Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA**
**CIVIL APPELLATE JURISDICTION**
**APPELLATE SIDE**

Present:
**The Hon'ble Justice Ananya Bandyopadhyay**

**FMA 713 of 2024**

**United India Insurance Company Limited**
**Versus**
**Mohona Dutta & Anr.**

**With**

**COT/97/2024**

**Mohona Dutta**
**-Vs.-**
**United India Insurance Company Limited & Anr.**

| | | |
|---|---|---|
| For the Appellant | : | Mr. Sanjay Paul,<br>Ms. Jaita Ghosh. |
| For the Respondents | : | Mr. Ali Imam Shah |
| Heard & Judgment on | : | 3rd April, 2025. |

**Ananya Bandyopadhyay, J:**

1. Both the Learned Advocates representing the appellant/Insurance Company and the respondents/claimant are present.
2. The instant appeal had been filed against the judgment and award dated 18.01.2024 passed by the Learned Additional District

Judge, Motor Accident Claims Tribunal, 2nd Court, Durgapur, Paschim Bardhaman in M.A.C. Case No. 70/2016.

3. An application under Section 163A of the Motor Vehicles Act had been filed on account of the death of the parents of the victim in an accident at Galsi National Highway in front of Punjab National Bank which occurred on 12.01.2016 at about 4:00 P.M. with the involvement of the offending vehicle (Maruti Wagnor) bearing registration no. WB 40G/9584 which collided with another Truck bearing registration no. PB-23D/5477 resulting in the death of the parents of the claimant on spot and the victim sustained injuries and was shifted to Burdwan Hospital for treatment.
4. The learned Advocate representing the appellant/Insurance Company submitted that the driver of the offending vehicle did not possess a valid driving licence and sought for the direction to recover the compensation awarded from the owner of the offending vehicle.
5. The learned Advocate representing the respondent/claimant has filed cross-objection being COT/97/2024 claiming the composite sum of Rs.5,00,000/- should be awarded as compensation in accordance with the notification dated 22nd May, 2018 and as also the decision of the Hon'ble High Court in Urmila Halder v. The New India Assurance Company Ltd.

6. The learned Tribunal in the impugned Judgment and Order had opined as follows:-

*"The Hon'ble Supreme Court in the case of IFFCO-TOKIO General Insurance Co. Ltd. vs. Geeta Devi and ors. reported in 2024 SAR (CIV) 86 held that "as already pointed out supra, once a seemingly valid driving license is produced by a person employed to drive a vehicle, unless such license is demonstrably fake on the face of it, warranting any sensible employer to make enquiries as to its genuineness, or when the period of license has already expired, or there is some other reason to entertain a genuine doubt as to its validity, the burden is upon the insurance company to proof that there was a failure on the part of the vehicle owner in carrying out due diligence apropos such driving license before employing that person to drive the vehicle. Presently, no evidence has been placed on record whereby inference could be drawn that the deceased vehicle owner ought to have gotten verified ujay pal's driving license. Therefore, it was for the petitioner-insurance company to prove wilful breach on the part of the said vehicle owner. As no such exercise was undertaken, the petitioner-insurance company would have no right to recover the compensation amount from the present owners of the vehicle. The impugned order passed by the Delhi High Court holding to that effect, therefore, does not brook interference either on facts or in law". In the present case enxhbit-2 and exhibit-3 series reveals that DL vide no. 23940/TSG/Prof in the name of Kunja Kishan valid up to 02.11.2017 was seized in connection with this case. No evidence has cropped up in the case record to show that the insurance company had proved wilful breach on the part of the vehicle owner or that there was a failure on the part of the vehicle owner in carrying out due diligence to ascertain the genuineity of the driving license before employing the driver to drive the vehicle. Accordingly, I am of the considered opinion that the insurance company is liable to indemnify the OP/owner as the offending vehicle had a valid insurance policy at the time of the RTA".*

7. The observation of the learned Tribunal is reasoned and this Court is not inclined to interfere with the same.

8. In view of the notification 22nd May, 2018 and the observation of the Hon'ble Supreme Court in Urmila Halder v. The New India

Assurance Company Ltd[1]. the respondent/claimant is entitled to composite sum of Rs.5,00,000/- which is the consolidated compensation taken into account various heads which might be implied.

9. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 4,00,532/ through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company. The appellant/insurance company shall further deposit of 2,30,000/- along with interest at the rate of 6% from the date of filing of the claim application i.e. 27th April, 2016 till the date of deposit.

10. The respondent/claimant is entitled to receive the balance amount of Rs. 5,00,000/- along with interest at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

11. The office of the Registrar General, High Court at Calcutta is to calculate the award passed by this Court today together with interest as aforesaid and thereafter disburse the same to the present respondent/claimant as mentioned in the impugned judgment passed by the Learned Judge, Motor Accident Claims Tribunal, Durgapur, Pachim Bardhaman in M.A.C. Case No. 70/2016 on proof of proper identification of the respondent

[1] 2019(2)TAC 143

/claimant subject to payment of ad valorem Court fees within four weeks.

12. The instant appeal is disposed of accordingly.

13. The interim order, if any, stands vacated.

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.)**

**Srimanta, A.R.(Ct.)/c.m. Ar. Ct.**