IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. 949 of 2024

Reliance General Insurance Co. Ltd.
-Vs-
Sunita Dey & Anr

For the Appellants/Insurance Co. : Mr. Sanjay Paul
Ms. Jaita Ghosh

For the Respondents/Claimant : Ms. Sima Ghosh

Heard on & Judgment on : 2nd April, 2025

Ananya Bandyopadhyay, J.:-

1. The claimant filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, (Suri, Birbhum-cum-Additional District judge, 4th Court, Birbhum at Suri) being MAC Case No.258/2015, claiming an award of Rs.40 lakhs along with interest from the date of filing whereby the aforesaid deceased expired due to a road traffic accident on 15.09.2015 at about 11:20 pm. The victim, being an employee of the Motor Vehicle Department of Purba Mednipore was a part of conducting a MV Enforcement raid at Milannagar on NH-41 near Sonapetya Toll Plaza. The raid was conducted with other people from the MV Department and Police. While raiding a vehicle, the offending vehicle being a Gas Tanker bearing registration No. WB15A-6856 hit the raided vehicle from behind. As a result, the truck being raided skid towards the members of the raid. The deceased and few others were hit by the truck,

resulting in him and two other NVT personnel being grievously injured. Consequently, the victim was taken to District Hospital Purba Mednipur. He succumbed to his injuries and was declared dead.

2. Based, on a written complaint, Tamluk P.S. Case No. 746/2015 dated 16.01.2015 under Section 279/338/304A of the Indian Penal Code was instituted against the driver of the offending vehicle and chargesheet under Sections 279/304A was submitted.

3. The owner of the offending vehicle did not appear before the Court to contest the MAC Case No.258/2015 in Court of Motor Accident Claims Tribunal, (Suri, Birbhum-cum-Additional District judge, 4th Court, Birbhum at Suri).

4. The respondent No.2 in the MAC Case No.258/2015 and appellant in the present case contested.

5. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs.36,35,598/- as compensation to the claimants together with interest @ 6% from the date of filing of the case being 01.12.2015 till payment by issuing one account payee cheque in the name of the claimant within 30 days.

6. The Learned Advocate representing the appellant/insurance company submitted that at the relevant time of accident the driver of the insured/offending vehicle did not possess any valid driving license and the Learned Tribunal erred in directing the Insurance Co. to pay compensation upon the respondent No.1/claimant disregarding the

violation of terms and conditions of the insurance policy, therefore, the insurance company was not liable to pay compensation. The Learned Advocate representing the appellant/insurance company further submitted the Learned Tribunal failed to understand the provisions of Motor Vehicles Act, 1988 whereby Section 14 proviso to 2(a) of the said Act specifically provided certain terms and conditions to drive Hazardous Goods vehicle.

7. The learned Advocate representing the respondent No.1/claimant submitted that the Learned Tribunal had rightly assessed the compensation awarded.

8. 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 issue raised by the learned Advocate representing the appellant/insurance company with regard to the right of recovery the compensation paid in favour of the claimant from the owner of the offending vehicle since the driving licence was not seized and exhibited or proper verification and proof. More-over, the owner did not appear before the Learned Tribunal to contest the aforesaid MAC case. The charge-sheet marked as Ext.2 mentioned about the seizure of driving licence in the name of Safiul Rahaman as well as Jameer Ahemed. The absence of driving licence on the part of the driver of the offending vehicle was considered by the Learned Tribunal as in the impugned judgment in the following manner:

> "*Insurance company specifically pleaded that the driver of gas tanker was driving the vehicle without valid and effective licence. But no initiative was there on the part of the insurance company to substantiate that the driver of the vehicle has got no valid and effective licence to drive gas tanker.*
> *Ld. Advocate for the insurance company argued that neither the registered owner nor the insurer of the truck is added as party to this case.*
> *In this case defect of parties is not pleaded by the insurance company. Truck bearing registration no. WB-23C/8325 is the victim vehicle herein. There is no claim against the owner or insurer of the said truck. IO after investigation has submitted charge-sheet against the driver of the gas tanker. Taking all these and the decision of the Hon'ble High Court, Calcutta in the referred case, cited in 2017(1)TAC 303 Cal, I am of the humble view that the instant case is not bad for defect of parties*".

9. It was a fact that the driving licences though seized were not exhibited before the Court. The respondent No.1/insurance company is to pay the compensation amount and this Court is not inclined to interfere with the same. However, on proof that the driver of the offending vehicle did not have a valid driving licence before the appropriate authority, the appellant/insurance company may recover the compensation amount from the owner of the offending vehicle.

10. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 50,78,999/=(Rs. 25,000 + 50,53,999) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.

11. The Respondent Nos. 1 /claimant is entitled to receive the amount of Rs. 36,35,598/- at the rate of 6% per cent per annum from the date of filing of the claim application i.e. 01.12.2015 till the date of actual realization.

12. The office of the learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse the entire awarded amount

so deposited along with accrued interest to the present respondent Nos. 1/claimant as mentioned in the impugned judgment passed by the Learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, 4th Court, Birbhum at Suri in M.A.C. Case No. 258 of 2015 on proof of proper identification of the respondent No.1 /claimant subject to payment of ad valorem Court fees and refund the balance amount, if any, through a cheque to the Learned Advocate for the Appellant/Insurance Company for the accounts of the insurance company.

13. The interest generated on the sum of money deposited by the appellant/insurance company at the office of the learned Registrar General, High Court at Calcutta which has been further deposited in the nationalized bank by the office of the learned Registrar General, High Court at Calcutta is to be apportioned and the sum of interest accrued on the aforesaid amount is to be disbursed in favour of the appellant/insurance company through a cheque to be deposited at the office of the appellant/insurance company.
14. The instant appeal is disposed of accordingly.
15. The pending applications, if any, stands disposed of.
16. The TCR be sent down to the concerned Tribunal forthwith.
17. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)