(2017) 03 CAL CK 0051

In the Calcutta High Court

Case No : 8841 of 2015?in?FMAT 672 of 2015

National Insurance Co. Ltd. APPELLANT

Vs

Smt. Jyotsna Gouri & Ors. RESPONDENT

Date of Decision : 15-03-2017

Acts Referred:

Indian Penal Code, 1860, Section 427, Section 304A, Section 365, Section 338, Section 337 - Mischief causing damage to the amoun

Citation : (2017) 03 CAL CK 0051

Hon'ble Judges : Dipankar Datta, Sahidullah Munshi

Bench : DIVISION BENCH

Advocate : Parimal Kumar Pahari, Krishanu Banik, Abhijit Singha Roy

Judgement

1. Upon the death of Gadadhar Gouri (hereafter the victim) in a motor accident, his widow Smt. Jyotsna Gouri and her minor daughter approached the Motor Accident Claims Tribunal, Tamluk on 29th August, 2012 with an application under Section 166 of the Motor Vehicles Act, 1988 (hereafter the Act) seeking compensation in a sum of Rs.11 lakh.

2. It was pleaded in the claim application that the victim, aged 28 years, was employed as a helper of a bus bearing registration no. WB-29A/0881 (hereafter the said bus) owned by a Farida Begum. On 30th July, 2012 at about 9.00 a.m., the said bus was parked near Rajgoda on the morrum portion of NH-41. The victim was in the process of replacing a flat tyre of the said bus when a bus bearing registration no. WB- 29/3038 (hereafter the offending bus), coming from Mechheda side, dashed the victim as well as the said bus with great force. Because of the impact, the victim suffered severe multiple injuries on his body, especially the head. He was immediately taken to Purba Medinipur District Hospital at Tamluk where he passed away after some treatment.

3. The owner of the offending vehicle and its insurer were impleaded as opposite

parties 1 and 2 respectively, in the claim application.

4. The claim application was contested by the National Insurance Company Ltd. (hereafter the insurance company), insurer of the offending bus. The essence of the defence case, as pleaded in the several written statements filed by it, appears to be this. The offending bus was dashed from behind by another bus bearing registration no. WB- 39A/0913 owned by a state transport corporation (hereafter the STC bus), which was being driven in a rash and negligent manner and in extreme high speed. Because of the impact, the driver of the offending bus lost control and dashed against the back portion of the said bus as a consequence whereof all the buses were more or less damaged. According to the insurance company, it was claimed that the liability ought to be foisted not on it but on the insurer of the STC bus.

5. At the trial, the widow of the victim deposed as PW-1. An eye-witness, Sanuyar Ali, and the said Farida Begum deposed as PWs 2 and 3 respectively. All of them supported the pleaded case in the claim application that because of rash and negligent driving of the offending bus, the accident occurred resulting in the victim meeting his tragic end.

6. PW-2, the eye-witness and the manager of the said bus, specifically deposed that while the said bus was on its way from Mechheda to Haldia, at Radhamoni Rail Bridge a rear tyre thereof got punctured. In course of cross-examination, he clarified that the inside (rear tyre) on the right side of the said bus suffered puncture. The victim, employed as the helper of the said bus, was replacing the punctured tyre when the offending bus came from behind and dashed the said bus on the rear side. Thereafter, the STC bus also came from the back side and dashed the offending bus. As a result thereof, the victim sustained severe injury whereupon he was taken to the hospital and ultimately died there. The witness denied the suggestion that the STC bus dashed the offending bus for which the accident occurred. He further denied the suggestion that the STC bus was responsible for the accident. He also denied that the offending bus was not at all responsible for the accident. On a reading of the answers given in course of cross-examination, it is clear as crystal that the witness stood by his version in examination-in-chief.

7. The employer of the victim, PW-3, deposed that she used to pay the victim Rs.7,500/- per month for rendering service as the helper of the said bus and also that he died in an accident. She identified the certificate given by her on 15th May, 2014 (Exhibit-8) issued by her to the effect that the victim used to receive salary of Rs.7,500/- per month. She also stood by her version while answering questions in course of crossexamination.

8. On behalf of the insurance company, two witnesses led evidence. OPW-1 was an Assistant Manager of the insurance company, while OPW-2 was the driver of the offending bus. OPW-1 deposed that he had no personal knowledge about the accident but reiterated that the offending bus was not responsible for the

accident. OPW-2 admitted having fled away from the place of occurrence after the accident. He, however, said that the bus in front, which was a bus of Haldia-Mechheda route, "was becoming slow and for that I (he) also became slow and just at that time the SBSTC bus dashed my (his) vehicle from the back side".

9. Having looked at the evidence on record and on hearing the learned advocates appearing for the parties, the tribunal pronounced its award on 15th December, 2014. The tribunal accepted the claim case and held the offending bus to be solely responsible for the accident that took away the life of the victim. It, thus, awarded compensation in a sum of Rs.5,62,600/-, and also awarded Rs.1,00,000/-, Rs.25,000/- and Rs.2,500/- on account of loss of consortium, funeral expenses and loss of estate, respectively, totaling to Rs.6,89,100/- with interest @ 6% per annum from the date of filing of the claim application.

10. Aggrieved by the award, the insurance company presented FMAT No.672 of 2015 under Section 173 of the Act. The award has been assailed on the ground that the tribunal erroneously held the offending bus to be solely responsible for the accident.

11. The claimants before the tribunal upon service of notice of the appeal preferred a cross-objection, COT No.12 of 2016. In such cross-objection, the award of the tribunal has been attacked on the ground that the future prospect of the victim has not been considered and also that interest @ 9% per annum should have been awarded.

12. Appearing in support of the appeal, Mr. Pahari, learned advocate for the insurance company tried to impress upon us that the offending bus as well as the STC bus having been involved in the accident leading to death of the victim, the entire liability of bearing compensation should not have been foisted upon the insurance company by the tribunal. He submitted that unless the STC bus had dashed the offending bus from behind, the driver of the offending bus would not have lost control and dashed the victim. This, according to him, the tribunal did not consider in the proper perspective and hence returned a finding which is indefensible. It was also contended by him that the sum awarded as compensation by the tribunal was not determined in accordance with the principles or guidelines laid down by the Supreme Court in its various decisions. He, therefore, prayed for modification of the award.

13. Per contra, Mr. Krishanu Banik, learned advocate representing the claimants supported the award by submitting that the tribunal did not commit any error in holding the offending bus as solely responsible for the accident. According to him, the eye-witness account was sufficient to enable the tribunal to return the finding it did. Rebutting the submission of Mr. Pahari that compensation should have been apportioned, Mr. Banik relied on the decision of the Supreme Court reported in 2014 ACJ 704 (Pawan Kumar and another v. Harkishan Dass Mohan Lal and others) where it was held that in a case of composite negligence, there would be no need for the High Court to apportion liability for accident between

two drivers and that the drivers/owners of both the vehicles being jointly and severally liable to pay entire compensation awarded, the cliamants are entitled to enforce the award against both or any of them.

14. In support of the cross-objection, Mr. Banik cited the decision of the Supreme Court reported in 2014 ACJ 1261 (Smt. Savita v. Bindar Singh) on the point of failure on the part of the tribunal to allow 30% increase for future prospects. He also urged that in view of the decision of the Supreme Court reported in (2015) 3 SCC 590 (Neeta v. Maharashtra State Road Transport Corporation), interest @ 9% on the compensation determined by the tribunal ought to be awarded by us.

15. We have heard Mr. Pahari and Mr. Banik at considerable length and are of the clear opinion that the tribunal did not commit any error in returning the finding that the offending bus was solely responsible for the accident, which resulted in the premature accidental death of the victim. The version of the eye-witness has to be given credence, more particularly because of the consistency revealed from the versions in course of examination-in-chief and cross-examination. At the same time, we find it difficult to accept the version of the driver of the offending bus quoted in paragraph 8 above. His account that the said bus was moving slowly is clearly at variance with the eyewitness account that the said bus was stationary and the victim was in the midst of replacing a flat tyre (inner right at the rear) at the time of impact. We see no reason to disbelieve the eye-witness account, which is more trustworthy. More importantly, the OPW-2 himself admitted having fled from the accident spot. His culpability, therefore, cannot be ignored. It also appears that on completion of investigation of Tamluk P.S. FIR No.365 of 2012 dated 30th July 2012 wherein the driver of the STC bus was named as an accused, the police report (charge-sheet) filed under Section 173(2), Criminal Procedure Code under Sections 365/337/338/304A/427, Indian Penal Code reveals OPW-2 being the charge-sheeted accused for his rash and negligent driving of the offending bus resulting in the death of the victim. The tribunal was, therefore, justified in holding that the offending bus was solely responsible for the death of the victim. Question of apportionment of liability to pay compensation does not, therefore, arise on facts and in the circumstances.

16. The tribunal, it also appears, disbelieved the certificate (Exhibit-8) for reasons indicated in the award. The claimants have not challenged such finding in the crossobjection and, therefore, it can safely be concluded that the tribunal did not commit any error in determining compensation by not treating Rs.7,500/- as the monthly salary the victim used to receive from PW-3 while working as a helper of the said bus. In determining the sum payable as compensation, the tribunal appears to have worked out Rs.3,000/- per month as the notional income of the victim together with 30% increase on account of future prospects, and applied the multiplier of 18 to arrive at the sum of Rs.8,42,000/- as compensation. From such sum, 1/3rd was deducted towards the expenses likely to be incurred by the victim for maintaining himself had he been alive. The point that future prospect has not been considered, as aruged by Mr. Banik does not,

therefore, commend acceptance.

17. What remains is the point of interest to be awarded on the sum determined as compensation. The tribunal awarded interest @ 6% per annum. In view of the decision of the Supreme Court reported in Neeta (supra), we hold that the sum determined as compensation would carry interest @ 9% per annum from the date of the claim application.

18. Since no application under section 140 of the Act had been filed by the claimants, the sum of Rs.6,89,100/- together with interest @ 9% per annum from the date of presentation of the claim application shall be paid by the insurance company by an account payee cheque in the name of the claimant no.1, which shall be delivered to the office of the tribunal within a month from date. After the cheque is received by the office of the tribunal, the claimants shall be informed and after maintaining official formalities the cheque shall be handed over to the claimant no.1. The Registrar General of this Court shall refund Rs.25,000/- being the statutory deposit after being satisfied that the entire amount together with interest in terms of this judgment and order has been deposited by the insurance company with the tribunal.

19. In the result F.M.A.T. 672 of 2015 stands dismissed together with C.A.N. 8841 of 2015 being the application for stay. C.O.T. 12 of 2106 stands disposed of.

20. The parties shall, however, bear their own costs.

21. Photocopy of this judgment and order, duly counter-signed by the Assistant Court Officer, shall be retained with the records of COT 12 of 2016. Urgent photostat certified copy of this judgment and order, if applied, may be furnished to the applicant at an early date.

