
(2023) 07 CAL CK 0070

In the Calcutta High Court

Case No : F.M.A No. 2189 Of 2016, IA No. CAN 1 Of 2016 (Old No. CAN 7493 Of 2016)

Bijoy Mukherjee & Anr .

APPELLANT

Vs

Aswani Tewari & Anr.

RESPONDENT

Date of Decision : 13-07-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Hindu Succession Act, 1956 — Section 11
Code of Civil Procedure, 1908 — Section Section 2(11)

Citation : (2023) 07 CAL CK 0070

Hon'ble Judges : Subhendu Samanta, J

Bench : Single Bench

Advocate : Ali Imam Shah, Saswata Bhattacharjee

Final Decision : Disposed Of

Judgement

Subhendu Samanta, J

The instant appeal is preferred by the claimants against the judgment of Learned MAC Tribunal, Judge, 2nd Court Suri on 30th July of 2015 in MAC Case No. 76 of 2013 u/s 166 of Motor Vehicles Act. The claimants are the brother and sisters of deceased namely, Bijay Mukherjee who died in a road traffic accident on 2nd of February, 2013. On the fateful day, the deceased was going towards Barosal, Fakirpara by riding a Motor Cycle from Munsuba petrol pump by NH 60, when he reached near Kendia Kata at the time the offending vehicle (Tata Truck) bearing No. WB 37-B/0023 which was driving in a rash and negligent manner with excessive high speed dashed the said victim as a result he received serious bleeding injuries and was shifted to the hospital where he was declared dead. The Insurance Company contested the claim case by filing written statement. The claimants have produced three witnesses before the Learned Tribunal but Insurance Company has not produced any witness. After hearing the parties and after perusing the evidences on record both oral and documentary the learned

Tribunal has allowed the claim case in favour of the claimants but directed the opposite party No. 1 i.e. the owner of the offending Truck to pay the compensation amounting to Rs. 10, 00,000/- on the ground that at the time of accident the offending vehicle had no valid permit.

The claimants/appellants are before this court with the ground that the impugned order passed by the Learned Tribunal is erroneous. Learned Tribunal should have ordered the Insurance Company to pay the amount of compensation and the Insurance Company may have the liberty to recover the same from the owner. The appellants also taken the ground in appeal that the Learned Tribunal has committed error in calculating the income of the deceased. PW 3 has deposed before this court to prove the Income Tax return submitted by the deceased prior to the accident but the Learned Tribunal has not considered the same and came to an erroneous finding. It is the further ground of the appellant that the 'Future Prospect' according to the law laid down by Hon'ble Supreme Court in Pranay Sethi, need be allowed in favour of the appellant.

Learned Advocate for the Insurance Company though has not filed for cross appeal but submitted that the assessment of income by the Learned Tribunal is erroneous. The average income of the 04 (four) assessment years required to be calculated.

The Insurance Company argued that the claimants being the brother and sisters are not dependant of the deceased and they are not entitled to get any compensation. They cannot enjoy forum out of misfortune.

He further argued that from the fact of the case it would be revealed that there was a face to face accident between two vehicles. Thus, the victim has contributed the accidents. The part of contribution of the victim need be apportioned from the entire amount of compensation. He further argued that the case of the claimants is quite unnatural, there is delay in preferring the FIR. The seizure list of the police case arising out of the accident, mentioned the offending vehicle (Truck) was plying in the road without any valid permit. The owner has entire knowledge about the expiry of permit; thus at this juncture the Insurance Company is not liable to pay the compensation.

Learned Advocate for the Insurance Company submitted that there is no illegality in the impugned order.

Learned Advocate for the appellant in reply submitted that the claimants are the legal representatives of the deceased as defined u/s 166 of the M.V Act thus they are entitled to get the compensation.

Heard the Learned Advocates, peruse the papers and materials on record.

Admittedly the present petitioners are the brother and sister of the deceased. The brother may have his separate income and the married sister is not actually dependant upon the income of the deceased. Let me consider the provisions of Section 166 of M.V Act.

166. Application for compensation--- (1) An application for compensation arising out of an accident of the nature specified in sub- section (1) of section 165 be made —

(a).....

(b).....

(c) Where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

So an application for compensation is maintainable by the legal representatives of the deceased. The term "legal representative" is defined u/s 2 (11) of the Code of Civil Procedure.

2. (11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;

The deceased person is a Hindu, according to Hindu Succession Act in absence of heirs mentioned in Class- I of the schedule; the heirs mentioned in Class- II of the schedule shall inherit the property of the Male Hindu. Section 11 of the Hindu Succession Act provided the distribution of assessed between the heirs mentioned in Classes of the Schedule. There are two Entries in the Class- II wherein in the First Entry the father is the only legal heir. In Second Entry sons daughter's son, son of daughter's daughter, brother and sister is mentioned. These heirs specified in Entry II of the Class-II of the schedule share the property simultaneously and equally (Section 11). According to Hindu Succession Act the brother and sister come under the Entry II Class- II of the schedule to Hindu Succession Act.

Admittedly in this case there no legal heirs of the deceased mentioned in Class I of the schedule. The father of the deceased is also not alive thus the brother and sister simultaneously and jointly shall the property of the deceased. Thus according to the provisions of law the present appellants/petitioners are the legal heirs of the deceased.

Learned Advocate for the claimants has cited several decisions regarding the view of the Hon'ble Apex Court as well as the Hon'ble High Court regarding the legal heirs of a claimant of a compensation case arising out of Section 166 of Motor Vehicles Act. In Gujrat State Road Transport Corporation Vs. Ramanbhai Prabhatbhai & Anr. The Hon'ble Supreme court has held that the brother of a deceased is entitled for compensation. In National Insurance Company Limited Vs. Birender & Ors. Hon'ble Supreme court has also observed that a major son having independent income is entitled to get compensation due to the fateful accident of his father. In N. Jayasree Vs. Chola mandalam M/S General Insurance Company Limited. The Hon'ble Supreme Court has held that the mother-in-law of

a deceased is also a legal representative in terms of a claim case initiated u/s 166 of Motor Vehicles Act.

On perusing the observation of the Hon'ble Supreme Court in the above mentioned cases, I am of a view that the present petitioner being the brother and sister of the deceased are legal heirs of the deceased and are entitled to get compensation under the provisions of 166 of Motor Vehicles Act.

To prove the income of the deceased Income Tax Return of the deceased for the assessment year 2009-10, 2010-11, and 2011-12 was produced, there are exhibited by virtue of deposition of PW 3. PW 3 is an Income Tax Officer who deposed before this court that the income mentioned in the I.T return is self assessment of assessee. Learned Tribunal has considered the deposition of the PW 3 and on the basis of which Learned Tribunal has rounded off the income of the deceased on the basis of average and for the purpose of calculation the income of the deceased assessed as Rs. 1,44,000/- per annum. I find that the procedure adopted by the Learned Tribunal suffers no illegality; the income of the deceased was his self assessed income. Thus in absence of any particular prove the income of the deceased, Learned Tribunal was correctly assessed it as Rs. 1,44,000/- per year.

Learned Advocate for the Insurance Company has raised a plea that there are contributory negligence on the part of the deceased as the accident was happened due to face to face collision by two vehicles. The Insurance Company has not produced any oral or documentary evidence to substantiate the plea of contributory negligence. On the other hand the police papers suggest the driver of the offending vehicle (Tata Truck) was solely responsible for the accident. In absence of any proof the plea of Insurance Company regarding contributory negligence appears to me not justified.

It further appears that the alleged accident happened on 2nd of February 2013 and FIR of this case was registered on 8th February 2013; there are 5/6 days of delay in preferring the FIR. The cause of the delay was mentioned on the FIR as-the delay is caused due to the 'Sradh' ceremony of the deceased. I find no discrepancies or unreasonableness in such explanation. In police papers the No. of the offending vehicle was mentioned not correctly in same places. It was pointed out that, in the seizure list the No. of the offending vehicle was mentioned as WB 57 A 0023 but in the same seizure list the RC Book was seized as Truck No. WB 37 B 0023. The discrepancies in some portion of police papers regarding the different No. of the offending vehicle is appears to me mere typographical errors and such minor discrepancies is not fatal for the claimant's case.

It is true that the permit of the offending vehicle was seized by the police; wherefrom it appears on the day of accident the offending vehicle had no valid permit to ply the vehicle. Learned Tribunal observing this fact has directed owner of the vehicle to pay the compensation. It is true that the owner and the insurer

had agreed on some terms and contract for validity of the Insurance policy. The third party is not the signatory of the contract hence the terms are not binding upon him. The terms and contracts between the owners of the insurer has no avenue to settle the claim of the third party under the provisions of Motor Vehicles Act. The legislature has enacted the provisions of Chapter- XI of the Motor Vehicles Act for awarding compensation to the heirs of the third party deceased. The claimant's i.e the heirs of the deceased shall not put under harassment for getting compensation. This is welfare legislation; this Act serves for the society. The manner of awarding compensation to the claimants in the Motor Vehicles Act has been discussed several time by the Hon'ble Apex Court. In absence of permit the Insurance Company/Insurer may be directed to pay the compensation to the claimants and the Insurance Company at the same time has the opportunity to recover it from the owner of the vehicle. In *Baljit Kaur Vs. State of Punjab* (2003 ACJ 1800) and finally *National Insurance Company Limited Vs. Swaran Sing and Ors* (AIR 2004 SC 1531). The Hon'ble Apex Court has held that the "chapter xi of the Motor Vehicles Act, 1988 provide compulsory Insurance of vehicles against third party risks is a social welfare legislation regarding by compensation to victims of accidents caused by used of Motor Vehicles. The provisions of compulsory Insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted to actuate the said object". Accordingly, the Hon'ble Supreme Court has formulated that the Insurance Company is liable to pay the compensation to victims of the accidents and the Insurance Company may recover the amount of compensation from the owner of the vehicle if there is a breach of policy agreement. Considering the view of the Hon'ble Apex Court it appears to me that the impugned award passed by the Learned Tribunal need be modified.

The appeal is allowed.

In computing the compensation of this court the yearly income of the deceased is taken to be Rs. 1,44,000/-. $\frac{1}{2}$ of which is deducted towards the personal expenses of the deceased thus the yearly income comes to Rs. 72,000/- the deceased was self employed and he is within the age group of 40 to 50 years. Thus 25% of his established income should be added towards the future prospects according to the law discussed by the Hon'ble Supreme Court in *Pranay Sethi*. So after adding the "future prospects" with the yearly dependency comes to Rs. 90,000/- applicable multiplier of this case is 13. Thus after multiplying the multiplier, the award comes to Rs. 11,70,000/- The appellants are also entitled to get the general damages of Rs.- 70,000/- according to the direction of Hon'ble Supreme Court passed in *Pranay Sethi*. Thus the award comes to Rs. - $(11,70,000 + 70,000) = \text{Rs. } 12,40,000$

Insurance Company is directed to pay the compensation along with 06% interest per annum from the date of filing of the claim application.

The insurance Company is further directed to pay compensation through the Learned Registrar General, High Court, Calcutta within 08 weeks from this date.

The Insurance Company is at liberty to recover the amount from the owner of the vehicle according to the law.

FMA is disposed.

All connected CRAN applications are also disposed. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.