

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

**FMA 881 of 2017
With
CAN 1 of 2017 (Old No. CAN 4498 of 2017)**

**Smt. Kanti Devi & Anr.
v.
Bajaj Allianz General Insurance Co. Ltd. & Anr.**

Mr. Krishanu Banik
Mr. Tathagata Banik ... for the appellants/claimants.

Mr. Rajesh Singh ... for the respondent no.1/insurance company.

Heard on: December 17, 2024 and February 24 & 25, 2025.

Judgment on: February 25, 2025.

Ananya Bandyopadhyay, J:-

1. The learned advocates representing the respective parties are present.
2. The instant appeal had been preferred against the impugned judgment and award dated 16th December, 2016 passed by the learned Judge, IXth Bench, Motor Accident Claims Tribunal, Calcutta in MAC Case No.310 of 2014.

3. An application under Section 163A of the Motor Vehicles Act had been filed by the appellants/claimants owing to the death of the victim in an accident, which occurred on 15th February, 2014 at about 6.00 hours on Durgapur Expressway at Panchghora near IFB Factor within the jurisdiction of Chanditala Police Station with the involvement of a mini truck being a TATA 407 bearing registration no.WB-03C-7096, which collided with an unknown stationary vehicle whereby the victim being the driver of the offending vehicle sustained severe injuries and succumbed to the same at Recovery Nursing Home (P) Ltd. at Calcutta.
4. The learned tribunal had dismissed the aforesaid claim application stating that *“the occurrence took place due to own fault of the deceased driver who dashed a vehicle and sustained injuries and later on expired”*

Section 163A of the Motor Vehicles Act states as follows: -

“This Section provides for compensation to the victim/applicant/claimant in the case of death of permanent disablement due to accident arising out of the use of motor vehicle. Such compensation shall be paid by the owner of the motor vehicle or the authorized insurer of the motor vehicle that caused such accident”.

5. The Learned Advocate representing the appellants/claimants submitted that the fault of the victim to have been instrumental in causing their accident shall not be considered and the victim was entitled to a consolidated sum of Rs.5,00,000/- in view of the notification dated 22nd May, 2018 and the decision of the Hon’ble

Supreme Court in Urmila Devi v. The New India Assurance Company Limited & Ors.

6. The Learned Advocate representing the respondent no.1/insurance company conceded to the submission of the learned advocate representing the appellants/claimants. The Learned Advocate representing the respondent No.1/insurance company further stressing the fact that the victim, who had been the driver of the offending vehicle at the relevant point of time, did not possess a valid driving licence to drive the offending vehicle in view of the evidences adduced before the Learned Tribunal by the OPW 1 and OPW 2. Moreover, on the date of the accident the driver was not possessed a valid licence irrespective of the nature of the vehicle to be driven. It was consequently prayed that the respondent no.1/insurance company be given the right to recover the compensation awarded from the owner of the offending vehicle. The evidence of OPW 1, executive of Bajaj Allianz General Insurance Co. Ltd., *inter alia*, deposed before the Learned Tribunal as follows:-

“These are insurance policy along with terms and conditions (containing six pages) in respect of vehicle no. WB-03C-7096 stands in the name of Ranjit Singh issued by Bajaj Allianz General Insurance Co. Ltd. Marked as Exhibit D collectively.

This is DL Extract marked as Exhibit E and this is money receipt marked as Exhibit F”.

The OPW 2 being the employee of the vehicle, *inter alia*, deposed before the learned tribunal as follows: -

“ Cross-examination :

It is fact that I have mentioned in page 2 of my affidavit in chief that the said driving license was valid transport vehicle for driving three wheeler cabs only. The driver had no authority to drive TATA 407 which is a medium vehicle. As per Exhibit 8 i.e. certificate of registration, class of vehicle is light. It is fact that TATA 407 is the light vehicle. Not a fact that the driver had authority to drive light vehicle TATA 407.”

7. From the evidences adduced by the aforesaid OPW 1 and OPW 2, it transpires that at the relevant point of time the driver of the offending vehicle was not entitled to drive the TATA 407, since he had been granted a driving licence in respect of an Auto and not of any other vehicle of transport.
8. In view of the notification dated 22nd May, 2018 and the decision of the Hon’ble Supreme Court in Urmila Devi v. The New India Assurance Company Limited & Ors. and the same being affirmed by the Supreme Court in Special Leave Petition 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, the second schedule 1(a) is as follows: -

“Fatal Accidents:
Compensation payable in case of Death shall
be five lakh rupees.”

9. The appellants/claimants are entitled to a sum of Rs. 5,00,000/- along with 6% interest per annum to be paid from the date of filing of the application till the date of its actual realization.

10. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 5,00,000/- 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 judgment.

11. On receipt of the said amount, the office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellants/claimants in equal proportion on proof of proper identification of the appellants/claimants subject to payment of ad valorem Courts fees.

12. The learned advocate representing the respondent No.1/insurance company on proof that the driver of the offending vehicle was not possessed a valid driving licence to drive the offending vehicle and to recover the said amount from the owner of the offending vehicle.

13. The instant appeal and connected application are disposed of accordingly.

14. The TCR be sent down to the concerned Tribunal forthwith.

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

(Ananya Bandyopadhyay, J.)

S.R./c.m. Ar. Ct.