
(2009) 02 CAL CK 0017
In the Calcutta High Court
Case No : F.M.A. No. 1024 of 2007

Dipa Ganguly and Another	Vs	APPELLANT
New India Assurance Company Limited and Another		RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 147, 147(1), 158, 163A
Penal Code, 1860 (IPC) — Section 302

Citation : AIR 2009 Cal 122

Hon'ble Judges : Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Santosh Kumar Das, for the Appellant; Manish Ranjan Poddar for the Insurance Company, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—This appeal is at the instance of the claimants in a proceeding u/s 166 of the Motor Vehicles Act and is directed against an award dated 24th August, 2006 passed by the learned Additional District Judge, Thirteenth Court, Alipore, and the Motor Accident Claims Tribunal, in M.A.C. Case No.363 of 2005 thereby dismissing the said application on the sole ground that the victim died due to murder committed by the driver of the offending vehicle and as such, the death did not arise out of an accident. It is, however, admitted that with the aid of and using the vehicle insured by the Insurance Company, the driver of the offending vehicle committed the act in a public highway.

2. Being dissatisfied, the claimants have come up with the present appeal.

3. It appears from record that the victim was a Sergeant of the Kolkata Police aged 31 years while doing his public duty as such, and his gross monthly income was Rs.8,986/- as appearing from Exbt.1 (b).

4. According to the claimants, due to rash and negligent driving on the part of a driver of a taxi, insured by the New India Assurance Company Limited, the victim

died.

5. The owner of the vehicle appeared in the proceeding by presenting a Vakalatnama but ultimately, did not contest. The proceeding was contested only by the Insurance Company after taking leave u/s 170 of the Motor Vehicles Act and it was contended that a case u/s 302 of the Indian Penal Code having been initiated against the driver of the taxi alleging murder of the victim, the case was not one arising out of an accidental death and as such, the Insurance Company was not liable to pay any compensation.

6. At the time of hearing of the application, three witnesses were examined on behalf of the claimants in support of the claim while none appeared to give evidence controverting the allegations of the claimants.

7. As pointed out earlier, the learned Tribunal below by the order impugned herein arrived at the conclusion that the victim unquestionably died due to injury caused by the taxi concerned but the taxi driver committed such act with an intention to murder the victim and, therefore, this was not a case of death arising out of motor accident. In support of such conclusion, the learned Tribunal below took note of the fact that the charge-sheet had been filed on the allegation of murder and it has been committed to the Court of Sessions.

8. Being dissatisfied, the claimants have come up with the present appeal.

9. Mr. Das, the learned Advocate appearing on behalf of the appellants, strenuously contended before us that even if it is assumed for the sake of argument that the driver of the vehicle, with the intention of murdering the victim, caused the accident resulting in death of the victim, the owner of the vehicle is vicariously liable and consequently, the Insurance Company, is bound to indemnify the compensation payable. According to Mr. Das, in order to maintain an application for compensation u/s 166 of the Act all that is necessary is that by involvement of a motor vehicle in a public place without contributory negligence on the part of the victim, the death or bodily injury should occur. According to Mr. Das, in order to bind the Insurance Company to make payment of compensation, in addition to the aforesaid fact, it must further be established that the vehicle was being driven by a person having valid driving licence with the consent of the owner. Mr. Das contends that the aforesaid ingredients have been established in the facts of the present case. He, therefore, prays for setting aside the order passed by the learned Tribunal below.

10. Mr. Poddar, the learned Advocate appearing on behalf of the Insurance Company, has, however, opposed the aforesaid contention of Mr. Das and has contended that if it was a case of murder by the driver and in the process the vehicle was used, his client was not liable to pay compensation and the Tribunal below rightly rejected such application. In support of such contention, he relies upon the decision of the Patna High Court in the case of Ranju Rani alias Ranju Devi & Ors. v. Branch Manager, New India Assurance Company Ltd., reported in 2003(1) TAC 229 (Pat) and that of the Supreme Court in the case of Smt. Rita

Devi & Ors. v. New India Assurance Company Ltd. & Anr., reported in 2000(2) TAC 213 (SC). He, therefore, prays for dismissal of the present appeal.

11. Therefore, the first question that arises for determination in this appeal is even if it is assumed for the sake of argument that the driver of the taxi concerned, insured by the Insurance Company, with the intention of committing murder, deliberately ran over the victim in the open public place, whether the heirs of the victim will be entitled to get compensation in terms of Section 166 of the Motor Vehicles Act notwithstanding the fact that the death occurred not for the negligent act of the driver but for his conscious operation of killing the victim.

12. In order to appreciate the said question it will be profitable to refer to the following provisions of the Motor Vehicles Act, 1988:-

"147. Requirements of policies and limits of liability.-(1) In order to comply with the requirements of this chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person [including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.-For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a

public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:-

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

165. Claims Tribunals.-(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation.-For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for

compensation u/s 140 and Section 163-A.

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he-

(a) is, or has been, a Judge of High Court, or

(b) is, or has been, a District Judge, or

(c) is qualified for appointment as a Judge of a High Court or as a District Judge.

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.

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 may be made-

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

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

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation u/s 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act.

13. After going through the aforesaid provisions of the Act, we find that the Claims Tribunals are constituted for the purpose of adjudicating the claim for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. As provided in Section 147 of the Act, the liability of the Insurance Company is extended, inter alia, against any liability which may be incurred by an insured in respect of death of or bodily injury to any person caused by or arising out of the use of the vehicle insured in a public place.

14. Therefore, in order to maintain an application u/s 166 of the Act, it must be proved that the liability to pay compensation arose out of an accident caused by or use of a vehicle in a public place.

15. In the Act, the word "accident" has not been defined. Therefore, we are to interpret the said word as used in the context of the provisions of the Act. The word "accident" according to Oxford Advanced Learner's Dictionary of Current English, Fourth Edition, by A.S. Hornby means "events that happens unexpectedly and causes damages, injury, etc; chance: fortune;" According to the Oxford Universal Dictionary Illustrated, Revised and edited by C.T. Onions, Third Edition, the said word means, an event, esp. an unforeseen contingency; a disaster: chance; fortune; an unfavourable symptom; a casual appearance or effect;

16. The learned Tribunal below proceeded on the assumption that if the event occurs due to an intended act of somebody, the same cannot be described as an accident and in this case, since, the charge-sheet u/s 302 of the Indian Penal Code has been given, it is not a mere accident but intentional act of the murderer. In other words, the Tribunal was of the opinion that in order to invoke the jurisdiction of the Motor Vehicles Tribunal, the incident resulting in injury or death must arise of an act of negligence but not from a positive intended act.

17. We are, however, of the opinion that an accident within the meaning of the Act may occur not only from the negligent act but also from positive or intended act. Our aforesaid view finds support from the explanation added to Section 147(1) of the Act according to which the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

18. Therefore, according to the said explanation, the accident within the meaning of the Act may cause either due to "omission" or "an act" of a person and in our opinion, such omission or the act need not be unintentional as would appear from the fact that in the proceedings under Sections 140, 163A or 163B of the Act, the Tribunal is not required to consider whether there was rash or negligent driving on the part of the driver of the offending vehicle or whether there was

contributory negligence on the part of the victim. However, in order to invoke Section 166 of the Act, accident must not cause due to the self-incurred act on the part of the victim. But if the driver of the offending vehicle with the intention of killing the victim deliberately runs over the victim, the case will attract the provision of Section 166. In this connection, we may profitably refer to the following observations of the Supreme Court in the case of Regional Director, E.S.I. Corporation v. Fransis de Costa, reported in 1993 (suppl) 4 SCC 100 while dealing with the undefined word "accident" in the context of Employee's State Insurance Act:-

"Accident has not been defined under the Act. The popular and ordinary sense of the word "accident" means the mishap or an untoward happening not expected and designed to have an occurrence is an accident. It must be regarded as an accident, from the point of view of the workman who suffers from it, that its occurrence is unexpected and without design on his part, although either intentionally caused by the author of the act or otherwise. It may also arise in diverse forms and not capable of precise definition. The common factor is somewhat concrete happening at a definite point of time and an injury or incapacity results from such happening.

(Emphasis supplied by us).

19. We are, therefore, of the view that in order to maintain an application u/s 166 of the Act, from the point of view of the victim who suffers from it, the event, in order to be accident, must be unexpected and without design on his part, although it might be caused intentionally by the author of the act. For the purpose of granting relief under Sections 140 or 163A of the Act or in the cases under the category of "hit and run", however, even the intentional act of the victim resulting in the accident is inconsequential.

20. We now propose to deal with the decisions cited by the Learned Counsel for the Insurance Company.

21. In the case of Ranju Rani v. Branch Manager, New India Insurance Company Ltd. (supra), the victim while travelling in a Motorcycle was shot at due to animosity between the victim and the accused and as a result of such injury he died. In that context, the Patna High Court while dealing with an application u/s 163A of the Act was of the opinion that the death did not arise out of an accident arising out of use of a motor vehicle but was an outright murder through bullet injury. In our view, it was rightly pointed out that the death had no connection with use of the motor vehicle but the death occurred due to firing. We quite appreciate that simply because a person has died while travelling in a motor vehicle, such fact by itself cannot bring the case within the jurisdiction of the Tribunal unless it is shown that the use of motor vehicle is the cause of injury or the death resulting from the negligence or act of somebody done in a public place. Therefore, the said decision of the Patna High Court is not applicable in the facts of the present case.

22. The case of Rita Devi & Ors. (supra), rather goes against the Insurance Company. In that case u/s 163A of the Act, an auto? rickshaw driver was murdered in the process of theft of the said auto ?rickshaw. In that context, the Supreme Court came to the following conclusion:-

"A conjoint reading of the above two "sub-clauses of Section 163-A shows that a victim or his heirs are entitled to claim from the owner/Insurance Company a compensation for death or permanent disablement suffered due to accident arising out of the use of the motor vehicle (emphasis supplied) without having to prove wrongful act or neglect or default of anyone. Thus, it is clear, if it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of motor vehicle then they will be entitled for payment of compensation. In the present case, the contention of the Insurance Company which was accepted by the High Court is that the death of the deceased (Dasarath Singh) was not caused by an accident arising out of the use of motor vehicle. Therefore, we will have to examine the actual legal import of the words "death due to accident arising out of the use of motor vehicle"."

"Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto rickshaw."

23. In our opinion, the said decision rather supports the case of the appellants. In the case before us, the Tribunal by relying upon the contents of the FIR pointed out that the victim as a traffic sergeant having charged the driver of the taxi concerned u/s 184 of the Act for traffic-?rule violation sometime earlier on the same day, the driver being enraged, knocked the victim down resulting in his death. If in the process of stealing of an auto rickshaw a murder of the driver is committed, such death is held to be "arising out of use of the motor vehicle in public place", on the said analogy, killing of a traffic sergeant by the driver of a motor vehicle being infuriated by the booking of the said very vehicle for violation of the traffic-rules earlier on the selfsame day, by running him over with the use of the said vehicle is on a better footing than the facts leading to murder

in the case of Rita Devi & Ors. In this case, the taxi itself is the root of trouble and is also the tool used for killing the victim while in the case of Rita Devi & Ors. (supra), the auto-rickshaw was the object of felony but not the instrument used in killing the driver.

24. We, therefore, find that the decisions cited by the Learned Counsel for the Insurance Company do not support his client in anyway.

25. We, consequently, hold that the, Tribunal below refused to exercise jurisdiction vested in it by law on the erroneous ground that the incident occurred due to the intentional act on the part of the driver of the offending vehicle which did not amount to an accident within the meaning of the Act.

26. Since there is no dispute as regards the age of the victim and his monthly income from the service of the Kolkata Police as a traffic sergeant, instead of remanding the matter back to the Tribunal for the purpose of calculation of the amount of compensation, we decided to adjudicate the question on the basis of materials-on-record and consequently, heard the Learned Counsel for the parties in exercise of our power conferred under Order XLI Rule 24 of the Code of Civil Procedure.

27. It. appears from record that the victim at the time of accident used to earn Rs.8,986/- as his gross salary. His basic pay was Rs. 5,600/- and in addition to the said amount, he used to get Rs. 2,296/- as dearness allowance, Rs. 840/- as house rent allowance, Rs.100/- as medical allowance, and Rs. 150/- as unconditional convention allowance. Out of the said sum, an amount of Rs. 1,000/- was deducted towards general provident fund, Rs. 40/- towards general insurance and Rs.90/- as professional tax. We cannot shut our eyes to the fact that he had an assured career and prospect and in normal course he would at least become an Inspector or could even rise to the position of an Assistant Commissioner of the Kolkata Police at the time-of his retirement after 29 years of further service.

28. In this connection, we may appropriately refer to the recent decision of the Supreme Court in the case of Oriental Insurance Company Ltd. Vs. Jashuben and Others, where the Apex Court was dealing with a case of death an Assistant working in the Oil and Natural Gas Commission who died at the age of 35 years. In that case, the Bench after taking into consideration all the earlier decisions of the Apex Court concerning death of an employee having stable service and prospect in the future, for the purpose of assessing the compensation, decided to arrive at a notional figure of income by multiplying the amount of Basic Pay and Dearness Allowance of the employee at the time of accident by two and adding to the said amount, the children education allowance for two children and children bus fares which the victim used to get in that case. The Supreme Court, thereafter, deducted one-third of that notional figure as the personal expenses of the victim and by using the multiplier of 13 on the two-third of such notional income, arrived at the figure of the compensation. The following relevant

observations of the Supreme Court are quoted below:-

"The loss of dependency, in our opinion, should be calculated on the basis as if the basic pay of the deceased was Rs.3,295/- x 2 = Rs. 6,590/-, thereto should be added 18.5% dearness allowance which comes to Rs.1,219/-, child education allowance for two children @ Rs. 240/- x 2 = Rs. 480/- and child bus fair Rs.160/- x 2 = Rs.320/- ?should have been added which comes to Rs.8,609/-. From the aforementioned figure 1/3rd should be deducted. After deduction, the amount of income comes to Rs.5,738/- per month [Rs. 8,609/- Rs.2871/-] and the amount of compensation should be determined by adopting the multiplier of 13, which comes to Rs.8,95,128/-."

29. Applying the said principle to the facts of the present case, if we simply double the amount of Basic Salary and the Dearness Allowance, the victim used to get at the time of death without taking into consideration the other allowances payable to him, the notional figure comes to Rs. 8,178/- x 2 = Rs.16,356/- Two-third of such figure is equivalent to Rs.10,904/-. In this case, the victim being aged 31 years and odd, we should apply the multiplier of 14 and thus, the amount of compensation would come to the figure of Rs. 14,12,656/-. The widow of the victim, viz. Dipa Ganguly being aged 25 years at the time of accident as it appears from her statement made at the time of trial, she should get Rs.10,00,000/- and the balance Rs.4,12,656/- should be paid to Sm. Tukurani Ganguly, the mother of the victim who was aged 61 years and odd as recorded in her voter identity card exhibited before the Tribunal. The claimants should also be entitled to get interest on the awarded amount at the rate of 8% per annum from the date of filing the application till actual deposit of the amount.

30. The Insurance Company is directed to deposit the amount within one month from today before the Tribunal below by issuing two separate cheques of the amount indicated above with interest at the rate of 8% per annum from the date of filing the application till the actual deposit of the amount in the names of the widow and the mother of the victim.

31. The appeal is, thus, allowed. The award impugned is set aside and we pass an award of Rs. 14,12,656/- with interest at the rate of 8% per annum from the date of filing the application till actual deposit payable by the Insurance Company in the manner indicated above.

Rudrendra Nath Banerjee, J.

32. I agree.