Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ananya Bandyopadhyay

FMA 457 of 2024

National Insurance Company Limited
Versus
Sanjukta Dandapat Singha @ Sanjukta Singha & Ors.

For the Appellant/ Insurance Company	:	Mr. Rajesh Singh
For the Respondents/ Claimants	:	Mrs. Rita Bhattacharya
Heard & Judgment on	:	20th August, 2025.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellant/ Insurance Company and the respondents/claimants are present in Court.
2. The instant appeal had been filed against the judgment and award dated 07.12.2023 passed by the Learned Additional District Judge, Motor Accident Claims Tribunal, 7th Court, Paschim Medinipur in M.A.C. Case No. 372 of 2019.

3. The learned advocate representing the appellant/Insurance Company submitted to have filed the instant appeal on the ground that the Learned Tribunal despite considering the driving licence possessed by the driver of the offending vehicle to have been fake had not granted the right to recover in favour of the appellant/Insurance Company after payment of the same to the claimants from the owner of the offending vehicle. Moreover, in absence of corroborative oral as well as documentary evidence, the Learned Tribunal assessed the monthly income of the victim to be Rs.8,000/- pursuing his livelihood as a vegetable seller as well as Micro Insurance Agent.
4. The learned Advocate representing the respondents/claimants submitted that the Learned Tribunal after considering each and every aspect had granted the compensation which should not be interfered with.
5. Since the occurrence of the accident, insurance policy, the route permit etc. and other ancillary issues are not disputed by the learned advocate representing the appellant/Insurance Company, this Court restrict itself only to the extent of modifying the above-mentioned issues.
6. Considered the rival contentions of the Learned Advocates representing the respective parties.

7. The evidence of O.P.W.1 before the Learned Tribunal exhibiting the report of the licensing authority marked as Exhibit-'B' stated that the extract copy of the driving licence regarding Aakash Singh, the driver of the offending vehicle did not tally with the licence being No.WB0120100690521 as delineated in their register. The driving licence was never issued in the name of the driver of the offending vehicle. It was specifically mentioned by OPW.1 that *"This is the report submitted by Sri Biswajit Majumdar, the Licensing Authority, on 13.09.2023 about the query made in the summons. The said report is marked as Exhibit-'B'.*

   I have brought extract copy of the driving licence regarding Akash Singh, son of Anil Singh. No such driving licence exists in the name of the said person. The licence number WB0120100690521 is not tallying with our register. This is the extract details in respect of the said driving licence number being computer generated. It is signed by our RTO, Licence, Mr. Biswajit Majumdar, on 13.09.2023. The extract details concerning the said driving licence number is marked as Exhibit-'C'.

   No such driving licence in the name of Akash Singh, son of Anil Singh was issued from our office or is in existence."

8. The Learned Tribunal in the impugned judgment and order had formulated an additional issue as follows:-

'Whether the driver of the offending vehicle bearing no. WB 34BB/8009 had valid driving licence at the time of the accident or whether the said licence is a fake one?"

9. The Learned Tribunal in disposing of the aforesaid additional issue no.1, observed as follows:-

"*The additional issue no. 1 dated 02.04.2022 is now taken up for determination earlier than the rest issues for the sake of convenience and brevity. The question is related to the issue as to whether the driver of the offending vehicle bearing no. WB34BB/8009 had valid driving licence at the time of the accident or whether the said licence is a fake one.*

This issue has arisen due to the assertion of the O.P. No. 5 that at the relevant time, the driver of the offending crane did not have any valid driving licence and the owner of the Crane had knowingly permitted him to drive the vehicle in violation of the terms and conditions of the policy for which the O.P. No. 5 is not liable to pay the compensation amount and compensation, if any, has to be borne only by the insured/owner.

In this regard the O.P. No. 5 has cited one witness, i.e., the O.P.W.1 Sri Kamal Jana, who is a MVA Technical, posted at the Public Vehicles Department, Kolkata – 700 020. He was authorized by the Regional Transport Officer, Licence, Kolkata, Mr. Biswajit Majumdar, to depose before the Tribunal upon *production of documents. He had produced his Authority Letter dated 13.09.2023 vide Exhibit – 'A' and a report submitted by Sri Biswajit Majumdar, Licensing Authority, dated 13.09.2023 about the query made in the summons and the said report has been marked as Exhibit-'B'. As per the said extract report, the driving license regarding Akash Singh, son of Anil Singh, was not in existence on the said date, i.e., 13.09.2023 and the Licence No. WB0120100694521 is not tallying with the register of the Licensing Authority. The extract details of the so-called driving licence has been marked as Exhibit-'C'.*

It appears that in view of the evidence of the O.P.W.1, there is a prima facie impression that the licence in the name of the erstwhile driver, namely, Akash Singh, son of Anil Singh, is a fake one, but in the instant case, the said driver is not before the Court, he is not a party to this case. The owners of the Crane have also avoided appearing before the Tribunal and the case is proceeding ex-parte against them. The compensation case has been filed not in respect of the driving licence of the driver of the offending vehicle but regarding the accidental death of the deceased during the use of the said Hydra-Crane. The claimants are by no way bothered as to whether the driving licence of the said driver was fake or a genuine one. Their predecessor, i.e., husband/father/son has died due to the use of the said Hydra-

Crane in rash and negligent manner and that is the concern of the claimants for which they have filed the case. The judicial pronouncements had made it clear that 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 3rd party. 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 vehicle by a duly licence driver or one who was not disqualified to drive at the relevant time. It appears that there cannot be any short cut method of proving the same. The witness who has come before the Court to depose regarding the driving license is an authorized person and he is not the maker of the report. Conclusive opinion about the said licence cannot be formed without the presence of the Licensing Authority, i.e., Sri Biswajit Majumdar who had submitted the report. Prima facie, there is an impression that the driving licence No. WB01200000100694521 does not exist. Nevertheless, it appears that the said matter should be the subject of consideration before the appropriate Forum in connection with appropriate litigation if undertaken by the Insurance Company intending to recover the amount payable to the claimants. It is a settled proposition of *law decided by the Hon'ble Apex Court that the Insurance Company should pay first and to recover if there is any violation or contravention of the terms and conditions of the Insurance Policy on any ground, inter alia, including the ground of the driving license being fake.*

The dependants of the deceased should not be subjected to difficulty and starvation in a claim case under Section 166 of the M.V. Act on the ground that there is dispute between the insurer and the insured regarding violation or contravention of the terms of the Insurance Policy. The Hon'ble Apex Court has given a guidelines in this regard in Shamanna and Another –Vs.- Divisional Manager, Oriental Insurance Co. Ltd. and Others, 2018(3) TAC 677(SC).

In view of the discussion held above, it appears that though there is prima facie indication regarding the fakeness of the driving license, no conclusive opinion about the matter may be passed in this case. Appropriate application before the appropriate Forum is necessary in that regard and as such the additional issue no. 1 is answered accordingly".

10. The Learned Tribunal had elaborately and vividly discussed the evidence adduced by O.P.W.1 and also the intent of the legislature in favour of the Insurance Company to exercise the right to recover the compensation awarded by the MAC Tribunal

in case where the driver of the offending vehicle was either possessing invalid driving licence or a fake driving licence. In the instant case too, the Learned Tribunal had enumerated the role of the appellant/Insurance Company considering the deposition of O.P.W.1, however, did not in specific terms mention the same. Since the facts and circumstances had been conspicuously dealt with by the Learned Tribunal in disposing of the additional issue no.1, this Court make its specifically clear that the appellant/Insurance Company is to pay the compensation awarded in favour of the claimants and thereafter recover the same from the owner of the offending vehicle. It is improbable and impractical for a vegetable seller to possess a trade licence as well as any other corroborative documents to establish his avocation as a vegetable seller. The victim though claimed to have been a Micro Insurance Agent could not prove the same through any document. The monthly income of the victim considered by the Learned Tribunal to be Rs.8,000/- per month is, therefore, not interfered with.

11. The learned Advocate representing the appellant/Insurance Company submitted to have deposited the entire compensation awarded by the Learned Tribunal along with interest @ 6% p.a. at the office of the Registrar General, High Court at Calcutta which is to be disbursed with.

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 respondents/claimants as mentioned by the Learned Additional District Judge, Motor Accident Claims Tribunal, 7th Court, Paschim Medinipur in M.A.C. Case No. 372/2019 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.

13. The instant appeal is disposed of accordingly.

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

15. 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.)