Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ananya Bandyopadhyay

FMA 1261 of 2024

Smt. Gita Biswas & Ors.
Versus
Bajaj Allianz General Insurance Co. Ltd. & Anr.

For the Appellants : Mr. Muktakesh Das.

For the Respondents : Mr. Rajesh Singh.

Heard & Judgment on : 19th February, 2025.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellants/claimants and the respondents/Insurance Company are present.
2. The instant appeal had been filed against the judgment and award dated 13.03.2018 passed by the Learned Judge, Motor Accident Claims Tribunal and Additional District Judge, Fast Track 1st Court, Krishnagar, Nadia in M.A.C. Case No. 102/2014.
3. An application under Section 166 of the Motor Vehicles Act had been filed due to the death of the victim in an accident which occurred on 19.10.2013 at about 12:30 hours on Stationpara Pucca Road (Nonaganj Route) at Bagula near Ambedkar Club with the involvement of the offending vehicle being a truck bearing registration no. WB-23-A/7425 which hit the victim at an exceeding speed and ran over the same resulting in his death on spot. The owner of the vehicle appeared to contest before the learned Tribunal on 5th November, 2016 but subsequently did not proceed.

4. The learned Advocate representing the appellant/claimants submitted the Learned Tribunal observed the driver of the offending vehicle did not possess a valid driving license and, therefore, exonerated the respondent No.1/Insurance Company from disbursing the compensation amount and fixed the liability upon the owner of the offending vehicle to pay the same. The learned Advocate representing the appellants/claimants further submitted the offending vehicle was insured validly by the respondent No.1/Insurance Company and the same cannot abdicate its responsibility from payment of compensation if at all there was a lapse on the part of the owner of the offending vehicle as well as the driver of the offending vehicle to have possessed the invalid driving license, the respondent Nos. 1/Insurance Company could pay the compensation and, thereafter, recover the same from the owner of the offending vehicle. It was further submitted that the compensation under the category of 'future prospect' was not granted by the Tribunal and the general damages should be enhanced from Rs.70,000/- to Rs.77,000/-.
5. The learned Advocate representing the respondent No.1/Insurance Company controverted the submissions of the learned Advocate representing the appellants/claimants submitting in view of the invalid driving license possessed by the driver of the offending vehicle who was granted the permission to drive a light motor vehicle was eventually driving heavy goods vehicle contrary to the statutory mandate and, therefore, the learned Tribunal had justifiably relieved the respondent No.1/Insurance Company of the liability to disburse the compensation towards the appellants/claimants. The D.W. 1 appeared before the learned

Tribunal being authorized by the licensing authority, Howrah Motor Vehicles Department to depose on behalf of the same. His deposition both in examination-in-chief as well as the cross-examination is replicated as follows:-

"<u>Examination-in-Chief:</u>
Now, I am posted at Howrah Motor Vehicle as UD Clerk. Today, I have come to depose being authorized by the licensing authority Howrah Motor Vehicles Department. This is the authorization letter.
Let, the authorization letter be marked as Ext. 'A'
Today, I have brought the driving license being No. WB-11/19950072057 in the name of Swapan Chandra Modok, S/O-H.R. Modok, 1 No. Kalikundu Lane, Howrah and it was renewed on 03.11.2009 with the validity up to 02.11.2012 (HMV TRANSPORT). The old license number was WB-11/023366. This is the Computer generated particulars of the said driving license.
Let, the computer generated particulars of the said license be marked as Ext. 'B'
From the document, which I have produced today, it reveals that Swapan Chandra Modok had no valid driving license (HMV Transport) on 19.10.2013 to drive Lorry.
We have no such record showing that any driving license was issued or renewed since then in the name of Swapan Chandra Modok.
<u>Cross-examination by the petitioner:-</u>
I have no personal knowledge about the said driver.
Swapan Chandra Modok had a valid driving license till 02.11.2012.
After expiry of the validity of the driving license for transport, the said driver cannot drive any transport vehicle (HMV)".

6. 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 appellant/insurance company, this Court restricts itself only to the extent of considering the liability of the respondents/Insurance Company to pay the compensation awarded to the appellants/claimants. The Insurance Company filed an application under Section 170 of the Motor Vehicles Act. However, it did not deny that the insurance policy was not issued covering the insurance of the offending vehicle. In case the respondent No.1/Insurance Company can prove that there has been a violation of terms and conditions of the insurance policy whereby the driver of the offending

vehicle has exceeded its jurisdiction to drive the nature of the vehicle he has been otherwise stipulated to drive, then, the respondent No.1/Insurance Company is to recover the amount paid as compensation from the owner of the offending vehicle. Considering the age of the victim the 'future prospect' is to be granted in favour of the appellants/claimants should be to the extent of 10 per cent.

Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr[1] and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.[2] The impugned award of Rs. 7,82,800/- is modified as follows:

Monthly Income	Rs. 9900/-
Annual Income	Rs. 1,18,800/-
Future Prospect to be added(10%)	Rs. 11,880/-
	Rs. 1,30,680/-
1/3rd Deduction	Rs. 43,560/
Personal Expenses	Rs. 87,120/-
	X 9
Multiplier to be "9"	Rs. 7,84,080/-
General Damages	Rs. 77,000/-
Entitlement	Rs. 8,61,080/-

7. The appellants/claimants are entitled to a sum of Rs. 8,61,080/- along interest at the rate of 6% per annum to be paid from the date of filing of the application till the date of its actual realization.
8. The respondent No.1/Insurance Company is to pay the sum of Rs. 8,61,080/- to the appellants/claimants and, thereafter, recover the same from the owner of the offending vehicle.
9. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 8,61,080/- 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 order .

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10. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellants/claimants in equal proportion as mentioned in the award passed by the Learned Judge, Motor Accident Claims Tribunal and Additional District Judge, Fast Track 1st Court, Krishnagar, Nadia in M.A.C. Case No. 102/2014 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Court's fees.

11. The instant appeal is disposed of accordingly.

12. The pending applications if any stands disposed of.

13. The TCR be sent down to the concerned Tribunal forthwith.

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

(Ananya Bandyopadhyay, J.)

[2] (2009) 6 SC 121