Rs.75,55,520/

10. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 88,12,130/=(Rs. 25,000 + 87,87,130) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.

11. The Learned Advocate representing the respondent Nos. 1 to 4/claimants are entitled to receive the amount of Rs. 75,55,520/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

12. 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 to the bank accounts of the present respondent Nos. 1 to 4/claimants as mentioned by Learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, Fast Track 3rd Court, Paschim Medinipur in M.A.C. Case No. 412 of 2020 on proof of proper identification of the respondent No.1 to 4/claimants subject to payment of ad valorem Court fees within four weeks and refund the differential amount if any through a cheque to the learned advocate for the 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.

13. The instant appeal and cross objection are disposed of accordingly.

14. The pending application, if any, stands disposed of.

15. The interim order if any stand vacated.

16. The TCR be sent down to the concerned tribunal forthwith.

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

(Ananya Bandyopadhyay, J.)

C.M. A.R.