IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 358 of 2013

With

CAN 3 of 2024

Sri Barun Mukherjee and Another

Versus

National Insurance Company Limited & Others

For the Respondent Nos. 2 to 4/Claimants

: Mr. Uday Shankar Chattopadhyay, Adv.
Ms. Trisha Rakshit, Adv.
Ms. Rajashree Tah, Adv.

For the Respondent No. 1/Insurance Company

: Mr. Afroze Alam, Adv.

Heard on : 07.10.2024

Judgment on : 27.11.2024

Ajay Kumar Gupta, J:

1. This appeal is directed against the Judgment and Award dated 14th Day of July, 2011 passed by the Learned Judge, 5th Motor Accident Claims Tribunal, Burdwan in M.A.C. Case No. 08 of 2009 filed under Section 163A of the Motor Vehicles Act,1988.

2. By the said Judgment and Award, the Learned Tribunal Judge allowed the M.A.C. Case No. 08 of 2009 in part against the National Insurance Co. Ltd. without cost and ex-parte against the owner of the offending vehicle bearing Registration No. WB-41A/5731. It was further observed that the Petitioners would receive an award of Rs. 3,88,500/- and Petitioner No. 1 be granted an additional Rs. 5,000/- extra towards loss of consortium. In addition to that, Petitioners are entitled to recieve interest @ 6 % per annum over the amount being Rs. 3,88,500/- from 09.01.2009 to till the date of realization thereof.

3. The Learned Tribunal Judge directed the Insurer to issue two A/C payee cheques of Rs. 1,29,500/- each in favour of the petitioner nos. 2 and 3 and one A/C payee cheque of Rs. 1,34,500/- in favour of petitioner no. 1 along with interest @ 6% per annum accrued for the period commencing from 09.01.2009 to till the date of realization thereof and deposit the said cheques must be deposited with the Learned Tribunal within one month from the date of receipt of the order, failing which petitioners shall be at liberty to realize the said amount by initiating execution proceeding through the Learned Tribunal as per law. Insurer is also granted liberty to take all steps available to it in law to get the said amount recovered from the owner of the vehicle bearing no. WB-41A/5731.

4. The brief fact of the case is that on 23.01.2008 at about 13.45 hrs., when the victim was proceeding along the G.T. Road along with petitioner no. 1 herein, then one tractor bearing registration no. WB-41A/5731 dashed the victim which resulted in his death on the spot.

5. The instant First Miscellaneous Appeal has been filed by the owner of the offending vehicle mainly on three-fold grounds.

Firstly, the Learned Tribunal failed to consider that the accident was actually caused due to contributory negligence of the victim/deceased. It was erred in holding that the accident was solely due to the rash and negligent driving on the part of the driver of the offending vehicle.

Secondly, the Learned Tribunal Judge was wrong in casting the liability to pay compensation upon the appellant/owner of the offending vehicle holding that the driver's driving licence was invalid on the date of accident but ignored that the said licence had been renewed by the driver.

Thirdly, the Learned Tribunal erred in directing the Insurance Company of the offending vehicle to pay the compensation to the claimants and to recover the same from the owner of the offending vehicle. As such, the Impugned Judgment and Award are liable to be set aside as the same is legally flawed. No other dispute raised by the appellants with

regard to the quantum of compensation awarded in favour of the claimants.

6. Learned counsel appearing on behalf of the respondent nos. 2 to 4/claimants vehemently opposed the prayer of the appellants and further submitted that due to the death of the victim, claimants filed claim application under Section 163A of the M.V. Act before the Learned Tribunal for compensation towards pain, agony and loss of dependency.

7. Learned counsel further submitted that the claimants have been able to prove through oral and documentary evidence that the accident occurred solely due to the sole rash and negligent driving of the driver of the offending vehicle. Not only that, during trial, it reveals from the evidence that the driving licence of the concerned driver was invalid on the date of accident.

8. The Insurance Company raised a specific plea that the driver had no valid licence at the time of the accident and produced one official from the Office of RTO, Burdwan and examined as OPW.1. He produced Official State Register of Driving Licence and one information slip on two occasions. It appears from the said Register of driving licence, which was prepared and mentioned under Section 26 of the Motor Vehicles Act, 1988 under Rule 18 of the West Bengal Motor Vehicles Rules, 1989, it was found the driving licence of the concerned driver was valid up to 06.01.2006 but the accident occurred on 23.01.2008. So, on the date of accident, the driver did not possess a valid driving licence.

9. Apart from that, the Learned Tribunal finally decided the case ex parte against the owner holding therein that the accident occurred solely due to rash and negligent driving of the driver of the offending vehicle. At the same time, there was no valid driving licence with the concerned Driver. Hence, the Learned Tribunal directed to pay the compensation amount as

awarded to the claimants as mentioned earlier by the Insurance Company and given liberty to take all steps in accordance with law to recover the amount from the owner of the vehicle bearing no. WB-41A/5731 in view of reliance of judgments passed by the Hon'ble Supreme Court as under:

i. National Insurance Co. Ltd vs. Baljit Kaur[1];
ii. Deddapa & Ors. vs. Branch Manager, National Insurance Co. Ltd.[2];
iii. Oriental Insurance Co. Ltd. vs. Angad Kol[3];
iv. New India Assurance Co. Ltd. vs. Kusum[4];
v. National Insurance Co. Ltd. vs. Vidhyadhar Mahariwala & Ors.[5].

10. Therefore, the Impugned Judgment and Award passed by the Learned Tribunal is absolutely correct as such, there is no need to interfere.

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[1] (2004) 2 SCC 1;
[2] (2008) 2 SCC 595
[3] AIR 2009 SC 2151;
[4] (2009) 8 SCC 377
[5] 2008 (4) TAC 378 (SC)

11. Considering the materials available on record as well as the judgment passed by the Learned Tribunal and judgments relied by the Learned Tribunal, this Court is of the opinion that there is no dispute regarding the accident which occured on 23.01.2008 at about 13.45 hrs., when the victim was proceeding along the G.T. Road along with petitioner no. 1 herein, then one tractor bearing registration no. WB-41A/5731 dashed the victim which resulted in his death on the spot. With regard to compensation, no question raised from the side of appellants. Claimants are able to prove the accident occurred due to sole rash and negligent driving of the driver by oral as well as documentary evidence, therefore, it can be safely accepted that the accident took place due to the rash and negligence driving on the part of the driver of the offending vehicle.

12. Insurance policy was valid but the driving licence of the concerned driver was invalid on the date of accident and it is transpired from the evidence of RTO official and the document

including Register producing by the OPW 1. OPW 1 further testified in his evidence that no renewal has been made in respect of the Driving Licence (L.M.V.) bearing no. WB-41-114890.

13. The claim of the appellants is that the driver has renewed the licence but neither renewal driving licence nor any supporting document was produced before the Learned Tribunal or this Court to satisfy the contention of the appellants. Therefore, there is no merit in the contention of the appellants.

14. Furthermore, when the driving licence is not valid on the date of accident, it constitutes a violation of the terms and conditions of the insurance policy by the owner of the offending vehicle by allowing such driver to drive the vehicle without valid licence. In such a situation, the Hon'ble Supreme Court time and again has directed to pay the compensation amount to the claimants considering the Motor Vehicles Act is social beneficial

legislation and then recovered from the owner of the offending vehicle.

15. The Hon'ble Supreme Court held in the case of ***Singh Ram v. Nirmala and Others***[6] that the Insurance Company is required to pay the compensation amount to the claimants with a liberty to recover the same from the owner of the offending vehicle. In the said case, the owner-cum- driver produced a licence that was fake and another licence which he sought to produce had already expired before the accident and it was renewed more than two years after the expiry. Accordingly, the owner of the offending vehicle violated the terms and conditions of the insurance policy. Accordingly, this First Miscellaneous Appeal has devoid of merit. There is no need to interfere with the Judgment and Award of the Learned Tribunal Judge.

16. Accordingly, the Judgment and Award dated 14th Day of July, 2011 passed by the Learned Judge, 5th Motor Accident

[6] **2018 ACJ 1264 (SC)**

Claims Tribunal, Burdwan in M.A.C. Case No. 08 of 2009 is affirmed. Accordingly, **FMA 358 of 2013** is, thus, **dismissed**. **CAN 3 of 2024** is also, thus, disposed of.

17. The respondent no. 1-Insurance Company is directed to deposit the total compensation amount i.e. Rs. 3,93,500/= (Rs. Three Lakh Ninety-Three Thousand Five Hundred) only along with the interest as indicated above by way of cheques before the Office of Learned Registrar General, High Court, Calcutta within a period of 4 weeks in view of judgment delivered in ***Singh Ram v. Nirmala and Others*** with a liberty to recover from the owner of the offending vehicle.

18. Learned Registrar General, High Court, Calcutta, upon deposit of the amount and interest on the total awarded compensation amount as indicated above, shall release the amount in equal share in favour of the claimants, upon proper identification and subject to verification of the payment of ad valorem Court fees on the total amount, if not already paid.

19. Let a copy of this Judgment along with Trial Court Records, if any, be sent back to the Learned Court below forthwith for information.

20. All parties shall act on a server copy of this judgment and order uploaded from the official website of High Court at Calcutta.

21. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)