IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 855 of 2022

With

CAN 2 of 2020 (Old No. CAN 1875 of 2020)

National Insurance Company Ltd.
-Vs-
Madhusudan Das & Ors.

With

COT 35 of 2022
Madhusudan Das & Ors.
-Vs-
National Insurance Company Ltd. & Anr.

For the Appellant/ Insurance Company in FMA 855 of 2022	: Mr. Sanjay Paul : Ms. Jaita Ghosh
For the Respondents/ Claimants in FMA 855 of 2022	: Mr. Jayanta Kumar Mandal : Mr. Sayantan Rakshit
For the Appellants/ Claimants in COT 35 of 2022	: Mr. Jayanta Kumar Mandal : Mr. Sayantan Rakshit
For the Respondent No.1/ Insurance Company in COT 35 of 2022	: Mr. Sanjay Paul : Ms. Jaita Ghosh
Heard and Judgment on	: 06-05-2025

Ananya Bandyopadhyay, J.:-

1. The instant appeal was heard earlier and judgment was reserved. However, the matter was listed under the heading ***"For Hearing"*** for further clarification.

2. The learned advocates representing both the parties are present.
3. Four claimants filed an application under Section 163-A of the M.V. Act in the Court of Additional District Judge, Motor Accident Claims Tribunal, Birbhum, Rampurhat in MAC Case No. 45/2016, claiming an award of Rs. 4,00,000/- whereby the aforesaid deceased expired due to a road traffic accident on 09.09.2016 at about 11:00 hrs. The offending vehicle being a truck bearing Registration No. WB-41H/0076 hit the aforesaid deceased riding on his bicycle in a rash and negligent manner. Consequently, the victim expired at the place of the accident. Subsequently, based on a complaint, Rampurhat P.S. Case No. 214/16 dated 09.09.2016 was instituted against the driver of the offending vehicle as aforesaid.
4. The owner of the offending vehicle did not appear in this case and the case was heard ex parte owner of the vehicle.
5. The respondent, the National Insurance Company contested the aforesaid MAC case.
6. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs.3,04,000/- as well as an interest of 7% from the date of filing the case, that is from 18/11/2016 payable by the Insurance Company.
7. The Learned Advocate representing the Appellants/Insurance Company submits as follows:-
    a. The Learned Tribunal erred in law and fact in awarding the excess compensation in favour of the claimants in an Application u/s 163A of the M.V. Act, 1988 for the death

occurred in a Road Traffic Accident which was beyond the provisions of the Act;

b. The Learned Tribunal erred in law by directing the insurance company to pay compensation upon the claimant disregarding the fact that the insured vehicle did not possess any valid route permit to ply on road;

c. The findings of the Learned Tribunal while holding that since the claim application filed under Section 163A of the Act, therefore, invalid road permit does not absolve liability of insurance company, is absolutely perverse and not tenable in the eye of law;

d. The Learned Tribunal ought to have directed the owner of offending vehicle since at the time of accident the insured/offending vehicle did not possess any valid route permit to ply on road;

e. The Learned Tribunal erred in law by granting Rs.40,000/towards general damages since claim application filed under Section 163A of M.V. Act whereby Second Schedule of the Act to be followed strictly;

f. It was further submitted that in a case of a death under Section 163A of M.V. Act, 1988, rash and negligent driving of the offending vehicle is not required to be proved by the claimants and also the Insurance Co. is not entitled to raise any question regarding rash & negligent driving of the offending vehicle and as per present position of law in a case of death Rs.5,00,000/-

has to be awarded since at the time of passing Judgment/Order the second schedule has been amended and upon retrospective operation of the schedule the compensation amount would be Rs.5,00,000/- in a case of death as per the following decisions of the Hon'ble Apex Court:-

i) 2018 (1) T.A.C. 3 (S.C.) [United India Insurance Co. Ltd. VS. Sunil Kumar and another Para-7 to 9;

ii) Special Leave Petition (Civil) No. 6260 of 2019 [The New India Assurance Co. Ltd. VS. Urmila Halder)

It was submitted on behalf of the respondents/claimants that according to Rule 330 of the West Bengal Motor Vehicle Rules, 1989 it was required to produce the permit in respect of the offending vehicle by the claimants and as per S.149 (2) of the M.V. Act the Insurance was to be proved to the effect that there was valid permit or not in respect of the offending vehicle.

g. It was also submitted that the Insurance Co. had not made any specific statement to the effect that there was no valid permit of the offending vehicle at the time of accident and as such the evidence which was beyond pleading should not be considered.

h. It was well settled law that if there was no valid permit to drive the vehicle in question then also principles of pay and recover ought to have been applied with as per the following decision of the Hon'ble Apex Court:

2018 SAR (Civil) 768 | Amrit Pal Singh & Anr. VS. TATA AIG General Insurance Company Ltd. and Ors.)

E. Interest will be calculated on the awarded amount from the date of filing the claim case till payment.

8. Heard the submission of the learned advocates representing the respective parties.

9. The OPW 1 representing the transport department, Purba Burdwan deposed as follows: -

"I am now posted at Transport Department, Purba Burdwan as Group-D. I came before this tribunal with the authorization, issued by R.T.O. Purba Burdwan. This is the authorization letter. Let it be marked as Exbt.A. This is the letter issued by Secretary, RTO Purba Burdwan addressing to this tribunal informing about the position of the permit in respect of vehicle No.W.B-41/9558. The permit of the said vehicle was issued and valid from 12.09.2016 to 11.09.2021. Let the letter addressing to this tribunal by Secretary, RTO Purba Burdwan be marked as Exbt.B.

On 09.06.2016 the said vehicle has got no valid permit."

10. The Hon'ble Supreme Court held the following in **IFFCO Tokio General Insurance Co. Ltd. v. Geeta Devi**[1]

> *12. Thereafter, in National Insurance Co. Ltd. v. Swaran Singh, a 3-Judge Bench of this Court dealt with the interpretation of Section 149 of the Act of 1988. The cases before the Bench involved, amongst others, instances where the driving licence produced by the driver or owner of the vehicle was a fake one. The Bench noted that Section 149(2)(a) opened with the words:'that there has been a breach of a specified condition of the policy', which would imply that the insurer's defence of the action would depend upon the terms of*

[1]**2023 SCC OnLine SC 1398**

the policy. It was observed that an insurance company which wished to avoid its liability is not only required to show that the conditions laid down in Section 149 (2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. Such a breach on the part of the insured must be established by the insurer to show that the insured used or caused or permitted to be used the insured vehicle in breach of the provisions. The Bench went on to state that where the insurer, relying upon the violation of law by the assured, takes exception to pay the assured or a third party, it must prove a willful violation of the law by the assured. Noting that the proposition of law is no longer res integra that the person who alleges breach must prove the same, the Bench observed that an insurance company would be required to establish the said breach by cogent evidence and in the event an insurance company fails to prove that there has been breach of the conditions of the policy on the part of the insured, such an insurance company cannot be absolved of its liability.

13. Further, in the context of cases where the driver's licence was found to be fake, the Bench observed that the question would be whether the insurer could prove that the owner was guilty of willful breach of the conditions of the insurance policy. It was pointed out that the defence to the effect that the licence held by the person driving the vehicle was a fake one would be available to the insurance company but whether, despite the same, the plea of default on the part of the owner has been established or not would be a question which would have to be determined in each case. The earlier decision in United India Insurance Co. Ltd. v. Lehru[4] was considered and the Bench observed that the ratio therein must not be read to mean that an owner of a vehicle can, under no circumstances, have any duty to make an inquiry with regard to the genuineness of the driving licence and the same would again be a question which would arise for consideration in each individual *case. The argument that the decision in Lehru (supra) meant that, for all intent and purport, the right of the insurer to raise a defence that the licence was fake was taken away was, however, rejected as not being correct and it was held that such a defence can certainly be raised, but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver. The findings summed up by the Bench, to the extent presently relevant, are as under:*

'(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the 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 a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, 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 the 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 licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability

towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals 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.'

14. More recently, in Ram Chandra Singh v. Rajaram, the issue before this Court was whether an insurance company could be absolved of liability on the ground that the insured vehicle was being driven by a person who did not have a valid driving licence at the time of the accident. This Court found that no attempt was made to ascertain whether the owner was aware of the fake driving licence possessed by the driver and held that it is only if the owner was aware of the fact that the licence was fake but still permitted such driver to drive the vehicle that the insurer would stand absolved. It was unequivocally held that the mere fact that the driving licence was fake, per se, would not absolve the insurer.

The Hon'ble Supreme Court held the following in ***National Insurance Co. Ltd. v. Swaran Singh***[2]:-

Where the driver's licence is found to be fake

92. *It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehru case [(2003) 3*

[2] **(2004) 3 SCC 297**

SCC 338 : 2003 SCC (Cri) 614] the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever. We would be dealing in some detail with this aspect of the matter a little later.

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(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the 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 a duly licensed driver or one who was not disqualified to drive at the relevant time.

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towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals 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.

11. 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 as agitated by the Learned Advocates representing the both the parties.

12. In view of the judgment of the Hon'ble High Court in ***Urmila Halder v. The New India Assurance Company Ltd.*** and the same being affirmed by the Supreme Court on 08.02.2024 and the notification dated 22nd May, 2018, the appellants/claimants are entitled to Rs.5,00,000/- of just compensation with regard to second schedule 1(a) and notification dated 22nd May, 2018 and also the aforesaid observations of the High Court at Calcutta and the Hon'ble Supreme Court.

13. Schedule 1(a) of the Second Schedule of the notification no. S.O. 2022(E) dated 22nd May, 2018, published by the Ministry of Road Transport and Highways is as follows: -

"Fatal Accidents:

Compensation payable in case of Death shall be five lakh rupees."

14. The respondent Nos. 1 to 4/claimants are entitled to receive an amount of Rs. 5,00,000/- interest at the rate of 6% per annum from the date of filing of the claim application under Section 163A of the Motor Vehicles Act till the date of actual realization.

15. It was further submitted by the Learned Advocate for the appellant/insurance company that the Appellant/Insurance Company to have deposited a sum of Rs.4,19,174/-=(Rs. 25,000 + Rs. 3,94,175/-) through two separate cheques as per challan filed by the Learned Advocate representing the appellant/insurance company.

16. The Learned Advocate for the Appellant/Insurance Company is to deposit the balance sum of (Rs. 5,00,000/- - Rs.4,19,175) = Rs.80,825/-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.

17. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and, thereafter, disburse the same to the present Appellant Nos.1 to 4/Claimants in equal proportion, as mentioned in the award passed by the learned the Court of Additional District Judge, Motor Accident Claims Tribunal, Birbhum, Rampurhat in MAC Case No. 45/2016 on proof of proper identification of the Appellant Nos.1 to 4/Claimants subject to payment of *ad valorem* Courts fees.

18. The Appellant/Insurance Company is to pay the compensation amount to the Respondent No.1 to 4/Claimants and recover the said amount from the owner of the offending vehicle on strict proof of its claim.

19. The instant appeal being FMA 855 of 2022 along with COT 35 of 2022 are disposed of.
20. Trial Court records shall be sent down to the concerned Tribunal forthwith.
21. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)

S.R. (A.R.C.)