

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1030 of 2023

Hasan Ali & Anr

v.

Reliance General Insurance Co. Ltd. & Anr.

Mr. Saidur Rahaman ... for the appellants/claimants.

Mr. Sanjay Paul ... for the respondent no.1/insurance company.

Heard & Judgment on: 30th July , 2025.

Ananya Bandyopadhyay, J:-

1. The Learned Advocates representing the respective parties are present in Court.
2. The instant appeal had been preferred against the impugned judgment and award dated 28th February, 2023 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 5th Court, Barasat, North 24 Parganas in MAC Case No.47 of 2016 under Section 163A of the Motor Vehicles Act.
3. An application under Section 163A of the Motor Vehicles Act had been filed by the claimants on account of the death of the victim in an accident which occurred on 24th July, 2016 at about 11.30 hours on Majharait road within the jurisdiction of Rajarhat Police Station

with the involvement of the offending vehicle being a truck bearing registration No. WB-25E/5653 which proceeding at a rashly and negligently hit the rickshaw boarded by the deceased victim and her minor son resulting in the fall of the victim on the road and thereafter run over by the offending truck eventually, causing her death on the spot.

4. The Learned Advocate representing the appellants/claimants submitted that the Learned Tribunal had erroneously granted a sum of Rs. 5,5200/- in favour of the minor daughter of the deceased victim regarding the intent and purport of the statute under provision of Section 163A of the Motor Vehicles Act. Further, the liability was cast upon the owner of the offending vehicle to pay the compensation award since the driver of the offending vehicle at the relevant point of time did not possess a valid driving licence. Therefore, the Learned Advocate representing the appellants/claimants claimed that the respondent No.1/insurance company should be liable to pay the compensation of Rs. 5,00,000/- along with interest to the claimants and thereafter recover the same from the owner of the offending vehicle.
5. The Learned Advocate representing the respondent No.1/insurance company submitted that the Learned Tribunal taking into consideration the evidence of D.W.1 and the documents marked as B and B/1 had exonerated the respondent No.1/insurance company

from its liability to pay the compensation award and directed the owner of the offending vehicle to pay the same being justified in itself.

6. Considered the rival contentions of the respective parties.
7. Since, the occurrence of the accident, involvement of the offending vehicle, route permit and insurance policy etc. have not been disputed by the Learned Advocate representing the respondent No.1/insurance company, this Court restricts itself only to the extent agitated by the Learned Advocates representing the respective parties. The Learned Advocate representing the appellants/claimants submitted that the owner of the offending vehicle did not appear before the Learned Tribunal to contest the MACC Case No. 627 of 2016 as aforesaid. The learned Tribunal in the impugned judgment and order *inter alia* stated that “*The opposite party No.1 i.e. registered owner of the offending truck bearing registration WB-25E/5653 did not turn up after service of summons*”.
8. The Learned Advocate representing the appellants/claimants further submitted that the operative portion of the impugned judgment and order mentioned the same to have been passed ex parte against opposite party No.1/owner of the aforesaid vehicle. Therefore, he did not serve notice upon the owner of the offending vehicle. The document marked as B and B/1 along with the evidence of the

concerned person representing the authority of RTO of Murshidabad D.M. Office, Gorabazar being the Motor Vehicles Inspector, *inter alia* stated as follows:

“According to the direction in the summons I have produced today D.L. bearing D.L. No. 5908/2010. The other D.L. number mentioned in the summoned received by the office of R.T.O. i.e. WB 5720100172980 has not existence at all in our office record. According to the report of RTO the D.L. No. 5908/2010 was issued in favour of Amal Biswas S/o Nanda Dulal Biswas, vill P.O. & P.S. Khargram, District Murshidabad. The old driving licence bearing no. 5908/2010 was renewed in the name of Amal Das and after renewal the D.L. No. is WB5720100054996. This is the report of RTO Murshidabad regarding the old no. and the number after renewal dt. 10.12.2018”

During his cross examination of D.W.1, *inter alia*, stated follows:

“ We have also checked our computer regarding the driving licence by searching the name of Md. Yamen Badsha, but I have not produced any report of such searching before this Court”.

9. The charge-sheet marked as Ext.2 detailed the seizure of the offending truck along with registration certificate, national permit, tax token as mentioned in column 11 there under and column 12 of the aforesaid charge-sheet mentioned the name of the accused person to be Md. Yamen Badsha who at the relevant point of time was driving of the offending vehicle. The driving licence No. WB 5720100100054996 was issued in the name of one Amal Biswas and had been in the name of the accused as aforesaid which evinced the fact that the licence bearing old No. 5908/2010 corresponding to the new No. WB572010054996 in Sarathi was not issued in the name of the driver of the offending vehicle namely Md. Yamen Badsha. Under such circumstances, the liability to pay the

compensation amount rest on the respondent No.1 since the insurance policy issued by the same was not disputed and thereafter recover the same from the owner of the offending vehicle upon production of proper documents.

10. In view of the statutory provisions under Section 163A of the Motor Vehicles Act 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 under Section 163A of the Motor Vehicles Act till the date of its actual realization. The impugned judgment and order is modified to the aforesaid extent without disbursement in favour of the minor daughter of the deceased victim being interfered with.

11. In view of the observation of the Hon'ble Supreme Court in **Parminder Singh Vs. Honey Goyal & Ors.**¹ the appellants/claimants are to provide the details of Bank Accounts held in the name of the appellants/claimants at the office of the learned Registrar General, High Court at Calcutta for disbursal of the compensation amount.

12. 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

¹ 2025 INSC 361

General, High Court Calcutta within 12 weeks from the date of passing of this order.

13. 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 directly to the bank accounts of the present appellants/claimants as mentioned in the award passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 5th Court, Barasat, North 24 Parganas in MAC Case No.47 of 2016 under Section 163A of the Motor Vehicles Act on proof of proper identification of the appellants/claimants subject to payment of ad valorem Courts fees.
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.)

c.m. Ar. Ct.