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IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 129 of 2024
Durga Kumari & Ors.
-Vs-
Oriental Insurance Co. Ltd. & Anr.

For the Appellants/claimants	:	Mr. Krishanu Banik Mr. Tathagata Banik
For the respondent No.1/insurance co.	:	Mr. Rajesh Singh
Heard	:	**30.09.2024, 04.11.2024, 02.12.2024, 02.01.2025, 29.01.2025, 30.01.2025.**
Judgment on	:	13.02. 2025

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

1. The Learned Advocates for the appellants/claimants as well as the respondent No.1/insurance company are present.
2. The instant appeal has been filed against the judgment dated 6th July, 2023 passed by the learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, Fast Track Court-III, Howrah in MAC Case No.3207 of 2014 under Section 163A of the Motor Vehicles Act, 1988.
3. An application under Section 163A of the Motor Vehicles Act had been filed for the death of the victim in an accident which occurred on 05.07.2010 at about 00.20 hours with the involvement of the offending vehicle being lorry bearing registration No. WB-11/8692 which hit the victim in rashly and negligently near 103 Foreshore Road resulting in his death.
4. The Learned Advocate representing the appellants/claimants submitted that the learned Tribunal in absence of proof of driving

licence being possessed by the driver of the offending vehicle had exonerated the insurance company i.e. opposite party No.2 to pay the compensation and directed the owner of the offending vehicle to pay the compensation of Rs. 5,00,000/- along with simple interest at the rate of 5% per annum from the filing of the claim application till this date of order. It was further submitted that in view of a number of judgment pronounced by the Hon'ble Supreme Court as in **Shamanna & Anr. Vs. The Divisional Manager, the Oriental Insurance Co. Ltd. & Ors**.[1], the Hon'ble Supreme Court directed the insurance company to pay the compensation 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 contradicted the submission of the Learned Advocate representing the appellants/claimants stating that the claimants failed to produce an *iota* of evidence both oral and documentary to prove that the owner of the offending vehicle possessed a valid driving licence and the Learned Tribunal had justifiably directed the owner of the offending vehicle to pay the compensation amount.

6. Since, the occurrence of the accident, involvement of the offending vehicle, driving licence, 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 of considering as to whether the insurance company should pay the compensation and thereafter recover the same from the owner of the offending vehicle. The learned Tribunal in the impugned judgment and order opinioned as followed :

> *"A citation in support of the argument O.P/2. Referred which was recently Hon'ble Apex Court decided on 03.11.2022 in Special*

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[1] AIR 2017 SCC 3726 of 2018

Leave to Appeal (C) No. 33638/2017, wherein it is observed referring the earlier decision in Manuara Khatun and ors. Vs. Rajesh Singh & Ors. therein an observation that normally their would be no order to pay and recover and Hon'ble Apex Court observed in the first referred decision that " therefore on the legal aspect, it is clear that in all cases such order of pay and recover would not arise when the insurance company is not liable". Though Hon'ble Apex Court in dealing with that specific case directed insurer to pay the compensation award passed against the owner, with a liberty to recover the same subsequently form the owner. But there specifically mention that said decision would not be used as a precedent.

Ld. Lawyer also referred during hearing another decision of Jammu Kashmir and Ladak High Court in 26.04.2023 in Oriental Insurance Co. Ltd. Vs. Bimala Devi & Ors. Referring the Apex Court decision and observed that "this court is of considered view that the Ld. M.A.T. Jammu Kashmir was not right directing the appellant insurance company to satisfy the award pass against the owner of the offending vehicles". Therein Hon'ble Court also absolved the insurance company to satisfy the award passed in the case discussed therein.

It is true that in the M.V. Act, there is no such provision made, touching the issue making insurance company liable to satisfy the award which would pass by tribunal only against the owner of the vehicle, absolving the liability of the insurer, in the line of principle "pay and recover'. Since Hon'ble Apex Court made specific observation that ordinarily their would be no order to 'pay and recover', in a case insurance company is not liable to compensate.

In the instance case, this tribunal already found and observed that the owner of the offending vehicle caused a breach to the insurance agreement in between allowing an unauthorized person to drive the vehicles. So insurance company can't be directed to indemnify the owner to discharge owner's liability to pay compensation, as prayed by the petitioner/claimant due lacking statutory sanction.

Accordingly this Tribunal is of view that the owner of the offending vehicles is liable to pay the compensation u/s 163A of the M.V. Act the amount and the O.P/insurance company is absolved in discharging the liability of the owner to indemnify him. Thus the issues are disposed of".

The Learned Tribunal after considering the decisions in **Manuara Khatun vs. Rajesh Singh** did not distinctly distinguish the merit of the instant case as to whether the ratio is to be applied appropriately for self-contradiction. The Learned Tribunal at one point of time accepted that the insurance company should pay the award of compensation and thereafter recover the same from the owner of the offending vehicle. However, at the end of the judgment observed that the owner of the offending vehicle in absence of proof of valid driving licence being possessed by the driver of the offending vehicle will be liable to pay and exonerated the insurance company from its liability.

In view of the judgment of the **Hon'ble High Court in Urmila Halder v. The New India Assurance Company Ltd** and the same being affirmed by the Supreme Court in Special Leave Petition 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, the second schedule 1(a) is as follows: -

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

7. The owner of the offending vehicle did not appear before the Learned Tribunal to contest the MAC Case No. 3207 of 2014. In view of the observation of the Hon'ble Supreme Court in the decisions cited above.
8. 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 till the date of its actual realization.
9. 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 General, High Court Calcutta within six weeks from the date of passing of this judgment.
10. 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 to the present appellants/claimants as mentioned in the award passed by the learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, Fast Track Court-III, Howrah

in MAC Case No.3207 of 2014 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Courts fees.

11. The instant appeal is disposed of accordingly.
12. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)