(2000) 06 CAL CK 0037

Calcutta High Court

Case No: F.M.A. No. 421 of 1999

The New India Assurance Co. Ltd.		APPELLANT
	Vs	
Menaka Roy and Others		RESPONDENT

Date of Decision: June 6, 2000

Citation: 105 CWN 467

Hon'ble Judges: Satyabrata Sinha, J; Hrishikesh Banerji, J

Bench: Division Bench

Advocate: K.K. Das, for the Appellant;Sanghamitra Nandy and Saidur Rahaman, for the Respondent

Final Decision: Dismissed

Judgement

Satya Brata Sinha, J.

Having regard to the decision of the Apex Court in New India Assurance Company Vs. Shri Satpal Singh and Others, , we are of the opinion that the appellant herein cannot escape its liability to pay the amount of compensation to the claimant-respondent who is said to be the driver of the vehicle. Mr. Das, learned counsel appearing on behalf of the Insurance Company, however, had drawn our attention to grounds No. 3 to 5 of the Memorandum of Appeal which read thus:

For that the learned Tribunal ought to have exonerated the objector/appellant from the liability altogether inasmuch as the private Ambassador car being No. WGU 4629 was illegally used as a taxi at the time of accident. That the charge-sheet has been issued against the driver of NBSTC Bus.

For that the learned Tribunal ought to have considered that the insured having used his private Ambassador car for a purpose not allowed by any permit and/or such use having been specially prohibited under the terms and conditions of the policy, not entitled to be idemnified.

For that in spite of the fact that in the policy of insurance there is a condition as "Limitation as to use" specifying the use of the vehicle "only for social, domestic and pleasure purposes and for the insured''s own business" the insured having used his private Ambassador car for the purpose of hiring and/or use as a taxi, the insured is not liable to be indemnified under the terms and conditions of the policy.

2. The question as to whether there had been a violation of the condition of the licence or not is not a matter which was required to be taken into consideration by the Assistant Claim Tribunal as even if such violation had taken place, the insurance company is liable to pay in terms of the doctrine of no fault liability.

3. For the reasons aforementioned, we do not find any merit in this appeal, which is, accordingly, dismissed. There will be no order as to costs.

4. However, if any amount has been deposited by the appellant herein, the claimant-respondent may be permitted to withdraw the said amount in accordance with law.

Hrishikesh Banerji, J.

I agree.