

**(2003) 07 CAL CK 0042****Calcutta High Court****Case No:** F.M.A.T. No. 3950 of 1997

National Insurance Co. Ltd.

APPELLANT

Vs

Lakhi Kanta Chaini and Another

RESPONDENT

**Date of Decision:** July 24, 2003**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 149(2)

**Citation:** (2004) 2 ACC 177 : (2004) ACJ 1133**Hon'ble Judges:** S.K. Gupta, J; Aloke Chakrabarti, J**Bench:** Division Bench**Advocate:** K.K. Das, for the Appellant;**Final Decision:** Dismissed**Judgement**

Aloke Chakrabarti and S.K. Gupta, JJ.

It is stated by Mr. Das, learned counsel appearing for the appellant that the statutory deposit has already been made on 16.12.1997. Office is directed to check-up and submit a report in respect of the same.

2. With the consent of learned counsel for the appellant, this appeal is treated as on day's list for hearing and is being disposed of at this stage.

3. Heard Mr. Das, the learned counsel appearing for the appellant.

4. Mr. Das, learned counsel, pressed this application contending that in view of the irregularity in the driving licence stay is required to be granted but considering the material on record as also the impugned judgment we find that with regard to the irregularity in the driving licence as alleged by the appellant insurance company, no evidence was led. Law has now been settled that it is the responsibility of appellant insurer to produce the proper evidence including the evidence of the driver, if such contention is made. We also take notice of the fact that only a meagre amount of Rs. 28,000/- and odd has been awarded as compensation. Mr. Das, learned counsel, is

also unable to show that the driver was examined or any attempt was made by the insurer to show any material in support of such case as regards alleged irregularity in the driving licence.

5. Upon considering the aforesaid contention we also take notice of the fact that law has now been settled in the judgments of the Supreme Court including the judgment in the case of United India Insurance Co. Ltd. v. Lehru, 2003 ACJ 611 (SC), indicating the responsibility of the insurer in the said proceeding arising out of the claim made by the third party victim. Similar decision was also taken by the Supreme Court in the case of Sohan Lal Passi v. P. Sesh Reddy, 1996 ACJ 1044 (SC), wherein the provision of the old Act and new Act were taken into consideration. Therefore, as we are of the opinion that in support of the allegation of the insurer appellant no material was at all shown and when a meagre amount of award has been passed, we do not feel that neither any stay order is required nor there is any reason to keep the appeal pending further.

6. Accordingly, both the appeal and the application are dismissed.

7. Appellant is permitted to withdraw the statutory deposit made on 16.12.1997 by challan No. 665. The insurer is also directed to deposit the said amount of the award as granted by the learned Tribunal in the impugned judgment along with interest at the rate of 9 per cent per annum from the date of making the claim application till the date of deposit with the Tribunal within six weeks from date. In default of such deposit, the claimant will be entitled to realise the said amount in accordance with law with further interest at the rate of 9 per cent per annum till realisation.

8. Let the lower court record along with the copy of this judgment be sent down to the Tribunal below forthwith.