

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE BIVAS PATTANAYAK.

FMA 2037 OF 2018

With

COT 124 OF 2019

Reliance General Insurance Company Limited

.....Appellant

Versus

Sudevi Gupta & Others

.....Respondents

For the Appellant: Mrs Gopa Das Mukherjee, Advocate.

For the Respondent nos.1 to 5: Mr Saswata Bhattacharjee, Advocate.

Mr Sanat Kumar Mallick, Advocate.

For Respondent no.6: Ms Sanjana Basu, Advocate.

Mr Parashar Baidya, Advocate.

Heard on: 15.09.2022, 19.09.2022, 9.1.2023.

Judgment on: 3.4.2023.

Bivas Pattanayak, J :-

1. The present appeal is preferred against the judgment and award passed on 30th May 2018 by learned Judge, Vth Bench cum Judge, Motor Accident Claims Tribunal, City Civil Court, Calcutta in M.A.C Case no. 263 of 2010 granting compensation in favour of respondents-claimants to the tune of

Rs.14,59,326/- along with interest under Section 166 of the Motor Vehicles Act, 1988.

2. The brief fact of the case is that on 18th November 2009 at about 1:15 PM while the victim was proceeding through the VIP road from North to South direction on his bicycle, at that time the offending vehicle bearing no. WB-19D/7066 (Tata Magic) which was driven in a rash and negligent manner dashed the victim from behind as a result of which he sustained head injuries. Thereafter the victim was taken to ESI Hospital and R.G Kar Hospital, wherefrom he was shifted to SSKM Hospital for further medical treatment. However, on the same day at night hours the victim was shifted to CMRI Hospital for better treatment and a considerable amount of Rs. 3 lakhs were spent towards treatment of the victim. Thereafter, once again the victim was shifted back to SSKM Hospital on 6 December 2009. Ultimately the victim succumbed to his injuries on 7 January 2010 and expired. On account of sudden demise of the deceased-victim, the respondents-claimants being widow, sons and mother of the deceased filed application for grant of compensation of Rs.15 lakhs along with interest under Section 166 of the Motor Vehicles Act, 1988.

3. The appellant-insurance company contested the claim application before the learned tribunal. However, respondent no.6-owner of the offending vehicle

did not contest the claim application before the learned tribunal and the claim application was disposed of *exparte* against him.

4. The claimants (respondent nos. 1 to 5 herein) in order to prove their case examined as many as five witnesses including claimant no.2, son of the deceased and also produced documents which are marked as **Exhibits 1 to 22** respectively.

5. The contesting opposite party no.2-insurance company (appellant herein) also adduced evidence of two witnesses and produced documents marked **Exhibits A to D** respectively.

6. Upon considering the materials on record as well as the evidence produced on behalf of the respective parties, the learned tribunal granted compensation in favour of the respondents-claimants of Rs. 14,59,326/- alongwith interest @ 8% per annum from the date of filing of the claim application till its realization.

7. Being aggrieved by and dissatisfied with the impugned judgment and award the insurance company has preferred the present appeal.

8. In the present appeal the respondent nos. 1 to 5 (claimants) have filed a cross-objection being COT 124 of 2019 for enhancement of compensation amount.

9. Both the appeal as well as the cross-objection is taken up together for consideration and disposal.

10. Mrs. Gopa Das Mukherjee, learned advocate for the appellant-insurance company submitted that the offending vehicle is a passenger carrying vehicle which is evident from the policy (**Exhibit 8**) issued by the insurance company in respect of the said vehicle being a passenger carrying vehicle package policy. Further it is the specific case of the insurance company that the driver of the offending vehicle on the relevant date of accident did not possess valid and effective driving licence to drive the offending vehicle which is a passenger carrying vehicle. The driving licence of the driver of the offending vehicle (**Exhibit D**) shows that the driver of the offending vehicle was authorised only to drive *light motor vehicle non-transport*. Therefore, the owner of the offending vehicle violated the terms and conditions of the insurance policy by plying the said vehicle through a driver who was not authorised to drive the offending vehicle which is a passenger carrying vehicle i.e a transport vehicle. For the aforesaid reasons, the insurance company cannot be saddled with the liability to compensate the claimants and as such the order of the learned tribunal is liable to be modified to the extent that liberty be given to the insurance company to recover the amount directed to be paid towards compensation, from the owner and driver of the offending vehicle.

She further submitted that the learned tribunal erred in determining the annual income of the deceased-victim of Rs. 1,18,350/- on the basis of income tax return for the assessment year 2009-10, which was filed after the death of the victim and therefore such finding of the learned tribunal needs to be set aside since it is improper and bad in law.

11. Mr Saswata Bhattacharjee, learned advocate appearing for the respondents-claimants, in reply, submitted that undisputedly the driver of the offending vehicle was holding driving licence to drive *light motor vehicle non-transport*. As per settled position of law the holder of a driving licence to drive *light motor vehicle* is authorised to drive *light passenger carriage vehicle* as well as *light goods carriage vehicle* and therefore there was no breach of condition of the policy of insurance in plying the offending vehicle by a driver holding driving licence to drive *light motor vehicles* on the relevant date. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Kulwant Singh versus Oriental Insurance Company Limited*** reported in **2014 (4) T.A.C 676 (SC)**. Further relying on the decision of Hon'ble Supreme Court passed in ***Mukund Dewangan versus Oriental Insurance Company Limited*** reported in **(2017) 14 S.C.C 663** he submitted that the Hon'ble Court has answered the reference with regard to the meaning of definition of '*light motor vehicle*' in Section 2(21) of the Motor Vehicles Act and held that a transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7,500 Kg would be a *light motor*

vehicle and no separate endorsement on the licence is required to drive transport vehicle of light motor vehicle class and the driver holding licence to drive light motor vehicle can drive transport vehicle of such class without any endorsement to that effect. The Registration Certificate (**Exhibit 7**) of the offending vehicle shows unladen weight to be 1000 Kg and gross weight 1600 Kg and therefore the offending vehicle is a *light motor vehicle*. Thus, the driver of the offending vehicle holding licence to drive *light motor vehicle* was also authorised to drive such *passenger carrying vehicle*. Relying on the decision of Hon'ble Supreme Court passed in **National Insurance Co. Ltd versus Swaran Singh and Others** reported in **(2004) 3 SCC 297** he submitted that the Hon'ble Court in the aforesaid decision held that if a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category. Further the insurance company with a view to avoid its liability is not only required to show that the conditions laid down under 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.

He further submitted that so far determination of income of deceased is concerned, neither such income of the deceased-victim has been challenged in the cross examination of PW5, income tax inspector, who proved the income tax return statement nor any suggestive denial has been made and

therefore such income of the deceased-victim has remained unchallenged and should be accepted.

In view of his aforesaid submissions, he prayed for dismissal of the appeal.

12. Mrs Mukherjee, learned advocate for appellant insurance company, in reply, submitted that the observation of the Hon'ble Supreme Court passed in ***Mukund Dewangan (supra)*** that a person holding a driving licence in respect of '*light motor vehicle*' could on the strength of that licence be entitled to drive a transport vehicle of light motor vehicle class, having unladen weight not exceeding 7,500 Kg, has been referred to a larger Bench of Hon'ble Supreme Court by its decision made in ***Bajaj Alliance General Insurance Company Limited versus Rambha Devi and Others*** reported in **2022 (3) T.A.C 1 (S.C).**

13. Ms Sanjana Basu, learned advocate appearing for the respondent no.6-owner of the offending vehicle submitted that as per settled proposition of law the driver holding driving licence to drive *light motor vehicle* is authorised to drive *light motor passenger carrying vehicle* as well as *light motor goods carrying vehicle* the weight of which should not exceed 7,500 Kg and thus there was no such breach or violation of terms and conditions of the insurance policy by the owner of the vehicle in plying the said vehicle by the driver holding driving licence to drive *light motor vehicles*. Thus, the

appellant-insurance company is liable to compensate the persons who are victim of an accident covered under the insurance policy.

14. Having heard the rival contentions raised by the parties, it appears that the insurance company in the present appeal has raised two-fold grounds, *firstly*, since the driver of the offending vehicle was not holding effective and valid driving licence to drive the offending vehicle on the relevant date of accident, hence insurance company has got no liability to compensate and *secondly*, the learned tribunal erred in determining the income of the deceased-victim by relying on income tax return filed after death of the victim.

14.1. With regard to the first issue of driver not holding valid and effective licence to drive such vehicle on relevant date, it is found that the appellant-insurance company in its written statement has made out specific case that the driver of the alleged vehicle had no valid, genuine and proper driving licence at the material time of accident to drive the particular class of vehicle alleged to be involved in the accident and therefore the insurance company is not liable to pay any compensation to the claimants. The appellant-insurance company adduced the evidence of one Sukanta Chatterjee a Group 'D' employee of PVD, Salt Lake, Calcutta who produced the particulars of driving licence bearing no. WB 012008634601 in the name of the driver of the offending vehicle Md Chandu Ali which is marked as **Exhibit D** (with objection). The aforesaid driving licence (**Exhibit D**) shows that its validity

has been made in respect of *light motor vehicle non-transport*. Undisputedly the offending vehicle is a *passenger carrying light motor vehicle*. It has been strenuously argued on behalf of appellant-insurance company that as the driving licence has been issued in respect of *light motor vehicle non-transport* as such the driver of the offending vehicle at the relevant time was not authorised to drive the offending vehicle which was a passenger carrying vehicle i.e a transport vehicle. Section 10 of the Motor Vehicles Act containing form and contents of licences to drive does not specify any class of vehicle under '*light motor vehicle non-transport*'. It is further relevant to note that Section 2 of the Act also does not define '*light motor vehicle non-transport*'. Be that as it may, to have a purposeful meaning, therefore, the licence in question issued to drive '*light motor vehicle non-transport*' would construe to authorise the holder of such license to drive *light motor vehicle*. Now the question which requires deliberation is whether the holder of a licence to drive *light motor vehicle* is authorised to drive *light motor road transport vehicle* or not.

14.1.1. The Hon'ble Supreme Court in ***Mukund Dewangan (supra)*** while answering the questions referred for decision relating to the definition of '*light motor vehicle*' and other questions including whether the holder of a licence to drive the class of '*light motor vehicle*' as provided in section 10(2)(d) of the Act would be competent to drive a transport vehicle or omnibus, the 'gross vehicle weight' of which does not exceed 7,500 Kg or a motor car or tractor or

roadroller the ‘unladen weight’ of which does not exceed 7,500 Kg, observed as follows.

“60. Thus, we answer the questions which are referred to us thus:

60.1. *‘Light motor vehicle’ as defined in section 2(21) of the act would include a transport vehicle as per the weight prescribed in section 2(21) read with sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of light motor vehicle by virtue of amendment act 54 of 1994.*

60.2. *A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 Kg would be a light motor vehicle and also motor car or tractor or a roadroller, ‘unladen weight’ of which does not exceed 7500 Kg and holder of a driving licence to drive class of ‘light motor vehicle’ as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross weight of which does not exceed 7500 Kg or a motor car or tractor or a roadroller, ‘unladen weight’ of which does not exceed 7500 Kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after amendment act 54 of 1994 and 28.3.2001 in the form.*

60.3. *The effect of the amendment made by virtue of the act 54 of 1994 w.e.f 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained ‘medium goods vehicle’ in section 10(2)(e), ‘medium passenger motor vehicle’ in section 10(2)(f), ‘heavy goods vehicle’ in section*

10(2)(g), and ‘heavy passenger motor vehicle’ in section 10(2)(h), with expression ‘transport vehicle’ as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle from the purview of section 10(2)(d) and section 2(41) of the act i.e light motor vehicle.

60.4. *The effect of amendment of form 4 by insertion of ‘transport vehicle’ is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of ‘light motor vehicle’ continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect”*

14.1.2. The Hon’ble Supreme Court in its decision passed in ***Kulwant Singh (supra)*** has laid down the once the driver is holding licence to drive *light motor vehicle*, he can drive commercial vehicle of that category. Such view was affirmed by the Hon’ble Supreme Court in ***Mukund Dewangan (supra)***.

14.1.3. In ***Swaran Singh’s Case (supra)*** the three-Judge Bench of the Hon’ble Supreme Court while dealing with meaning, application and interpretation of various provisions, including Sections 3(2), 4(3), 10(2) and 149 of the Act held in paragraph 47 of the report that if a person has been given a licence for a particular type of vehicle as specified therein, he cannot

be said to have no license for driving another type of vehicle which is of the same category but of different type. As for example, when a person is granted a licence for driving a *light motor vehicle*, he can drive either a car or a jeep and it is not necessary that he must have driving licence both for cars and jeeps separately. The aforesaid decision of the Hon'ble Supreme Court has been relied upon in its decision in ***Mukund Dewangan (supra)***.

14.1.4. Although Mrs Mukherjee, learned advocate for appellant-insurance company relying on ***Rambha Devi (supra)*** indicated that the observation of the Hon'ble Supreme Court in ***Mukund Dewangan (supra)*** has been referred to a larger bench yet no contrary view has been brought to my notice. Thus, in the absence of any contrary view the observation of the Hon'ble court in ***Mukund Dewangan (supra)*** still holds the field in relation to the issue discussed above. **[See *M.S Bhati versus National Insurance Company Limited* reported in 2019 (2) T.A.C 357 (SC)]**

14.1.5 Accordingly, as it is found that on the date of accident the driver of the offending vehicle was holding licence to drive *light motor vehicle* hence following the observations of the Hon'ble Supreme Court as discussed above, it goes without saying that the driver of the offending vehicle was authorised to drive *light motor passenger carrying vehicle* as well. Thus, there was no breach of condition of the insurance policy by the insured-owner of the offending vehicle and as such the argument advanced on behalf of the

appellant-insurance company in this regard falls short of merit. Though Mrs Mukherjee, learned advocate for the appellant-insurance company vouched for applying principle of pay and recovery yet as it is already found that there is no such breach of condition of policy of insurance on the part of insured-owner in plying the offending vehicle through a driver holding licence to drive *light motor vehicle*, hence the principle of pay and recovery does not apply to the case at hand.

14.2. With regard to the second issue raised of erroneous determination of income of the deceased-victim, it is found that the respondents-claimants have proved income tax return statement of the deceased-victim for the assessment year 2007-2008, 2008-2009, 2009-2010 which are marked as **Exhibits 21/1, 21/2 and 21/3** respectively. The learned tribunal has taken into account the annual income of Rs.1,18,350/- of the deceased-victim as per income tax return for the assessment year 2009-2010 (**Exhibit 21/3**) filed on 25 March 2010, after the death of the victim. The insurance company has contended that such income of the deceased-victim should not be accepted since the income tax return for the said assessment year has been filed after the demise of the deceased-victim. Undisputedly, the income tax return for the assessment year 2009-2010 has been filed 25.3.2010 after the death of the deceased-victim on 7.1.2010. Now the question arises whether such income of the deceased-victim in income tax return for the assessment year 2009-2010 filed after death of the victim is to be accepted or not. In **V.**

Subbulakshmi and Others versus S. Lakshmi and another reported **(2008) 4 SCC 224** the Hon'ble Supreme Court endorsed the view of the High Court in not relying on the income tax return filed after the accident. Further in ***Sangita Arya versus Oriental Insurance Company Limited*** reported in **(2020) 5 SCC 327** the Hon'ble Supreme Court considered the income tax return for assessment years filed prior to the death of the deceased for determining the income of the deceased victim. Bearing in mind the aforesaid observation of the Hon'ble Supreme Court, the income tax return for the assessment year 2008-09 **(Exhibit 21/2)** filed on 2.3.2009, prior to the death of the victim on 7.1.2010, should be taken into account for determining the income of the deceased-victim. The gross income disclosed in the income tax return for assessment year 2008-09 **(Exhibit 21/2)** less tax paid should be the annual income of the deceased which is to be considered for assessment of compensation amount. The gross income of the deceased as per the said assessment year is Rs. 1,07,230/- and the tax paid for such assessment year is NIL. Therefore, the annual income of the deceased comes to Rs.1,07,230/- which should be taken into account for computation of compensation. I find substance in the submission of Mrs Mukherjee, learned advocate for appellant-insurance company in this regard.

15. Now the cross objection being no. COT 124 of 2019 filed by the respondents-claimants is taken up for consideration.

15.1. Mr Bhattacharjee, learned advocate for the respondents-claimants submitted that the learned tribunal has taken into account only 25% of the annual income of the deceased victim amounting to Rs.29,588/- towards future prospect without multiplying the said amount with the multiplier 13 and accordingly such award needs to be modified.

15.1.1 It appears from the impugned judgment and award that only an amount of Rs. 29,588/- equalling to 25% of the annual income has been taken into account towards future prospects. Needless to mention that amount equivalent to 25% of annual income should be added to the annual income towards future prospects and on deduction towards personal and living expenses, the amount arrived should be multiplied with the multiplier. Therefore, the learned tribunal erred in computation of future prospects which needs to be modified for the interest of justice.

16. The other factors namely the deduction of 1/4th towards personal and living expenses, multiplier of 13, general damages of Rs.70,000/- and medical expenses incurred in treatment of the deceased-victim has not been challenged in the appeal.

17. Now taking into consideration the aforesaid aspects the compensation amount is calculated as hereunder.

Calculation of compensation

Annual Income.....	Rs 1,07,230/-
Add: Future Prospects @ 25% of total Income.....	<u>Rs.26,808/-(approx.)</u>
Annual loss of Income.....	Rs.1,34,038/-
Less: Deduction 1/4 th of the Annual Income towards personal and living expenses.....	<u>Rs.33,510/-(approx.)</u>
	Rs.1,00,528/-
Adopting multiplier 13 (Rs.1,00,528/- X 13)	Rs.13,06,864/-
Add: General Damages.....	<u>Rs.70,000/-</u>
Loss of estate.....	Rs.15,000/-
Loss of Consortium...Rs.40,000/-	
Funeral Expenses.....	Rs.15,000/-
Add: Medical Expenses.....	Rs.2,05,819/-
Total Compensation.....	Rs.15,82,683/-

18. Thus the respondents-claimants are entitled to compensation of Rs.15,82,683/-. It is found that the appellant-insurance company has deposited a sum of Rs.1,95,978/- vide OD challan no.1573 dated 28.09.2018 and further deposited a sum of Rs.22,18,240/- vide OD challan no.1574 dated 28.09.2018 and has also made statutory deposit of Rs. 25,000/- vide OD challan no. 941 dated 12.07.2018 with the Registry of this Court. The respondents-claimants are entitled to receive the aforesaid amounts along with interest accrued thereon.

19. The appellant- Reliance General Insurance Company Limited is directed to deposit balance amount of Rs.1,23,357/- alongwith interest @ 6% per annum from the date of filing of the claim application till deposit by way of cheque with the learned Registrar General, High Court, Calcutta within the period of four weeks from date.

20. Respondents-claimants are directed to deposit *ad valorem* court fees on the compensation assessed, if not already paid.

21. Learned Registrar General, High Court, Calcutta upon deposit of the aforesaid balance amount and interest as indicated above shall release the entire compensation amount along with interest in favour of respondents-claimants, after making payment of Rs.40,000/- in favour of respondent no.1, widow of the deceased towards spousal consortium, in the following proportion namely,

Respondent no.1, widow of the deceased, shall get $1/3^{\text{rd}}$.

Respondent nos. 2, 3, 4 & 5 namely mother and sons of the deceased respectively, shall get remaining portion in equal share each.

Subject to satisfaction of their identity and payment of *ad valorem* court fees on the compensation assessed, if not already paid.

22. With the aforesaid observation the appeal and the cross-objection stands disposed of. The impugned judgment and award of the tribunal stands modified to the aforesaid extent. No order as to cost.

23. All connected applications, if any, stands disposed of.

24. Interim order, if any, stands vacated.

25. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak,J.)