

(2024) 02 CAL CK 0001

In the Calcutta High Court

Case No : FMA No. 581 Of 2023, IA No: CAN/1/2016 (Old No: CAN/6478/2016),
CAN/2, 3/2023

Chandana Paramanik & Ors.

APPELLANT

Vs

Bajaj Allianz Insurance Co. Ltd. & Anr.

RESPONDENT

Date of Decision : 02-02-2024

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2024) 02 CAL CK 0001

Hon'ble Judges : Subhendu Samanta, J

Bench : Single Bench

Advocate : Ali Imam Shah, Rajesh Singh

Final Decision : Disposed Of

Judgement

Subhendu Samanta, J

1. The instant appeal has been preferred against the judgment and award dated 19th September, 2015 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Fast Track, 2nd Court, Burdwan in MAC Case No. 76 of 2013.

2. The brief facts of the case is that the present appellants being the claimants have preferred an application before the learned tribunal under Section 166 of the M.V. Act for getting compensation on the ground that their predecessor was died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the Insurance Company. The claim case was contested by the owner of the offending vehicle by filling written statement; subsequently, he did not contest the matter further. The Insurance Company also contested the matter by filing written statement.

3. After hearing the parties and after receiving the evidences the learned tribunal has dismissed the claim case. Only on the ground that the alleged offending vehicle was not involved in the alleged accident. Being aggrieved by and

dissatisfied with the said order of dismissal the present appeal have been preferred by the claimants.

4. Heard the learned advocates perused the observation of the learned tribunal in the impugned judgment.

5. The fact of the case in a nutshell is that, the deceased was proceeding to Akui on bicycle on 11.4.2013 from Bowainchandi and when the deceased reached at Ghaterpara then, all on a sudden, one tractor bearing No. WB-41D-6570 which was coming from his back side dashed him and as a result victim received serious bodily injuries and was shifted to the nearest nursing home but he succumbed to his injuries on 12.4.2013.

The owner of the offending vehicle as well as the Insurance Company has filed separate written statement alleging, inter alia, that the tractor being No. WB-41D-6570 was not involved in the alleged accident. During trial two witnesses were adduced on behalf of the prosecution and two witnesses were appeared on behalf of the Insurance Company.

6. The learned tribunal after considering the all materials and evidences has dismissed the claim application on the ground that the vehicle bearing No. WB-41D-6570 was not involved in the alleged accident on the grounds that:

a) FIR lodged after three days of accident.

b) PW-1 had no personal knowledge of accident or PW-1 has not properly stated the fact of accident to the scribe of FIR and,

c) The evidence of PW-2 is not believable as the description of the accident by PW-2 and number plate of the offending vehicle, as well as the number of the offending vehicle was not properly stated by him. PW-2 had his acquaintance of the family members of the deceased. So, he is interested witness.

d) The charge-sheet does not contain the name of the PW-2 as an eye witness. Post-mortem report does not suggest the death of the deceased was caused by RTA.

e) The petitioner PW-2 scribe of the FIR and the owner of the vehicle are residence of the same village. So, their evidences cannot be believed.

7. The fact goes to show that the accident happened on 11.04.2023 and the victim died in the nursing home on 12.04.2013. The police case was registered on 14.04.2013 on the basis of the written complaint of widow. There are only two days delays in preferring the instant FIR by the widow of the deceased. After demise of victim the widow must have engaged in the last rituals so the delay of two days appears to me not unjust in the facts and circumstances of this case. The observation of the learned tribunal regarding delay of FIR appears to me unjust. Moreover, the delay has been properly explained in the last paragraph of FIR. The FIR also contained the UD Case No. which was initially registered just after the said accident. Accordingly, the point of delay in lodging the FIR as

observed by the learned tribunal is erroneous.

8. It is true that the de-facto complainant is the widow of the deceased who was not present at the time of accident. It is not possible for the widow to be present at the time of accident. But, he first got the knowledge of such accident as some person informed him that her husband was admitted to the Life Line Nursing Home. She could not state the name of the persons that does not mean the entire fact of accident and the death of her husband is a miss-statement. How she informed the fact of accident to the scribe is only can be questioned if there is any discrepancy to the fact of the accident in this case. Moreover, FIR should not be, in nature, be an encyclopaedia of the offence. The deceased i.e. the husband of the PW-1 died in a road traffic accident on the basis of which the specific police case was registered. So, the doubt of the learned tribunal regarding the manner of accident stated by the PW-1 to the scribe is appears to me not justified. The Hon'ble Supreme Court in *Amita Sharma & Ors. Versus The New India Assurance Co. Ltd. & Anr.* reported in (2021) SAR (Civ) 1 has held that:

"Strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eye-witnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true".

So, in this case, the intent of the learned tribunal to find out the fault in the evidence of PW-1 is appears to me not justified.

9. The learned tribunal has also disbelieved the statement of PW-2 on the ground that the name of the PW-2 was not cited as a witness in the charge-sheet. An accident may be witnessed by more than one person; it is the duty of the police to investigate the case and state the name of available witnesses who has seen the accident. It is not necessary for the police to name all the persons who witness the accident or present at the P.O.

10. The Division Bench of this Court in *Latika Rani Gorai and another Vs. Shriram General Insurance Co. Ltd. and another* as well as Hon'ble Supreme Court in *Kusum Lata and Others Versus Satbir and Others* has held that the credibility of the eye witness cannot be challenged due to the fact that his name is not appearing in the list of the witnesses filed by the police in the charge-sheet. So, the observation of the learned tribunal is quite erroneous on that score.

11. It further appears that the learned tribunal has disbelieved the PW-2. On the ground that he has not properly stated the manner of accident and also could not speak the number of the offending vehicle. From the cross examination of PW-2 it appears that the PW-2 has stated the number of the vehicle to be "WB-6570" instead of "WB-41D-6570. The PW-2 is a rustic village witness who actually

stated the number and missed the earlier digit i.e. "41D". The accident happened in the year 2013 and the evidence of PW-2 was taken in the year 2015 so it is possible that due to the loss of memory the PW-2 has stated the actual four digit numb of the vehicle; so the discrepancies appearing in the evidence of PW-2 are the minor discrepancy and which cannot be emphasized in a case filed under Section 166 of the M.V. Act. So, in my view, the learned tribunal has failed to appreciate the fact to disbelieve the statement of PW-2.

12. The learned tribunal has also observed that the PM report does not suggest that the death of the deceased was caused due to the RTA. The PM report itself contained the UD Case No. Which was registered on the basis of the self-same accident? Moreover, the injuries as observed by the doctor can only possible due to the road traffic accident. Not mentioning in the cause of death due to the road traffic accident itself did not disprove the case of the claimant.

13. The learned advocate for the Insurance Company submits that in different cases it is the tendency of the claimants as well as the police personnel to falsely implicate a vehicle covered policy with the Insurance Company but actually the accident was caused by other vehicle having no policy. A co-ordinate Bench of this Court has observed the same view in Bajaj Allianz General Insurance Company Limited Vs. Shibdas Majhi @ Shibu Maji & Anr. and the appeal of the Insurance Company was allowed and the Insurance Company was also allowed to withdraw the statutory deposit amount along with entire deposited awarded amount. He further argued that the opposite party no. 1 i.e. the owner of the offending vehicle also disputes the involvement of the vehicle in question. So, the learned tribunal has correctly dismissed the case.

14. Heard the learned advocate of the Insurance Company it appears that in case of Shibdas Majhi @ Shibu Maji there are 341 days delays in lodging the FIR after the date of accident. There were no explanations of such delay. On that score, the Co-ordinate bench has passed the order. But, in this case, there are only two days delays. Moreover, the FIR was lodged by the widow after losing her husband. So, there is actually, no delay in lodging the FIR in this case; so the ratio of Shibdas Majhi @ Shibu Maji is not applicable in this case.

15. Moreover, it appears to me that the OPW-1 being the owner of the offending vehicle has voluntarily produced the offending vehicle as well as the papers of the vehicle papers and on his voluntarily production of such documents and the offending vehicle. Police seized them by preparing proper seizure list. He lodged no objection to any of the authority. Suddenly, after receiving the summons he appeared and filed the written statement denying the involvement of the vehicle. Moreover, after such filing of the WS he never appeared to contest the matter. Thus, in my view the plea of non-involvement of the alleged offending vehicle in this case has no leg to stand upon. The observation of the learned tribunal appears to be erroneous.

16. In my view, the claimants are entitled to get the just and proper

compensation.

17. The evidence of OPW-1 and OPW-2 suggests that the driver of the offending vehicle had no valid licence at the time of accident; on that score, the Insurance Company has no liability to pay the compensation.

18. By virtue of the decision of Hon'ble Apex Court passed in Swaran Singh, as the offending vehicle was well covered under the policy of the Insurance Company at the time of accident, the Insurance Company may be directed to pay the compensation and intern there are at liberty to recover the same amount from the owner.

19. In considering the quantum of compensation of this case it appears that the deceased was a labour and no proof of income has been filed before the learned tribunal. The deceased was died in the year 2013. So, in this case, the notional income of the deceased should be Rs. 4,000/- per month. The claimants are also entitled to get the future prospects which would be 25% to the establish income of the deceased. Considering his age within the age group of 40-50 years at the time of accident. The claimants are also entitled to get the general damages according to the observation of the Hon'ble Supreme Court passed in Pranay Sethi.

20. The just and proper compensation of this case is calculated as hereunder:

Calculation of Compensation

i) Income

:Rs.4,000/-

ii) Annual Income (Rs.4,000 X 12)

:Rs.48,000/-

iii) Add: 25% future prospects

:Rs. 12,000/-

:Rs.60,000/-

iv) Less: 1/4th deduction towards personal Exp. (No. of claimant-6)

:Rs. 15,000/-

:Rs.45,000/-

v) Multiplier 13 (age 43 years) (Rs.48,000 X 13)

:Rs.5,85,000/-

vi) Add General Damages

:Rs.70,000/-

:Rs.6,55,000/-

21. The just and proper compensation of this case come to Rs. 6,55,000/-. The award shall carry interest @ 6% per annum from the date of filing of the claim application. The Insurance Company is directed to pay the compensation along with interest @ 6% per annum from the date of filing of the claim application within six weeks through the office of the learned Registrar General, High Court, Calcutta. On such deposit the office of the learned Registrar General, High Court, Calcutta shall disburse the same amount in favour of the claimants/appellants vide six equal account payee cheques on usual terms and conditions.

22. The payment of compensation is subject to the ascertainment of payment of deficit Court Fees, if any.

23. After such payment the Insurance Company shall recover the awarded amount from the owner according to the procedure laid down by the Hon'ble Supreme Court in Swaran Singh.

24. The office is directed to return the LCR immediately.

25. The learned tribunal shall act upon the certified copy of this order to receive the deficit Court Fees, if any.

26. The instant FMA 581 of 2023 is disposed of with the above observation.

27. All connected applications, if any, stand disposed of.

28. Interim orders, if any, stand vacated.

29. Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.