IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. 79 of 2024

Madhabi Dhara & Anr.
-Vs-
The New India Assurance Company Ltd. & Anr.

For the Appellants/Claimants	:	Mr. Amit Ranjan Roy, Mr. Pradyot Kumar Roy.
For the Respondents/ Insurance Company	:	Ms. Nibedita Chakraborty.
Heard & Judgment on	:	06.05.2025.

Ananya Bandyopadhyay, J.:-

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 instant appeal had been filed against the judgment and award dated 31.03.2023 passed by the learned Additional District Judge, Motor Accident Claims Tribunal, Fast Track 2nd Court, Tamluk, Purba Medinipur in M.A.C. Case No. 454 of 2020.
4. Two claimants filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Purba Mednipur being MAC Case No.454/2020, claiming an award of Rs. 10,00,000/- towards loss of future income, for loss of life, for dependency, for loss of estate, for funeral cost,

including litigation cost and interest whereby the aforesaid was involved in a road traffic accident on 09.09.2020 at about 10:30 p.m.

5. The offending vehicle being one container bearing Registration No. WB-HR-55W/3953 suddenly stopped in the middle of the road, causing the victim who was travelling in a car bearing Registration No. WB-17M/2718 to hit the offending vehicle from behind. As a result of being hit, the victim was grievously hurt.
6. Consequently, the victim was taken to Panskura Super Speciality Hospital for treatment and was further transferred to Purba Mednipur District Hospital at Tamluk. The victim succumbed to his injuries and was declared dead. His post mortem examination was held at Purba Mednipur District Hospital at Tamluk.
7. On the basis of a complaint, P.S Case 267/20 dated 10.09.202 was instituted at Panskura Police Station under Sections 279/304(A)/427 of the IPC.
8. The owner of the offending vehicle appeared and had filed a written statement but did not appear before the Court in the long run, thus the case proceeded ex-parte against him.
9. The respondent, New India Assurance Co. Ltd. contested the aforesaid MAC case.
10. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs. 7,86,000/- from the insurance company along with 6%

interest per annum from the date of filing the case till the date of realization.

11. The learned advocate representing the appellants/claimants submitted that the learned Tribunal erroneously assessed the monthly income of the victim to be Rs.5,000/- for lack of documentary evidence wherein the minimum ages can be considered as per the Government circular. Moreover, the age of the victim is to be determined in view of Aadhar Card and not the post mortem report. Since the victim died as a bachelor 50% should have been deducted towards the personal expenditure.

12. The learned Advocate representing the respondents/Insurance Company submitted that the driver possessed the driving licence to drive light motor vehicles contrary to which he drove the goods vehicle. The documents pertaining to driving licence, route permit etc. were not filed.

13. Since the occurrence of the accident, involvement of the offending vehicle, the driving license, Insurance certificate etc. are not disputed by the learned advocate representing the respondents/insurance company, this Court restricts itself only to the extent of considering the aforementioned issues. In the absence of valid age proof document the age mentioned in the Aadhar Card shall have precedents over the post mortem report. Therefore, the age of the victim is considered to be 28 years as per the date of birth mentioned in the Aadhar Card. The Investigating Officer dealing with Panskura Police Station Case No. 267/2020 dated 10.09.2020 had seized the driving licence issued in the name of Surojit Dhara which was for driving LMV till 15.05.2038 issued by

the RTA, Hooghly. The violation on the part of the driver of the offending vehicle to have driven the same being a goods vehicle by virtue of driving licence pertaining to LMV can in no way affect the right of the claimants to claim of compensation for such contravention and the respondents/Insurance Company having admitted to have issued the insurance policy was liable to grant the compensation.

14. The Hon'ble Supreme Court held the following in **IFFCO Tokio General Insurance Co. Ltd. v. Geeta Devi**[1]

> *12. Thereafter, in National Insurance Co. Ltd. v. Swaran Singh, a 3-Judge Bench of this Court dealt with the interpretation of Section 149 of the Act of 1988. The cases before the Bench involved, amongst others, instances where the driving licence produced by the driver or owner of the vehicle was a fake one. The Bench noted that Section 149(2)(a) opened with the words:'that there has been a breach of a specified condition of the policy', which would imply that the insurer's defence of the action would depend upon the terms of the policy. It was observed that an insurance company which wished to avoid its liability is not only required to show that the conditions laid down in Section 149 (2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. Such a breach on the part of the insured must be established by the insurer to show that the insured used or caused or permitted to be used the insured vehicle in breach of the provisions. The Bench went on to state that where the insurer, relying upon the violation of law by the assured, takes exception to pay the assured or a third party, it must prove a willful violation of the law by the assured. Noting that the proposition of law is no*

[1]**2023 SCC OnLine SC 1398**

longer res integra that the person who alleges breach must prove the same, the Bench observed that an insurance company would be required to establish the said breach by cogent evidence and in the event an insurance company fails to prove that there has been breach of the conditions of the policy on the part of the insured, such an insurance company cannot be absolved of its liability.

13. Further, in the context of cases where the driver's licence was found to be fake, the Bench observed that the question would be whether the insurer could prove that the owner was guilty of willful breach of the conditions of the insurance policy. It was pointed out that the defence to the effect that the licence held by the person driving the vehicle was a fake one would be available to the insurance company but whether, despite the same, the plea of default on the part of the owner has been established or not would be a question which would have to be determined in each case. The earlier decision in United India Insurance Co. Ltd. v. Lehru[4] was considered and the Bench observed that the ratio *therein must not be read to mean that an owner of a vehicle can, under no circumstances, have any duty to make an inquiry with regard to the genuineness of the driving licence and the same would again be a question which would arise for consideration in each individual case. The argument that the decision in Lehru (supra) meant that, for all intent and purport, the right of the insurer to raise a defence that the licence was fake was taken away was, however, rejected as not being correct and it was held that such a defence can certainly be raised, but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver. The findings summed up by the Bench, to the extent presently relevant, are as under:*

'(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by

the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v.) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.'

14. More recently, in Ram Chandra Singh v. Rajaram, the issue before this Court was whether an insurance company could be absolved of liability on the ground that the insured vehicle was being driven by a person who did not have a valid driving licence at the time of the accident. This Court found that no attempt was made to ascertain whether the owner was aware of the fake driving licence possessed by the driver and held that it is only if the owner was aware of the fact that the licence was fake but still permitted such driver to drive the vehicle that the insurer would stand absolved. It was unequivocally held that the mere fact that the driving licence was fake, per se, would not absolve the insurer.

The Hon'ble Supreme Court held the following in ***National Insurance Co. Ltd. v. Swaran Singh***[2]:-

Where the driver's licence is found to be fake

92. *It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehru case [(2003) 3 SCC 338 : 2003 SCC (Cri) 614] the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever. We would be dealing in some detail with this aspect of the matter a little later.*

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[2] **(2004) 3 SCC 297**

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

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(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

15. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr3 and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.4 the impugned award of Rs. 7,86,000/- is modified as follows:

Monthly Income	Rs. 7,500/-
Annual Income	Rs. 90,000/-
Personal Expenses (50%)	Rs. 45,000/-
Add : Future Prospect (40%)	Rs. 18,000/-
	Rs. 63,000/-
Multiplier '18'	X 18
	Rs.11,34,,000/-
General Damages	Rs. 36,000/-
	Rs. 11,70,000/-
Less : Awarded Amount	Rs. 7,86,000/-
Balance	Rs. 3,84,000/-

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

[4] **(2009) 6 SC 121**

16. The Learned Advocate for the appellants/claimants submitted that the appellants/claimants has withdrawn a sum of Rs. 7,86,000/-. The appellants/claimants are entitled to a further sum of Rs. 3,84,000/- along with 6% interest per annum to be paid from the date of filing of the application till the date of its actual realization.

17. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 3,84,000/- along with 6 % per cent interest per annum from the date of filing of the claim application before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order .

18. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the appellants/claimants as mentioned in the award passed by the learned Additional District Judge, Motor Accident Claims Tribunal, Fast Track 2nd Court, Tamluk, Purba Medinipur in M.A.C. Case No. 454 of 2020 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Court's fees.

19. The instant appeal is disposed of accordingly.

20. The pending applications, if any, stands disposed of.

21. 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.)