

**04.12.2023**  
**Item No. 22**  
**BR**

**FMA 3837 of 2016**  
**With**  
**IA No. CAN 1 of 2016 (Old No. CAN 6300 of**  
**2016)**

**Falu Das & anr.**  
**-vs-**  
**The Bajaj Allianz General Insurance Co.**  
**Ltd. & anr.**

**Mr.Amit Ranjan Roy**  
**... for the appellant**

**Mr. Rajesh Singh**  
**... for the insurance co.**

Paper book filed by the petitioners is taken on record.

Copy already served upon the opposite party/insurance company.

The instant appeal has been filed by the appellant feeling aggrieved with the judgment and award dated 15<sup>th</sup> March, 2016 passed by the Motor Accident Claims Tribunal (Special Judge)-cum Additional

District Judge, Burdwan in Motor Accident Claim Case No. 6 of 2009 (352 of 2009) thereby the learned trial Court awarded a sum of Rs. 3,69,500/- in part on contest against the opposite party no. 1/owner of the offending vehicle dismissed on contest against the opposite party no. 2/Bajaj Allianz General insurance company Ltd as the route permit of offending vehicle was not valid on the date of accident as such insurance company is not liable to pay the compensation.

The learned Tribunal has directed the owner of the offending vehicle no. WB 41B/8236 to pay the compensation in the mode and manner as stipulated in the ordering portion of the aforesaid judgment.

Learned advocate appearing on behalf of the petitioners submits that only one issue is involved in the instant appeal. That is compensation amount as awarded to be paid by the Insurance Company to the

claimants and recover the same from the owner of the offending vehicle in view of catena of decisions of the Hon'ble Supreme Court. Time and again the Hon'ble Supreme Court and High Court also directed to pay compensation first to the claimants and recover by the insurance company from the owner of the offending vehicle in accordance with law.

On the other hand, Ld. Counsel appearing on behalf of the insurance company raised objection of such prayer and further submits the Ld. Tribunal rightly directed the owner to pay the compensation as the owner violated the terms and conditions of insurance policy.

Heard both sides. The basic facts and compensation awarded by the Learned Tribunal are not in dispute. Only issue is here who will pay the compensation. On this issue in similar circumstances, the Hon'ble Supreme Court on plethora of judgments

directed the insurance company to pay the awarded compensation to the claimant/claimants first and then recover the said amount from the owner of the offending vehicle.

In such facts and circumstances, the justice would be sub-served if this Court directed the insurance company to pay the compensation amount as awarded by the learned Tribunal in the manner and mode as stipulated in the judgment and award dated 15<sup>th</sup> March, 2016 to the claimants with further liberty is given to recover the said amount from the owner of the offending vehicle bearing registration no. WB 41B/8236 in accordance with law by the insurance company.

The instant appeal being **FMA No.3837 of 2016** is, thus disposed of.

Respondent/Insurance company is directed to pay the compensation amount to the tune of Rs. 3,69,500/- along with

interest accrued thereon at the rate of 7 per cent per annum from the date of application till realisation by way of cheque before the office of learned Registrar General, High Court, Calcutta within a period of 4 weeks from date.

Learned Registrar General, High Court, Calcutta, upon deposit of the said cheque shall release the amount in favour of the appellants/claimants upon proper identification and subject to verification of the payment of ad valorem Court fees if not already paid, in the manner and mode of payment as stipulated by the Ld. Tribunal in its judgement and award dated 15<sup>th</sup> March, 2016.

Consequently, connected application, if pending, is also thus disposed of

The impugned judgment and award of the learned Tribunal dated 15<sup>th</sup> March, 2016 is modified to the aforesaid extent only.

Let a copy of this Judgment along with LCR, if be sent back to the learned Tribunal forthwith for information.

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

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

**( Ajay Kumar Gupta , J. )**