

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

**FMA 653 of 2024
With
CAN 2 of 2024**

**National Insurance Co. Ltd.
v.
Jahanara Bibi & Ors.**

Mr. Sanjay Paul
Ms. Jaitha Ghosh ... for the appellant/insurance company.

Mr. Amit Ranjan Roy ... for the respondent no.1 & 2/claimants.

Heard on: February 26, 2025.

Judgment on: February 26, 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 January, 2024 passed by the Learned Judge, Motor Accident Claims Tribunal, Fast Track Court – II, Howrah in MAC Case No.158 of 2017.
3. An application under Section 166 of the Motor Vehicles Act had been filed by the respondents/claimants for death of the victim in an accident, which occurred on 26th April, 2017 at about 08.30 hours

on Shyampur Road near Sagar Club Dhulasimala within the jurisdiction of Uluberia Police Station with the involvement of the offending vehicle bearing registration no.WB-14/M-1426 (car), which hit the motorcycle being driven by the victim at an exceeding speed rashly and negligently, which resulted in his death.

4. The Learned Advocate representing the appellant/insurance company submitted to have filed the instant appeal only on the ground that the driving licence was not possessed by the driver of the offending vehicle as per the documents marked as "Exhibit-B".
5. The Learned Advocate representing the respondent Nos. 1 and 2/claimants did not object to the same.
6. 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 of considering as to whether the driver of the offending vehicle possessed a valid driving licence at the relevant date and time of the accident. The deposition of OP2, being the authorized witness of the licensing authority stated as follows:-

"I have filed the driving licence particulars in reference with DL no.-WB-1120161054862 in accordance with the summons received. This is the said report issued by the ARTO, Howrah. It is marked as Exhibit-B. The document marked as Exhibit-B, inter alia, stated "In reference to the above this is to inform that the licence no.WB-1120161054862 is not found in SARATHI database."

7. The statements of OP2 as well as the document marked as “Exhibit-B” did not clarify the nature of the driving licence, as to whether the same was issued in favour of the driver of the offending vehicle, whether the same exceeded its limits with regard to the nature of the vehicles against which the driving licence was issued etc. However, if the appellant/insurance company can prove that the owner of the offending vehicle at the time of occurrence of the accident has not been issued with a valid driving licence from the concerned licensing authority, the same can recover the compensation awarded by the learned Tribunal from the owner of the offending vehicle.
8. It was further submitted by the Learned Advocate for the appellant/insurance company that the Appellant/Insurance Company had already deposited the entire awarded sum of Rs.14,48,510/-(Rs. 25,000 + Rs. 14,23,510) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.
9. The respondent Nos. 1 and 2/claimants are entitled to receive the balance amount of Rs. Rs. 10,22,000/- 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.
10. The office of the Registrar General, High Court, Calcutta shall encash the cheques and thereafter disburse the entire awarded amount so deposited along with accrued interest to the present

respondent No.1 and 2/claimants with accrued interest as mentioned in the award passed by Learned Judge, Motor Accident Claims Tribunal, Fast Track Court – II, Howrah in MAC Case No.158 of 2017 on proof of proper identification of the respondent Nos.1 and 2 /claimants subject to payment of ad valorem Courts fees and refund the differential amount if any through a cheque to the learned advocate representing the appellant/insurance company for the accounts of the insurance company.

11. The instant appeal and connected application are disposed of accordingly.
12. The interim order if any stand vacated.
13. The Department is to transmit the case record to the learned Tribunal, as aforesaid, for filing the deficit court fees by the learned advocate representing the respondents/claimants.
14. The learned advocate representing the respondents/claimants submits to bear the costs of the special Messenger within a week
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.