Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ananya Bandyopadhyay

FMA 244 of 2023

HDFC ERGO General Isurance Company Limited
Versus
Archana Nayek & Ors.
With
COT/101/2023
Archana Nayek & Ors.
-Vs.-
HDFC ERGO General Isurance Company Limited & Anr.

For the appellants/Insurance Company : Mr. Rajesh Singh

For the respondents/claimants : Mr. J. K. Mandal

Heard & Judgment on : 11th June, 2025

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present in Court.
2. The instant appeal had been filed against the judgment and award dated 05.12.2022 passed by the learned Additional District & Sessions Judge, Motor Accident Claims Tribunal, Fast Track, 3rd Court, Paschim Medinipur in M.A.C. Case No. 606 of 2018.
3. An application under Section 166 of the Motor Vehicles Act, 1988 had been filed due to the death of the victim in an accident which

occurred on 04.11.2018 at about 9.00 a.m. near Orissa Metalik Factory situated within the jurisdiction of Kharagpur Local Police Station with the involvement of the offending vehicle being a Truck bearing registration no. WB-23B/9095 which proceeding at an exceeding speed rashly and negligently hit the victim from behind who was a pillion rider of a motorcycle who sustained injuries and was declared 'brought dead' by the Doctors of Midnapur Medical College and Hospital.

4. The Learned Advocate representing the appellant/Insurance Company submitted the driver of the offending vehicle did not possess a valid driving licence which was corroborated by the evidence of O.P.W. 1 who had been a person attached with R.T.O, Birbhum who had placed the document before the Court marked as exhibit – 'B' which stated that the driving licence bearing no. WB-53/20150091668 was not issued by the R.T.O., Birbhum. However, WB-53 had been the official code of R.T.O., Birbhum. The driving licence in question was fake. It was further submitted that the learned Tribunal had erroneously granted an excess sum of Rs.88,000/- towards parental and filial consortium.

5. The Learned Advocate representing the respondents/claimants submitted to have filed a cross-objection claiming an enhancement in the monthly income of the victim to be

Rs.6,000/- as assessed by the learned Tribunal to Rs.8,000/- as claimed by the claimants.

6. Since the occurrence of the accident, insurance policy, route permit etc. and other ancillary issues are not disputed by the learned advocate representing the appellant/insurance company, this Court restricts itself only to the extent of considering the aforementioned issues. It is evident from the deposition of O.P.W. 1 corroborated by the documents marked as exhibit – 'B' that the driving licence possessed by the driver of the offending vehicle was not genuine.

7. The learned Tribunal in the impugned Judgment and order observed as follows:-

"*From the judicial pronouncements as held in National Insurance Company Limited –Vs.- Swaran Singh & Ors. (Supra) and Nirmala Kothari –Vs.- United India Insurance Company Limited (supra), it is now trite that the insurer cannot be held to have validly discharged its burden for getting absolved from its liability to compensation by mere establishing the fact that the driver had no valid driving license at the relevant time. In such case, the Tribunal is to see whether the insured exercised reasonable care in ascertainment of having valid driving license by his driver. It is to be seen further whether the insured had any reason to sense* *any forgery and therefore, verified it further. At the Same time, it is to be ascertained whether non-having valid driving license is so fundamental that it contributed to the cause of accident. In all such cases, if the insured is found in negligence in discharging his minimum care and caution and it is found that the driver had no valid driving license, which fact was so fundamental that it contributed cause to the accident, the insurer cannot be held liable to compensation. Keeping this mandate in mind, let us revert back to the case in hand.*

"Assuming arguendo that the driving license of the driver of the offending vehicle is forged one, this fact does, however, not itself absolve the Insurance Company from its liability to pay compensation for the reasons just discussed above. To escape from liability, the Insurance Company has to show that the forgery of driving license was well within the knowledge of the owner prior to accident. The seizure of the driving license denotes the existence of driving license in paper, which may or may not be forged. It is to be now seen whether the owner had perceived such forgery at the time of induction of the driver in his vehicle. If the owner was with possession of knowledge of such forgery prior to accident, the owner would be alone held liable to pay compensation. In the case, the owner is not before the

Tribunal. The Insurance Company has not made any attempt to secure his presence on dock to prove the fact that he was aware with fake driving license of the driver employed by him or he had cause to perceive said forgery. The Insurance Company had every scope to call the owner on dock to prove this fact but, it has not cared to avail of that opportunity. There is, therefore, no iota of evidence that the owner was well aware with the fact that the driving license of the driver was fake one. This fact is, thus, not established.

Moreover, the Insurance Company has cited no sort of evidence to suggest that having no valid driving license was so fundamental that it caused negligence in the accident. In other words, the fact that because of having no valid driving license the driver met with accident is not evinced in this case. In my view, the Insurance Company has failed to prove the breach of condition of driving licence, as pleaded by it. Having said so, the Insurance Company cannot escape from its liability to indemnify the owner".

8. The Insurance Company cannot under any circumstances play the role of an Investigating Agency to investigate as to the intent of the driver to have forged the driving licence or not. Moreover, the Insurance Company is also not in a position to state as to

whether the owner of the offending vehicle has been aware of a fake driving licence being possessed by the driver of the offending vehicle. It is for the owner to have clarified the issues raised with regard to the fake driving license and it is only being attributed to him. A separate criminal case had been instituted which resulted in a chare-sheet marked as exhibit-2 which would finally determine the criminal intent of the driver concerning the forgery of the driving licence if at all implicated in such offence. In the instant case, the appellant/Insurance Company is to pay the compensation awarded and, thereafter, recover the same from the owner of the offending vehicle subject to strict proof of its claim before the competent authority.

9. The learned Tribunal has erroneously granted an excess amount of Rs.88,000/- towards parental and filial consortium which requires the modification of the impugned Judgment and Order to the following extent. The respondents/claimants could not prove that the father of the victim was solely dependent on the income of the victim.

10. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr[1] and

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

Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.[2] the impugned award of Rs. 11,73,000/- is modified as follows:

Annual Income	Rs. 72,000/-
Future Prospect to be added(40%)	Rs. 28,800/-
	Rs. 1,00,800/-
1/3rd Deduction	Rs. 33,600/-
	Rs. 67,200/-
Multiplier to be "15"	X 15
	Rs. 10,08,000/-
General Damages	Rs. 77,000/-
	Rs. 10,85,000/-

11. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs.14,81,320/- as per challan filed by the learned advocate representing the appellant/insurance company.

12. The Respondents/claimants are entitled to receive the amount of Rs. 10,85,000/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.

13. 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

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[2] **(2009) 6 SC 121**

to the Bank accounts of the respondents/claimants in equal proportion as mentioned in the impugned judgment of the Learned Additional District & Sessions Judge, Motor Accident Claims Tribunal, Fast Track, 3rd Court, Paschim Medinipur in M.A.C. Case No. 606 of 2018 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.

14. The instant appeal is disposed of accordingly.

15. The pending applications if any stands disposed of.

16. 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)