IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 848 of 2012
Bajaj Allianz General Insurance Co. Ltd.
Vs.
Sunanda Banerjee & Anr.
With
COT 23 of 2012
Sunanda Banerjee
Vs.
Bajaj Allianz General Insurance Co. Ltd.& Anr

For the Appellants : Mr. Rajesh Singh

For the Respondents : Mr. Ashique Mondal

Heard on &Judgment on : 07.05.2025

<u>Ananya Bandyopadhyay, J.:-</u>

1. The instant appeal was heard earlier and judgment was reserved. However, the matter was listed under the heading "For Hearing" for further clarification.
2. The Learned Advocates representing the respective parties are present.
3. The claimant filed an application under Section 163-A of the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal, praying for compensation of Rs. 2,25,000/- for the injuries sustained in a accident that occurred on 16.05.2007. The accident took place as the offending vehicle mounted on the side walk and ran over the victim.

4. A criminal case was registered over the incident as Alipore P.S. Case No. 102 dated 16/05/2007. More than Rs. 3,50,000/- had already been spent on his treatment.

5. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidence and awarded a sum of Rs. 1,67,500/- as well as an interest of 9% from the date of filing the case till the realization of the amount.

6. The Learned Advocate representing the appellant/insurance company submitted that in the written statement filed by the appellant/insurance company before the learned Tribunal. It was *inter alia* stated as follows:

   " *It is submitted that the Driver of the WB-02x4500 was not holding a valid and effecting driving license at the time of the accident and further has not satisfied the requirements of the Rule 3 of the Central Motor Vehicles Rules 1989. The respondent No.1 has handed over the possession of the vehicle to the said driver and therefore, has contravened the proviso of the MV Act and the Rules framed there under and has committed the breach of the terms and the condition of the policy. It needs to be mentioned here that at the time of the accident the vehicle was being used for the purpose of learning driving. The same was being done within the knowledge of the owner, as on each day the vehicle was being used for the said purpose, but knowing the same the owner allowed the same to continue. As per the police papers Subhankar Roy was driving at the time of alleged accident who was having no valid driving licence and further there was breach of Rule 3 of Central Motor Vehicle Rules 1989 as such this insurance company is not liable to pay any compensation, the compensation if any is to be paid by the owner and driver of the vehicle in there personal capacity*".

7. It was further referred that the First Information Report mentioned as follows:

   " Particulars 1 Subhankar 2. Uttam 3.Amal at large FIR contents one Subhankar Roy of 47 Alipore Rd. Kol -27 was learner driving in a Maruti Zen No. WB02x4500".

8. It was further stated that "subsequently the said Maruti Zen Car being driver by Subhankar dashed one Lady namely Sunanda Banerjee and her two sons namely Pijush Banerjee and Prosun Banerjee infront of a way side tea stall on P.H. Deb Rd".
9. The Learned Advocate representing the appellant/insurance company submitted since there had been a violation of the insurance policy as well as permissible limits of licence being issued with regard to the driving of the offending vehicle liberty to be given to the appellant/insurance company to pay the awarded compensation and recover the same from the owner of the offending vehicle.
10. The Learned Advocate for the respondents/claimants conceded to the submission of the Learned Advocate representing the appellant/insurance company.
11. Heard the submission of the learned advocates representing the respective parties.
12. Since, the occurrence of the accident, involvement of the offending vehicle, have not been disputed by the Learned Advocate representing the appellant/insurance company, this Court restricts itself only to the extent of granting compensation considering the judgment in ***Urmila Halder v. The New India Assurance Company Ltd.*** and the same being affirmed by the Supreme Court on 08.02.2024 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. Schedule 1(a) of the Second Schedule of the notification no. S.O. 2022(E) dated 22nd May, 2018, published by the Ministry of Road Transport and Highways is as follows: -

> *"Fatal Accidents:*
>
> *Compensation payable in case of Death shall be five lakh rupees."*

13. 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.

14. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs.1,77,500 = (Rs. 25,000 + 1,42,500) through two separate cheques as per challan filed by the Learned Advocate representing the appellant/insurance company. The Learned Advocate representing the appellant/insurance company is to deposit the sum of Rs. 3,22,500/- along with interest as aforesaid before the office of the learned Registrar General, High Court Calcutta within eight weeks from the date of passing of this order .

15. 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 cum Additional District & Sessions Judge, Fast Track, 9th Court, Alipore, South 24 Parganas in M.A.C. Case No. 1 of 2008 on proof of proper identification of the respondent

No.1/claimant subject to payment of ad valorem Court fees within four weeks.

16. The instant appeal and cross objection are disposed of accordingly.

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

18. The TCR be sent down to the concerned tribunal forthwith.

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

(Ananya Bandyopadhyay, J.)