
(2017) 01 CAL CK 0059
In the Calcutta High Court
Case No : FMA No. 23 of 2006

Putul Baski

APPELLANT

Vs

National Insurance Company Ltd.

RESPONDENT

Date of Decision : 27-01-2017

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2017) AAC 1223 : (2017) 2 ACC 316 : (2017) 1 CalLJ 353

Hon'ble Judges : Dipankar Datta and Sahidullah Munshi, JJ.

Bench : Division Bench

Advocate : Mr. Krishanu Banik, Advocate, for the Appellants; Mr. Parimal Kumar Pahari, Advocate, for the Respondent No. 1

Final Decision : Allowed

Judgement

Dipankar Datta, J.—Aggrieved by rejection of their claim petition (filed on March 17, 2004 and registered as M.A.C. Case No. 55/148 of 2004) under section 163A of the Motor Vehicles Act, 1988 (hereafter the Act) by the Motor Accident Claims Tribunal, Burdwan (Fast Track 1st Court, Burdwan) vide award dated July 28, 2005, the claimants (widow, major son and minor son of the victim) have preferred this appeal under section 173 thereof.

2. The claim petition discloses that the victim on February 20, 2004 was, inter alia, an occupant of a maruti omni, bearing registration no. WB-54B/4464 (hereafter the maruti omni). While it was travelling towards Illambazar, near Beldanga village on the Panagarh-Illambazar road, within the jurisdiction of Kanksa Police Station in the district of Burdwan, there was a head-on collision with a dumper, bearing registration no. WB-37A/3302 (hereafter the dumper). The dumper, allegedly, was being driven rashly and negligently and came from the opposite direction in high speed. As a result thereof, the maruti omni was severely damaged and three occupants thereof, including the victim, succumbed to their injuries after being shifted to nearby hospitals. The claimants pleaded that the victim, aged about 58 years, was a labourer earning Rs.1,800/- per

month. It was also pleaded that since the victim was the occupant of the maruti omni, which was involved in the accident resulting in the victim's death, the claimants were entitled to compensation of Rs.1,00,000/- to be paid by the owner and the insurer thereof, either jointly or severally. The owner of the maruti omni was impleaded as the first respondent in the claim petition while the owner of the dumper was impleaded as the second respondent therein. National Insurance Company Ltd., the insurer of both the maruti omni as well as the dumper, was impleaded as the third respondent.

3. While the owner of the maruti omni did not contest the claim, the owner of the dumper filed a written statement but did not turn up subsequently for contest. The claim was vehemently contested by the insurer upon obtaining leave in terms of section 170 of the Act. In defence, it was pleaded in the written statement that the victim was more than 60 years old at the time of accident and, therefore, could not have been employed as a labourer. It was also pleaded that he had no income and that he was not travelling in the maruti omni, as claimed.

4. In support of the claim, the claimants examined the victim's major son being PW- 1, and two other witnesses who claimed to be travelling along with the victim in the maruti omni on the fateful day, being PWs 2 and 3. PW-1 supported the case pleaded in the claim petition that the victim was about 58 years of age on the date of accident and being a labourer, had an earning of Rs.1,800/- per month. PW-1 also stated in course of cross-examination that the victim was "going to dig soil for Tarashankar Ghosh by the car which car belonged to same Tarashankar Ghosh". PWs 2 and 3 duly deposed that they were illiterates, co-occupants of the maruti omni along with the victim and eye witnesses to the accident of which the victim was a casualty.

5. The tribunal in its award dated July 28, 2005 returned findings that the claimants had failed to prove that the victim had died as a result of the collision between the maruti omni and the dumper and, accordingly, dismissed the claim on contest against the insurer and ex parte against the owners of the maruti omni and the dumper.

6. Mr. Banik, learned advocate for the claimants/appellants, contended that the tribunal committed gross error in disbelieving the claim on the ground that PW-1 had, in course of cross-examination, mentioned the registration no. of the maruti omni as WB-55B/4466 instead of WB-54B/4464 and also that the police papers did not reveal that the father of PW-1 was travelling in the maruti omni and a victim of the accident.

7. Reliance was placed by Mr. Banik on the decisions of Hon''ble Division Benches of this Court and of the Madhya Pradesh High Court reported in I (2008) ACC 512 (DB) (Radha Rani Dey & ors. v. National Insurance Company Ltd. & anr.) and 1999 (1) T.A.C. 726 (Ramesh Kumar v. Shambhu Singh & ors.), respectively. The former report was relied on for the proposition that too technical a view ought

not to be taken in case where due to the slip of tongue a minor discrepancy arises, for, rejection of a claim petition on such ground only would cause injustice to the claimants. In the decision in Ramesh Kumar (supra), it was held that villagers are bound to commit mistakes in respect of dates getting confused by the atmosphere of the Court while answering questions put to them by advocates appearing for the parties and since the villagers are not accustomed to city life and the atmosphere of the Court precincts, they get confused and bewildered, and the Court, faced with such lot of witnesses, has to be cautious in understanding their contentions and submissions.

8. It has been also contended by Mr. Banik that there was no evidence on record to demolish the evidence tendered by PWs 2 and 3 to the effect that the victim was travelling with them in the maruti omni at the time of the accident and having regard to the object and purpose of section 163A of the Act, the tribunal ought to have granted compensation as prayed for.

9. The appeal has been opposed by Mr. Pahari, learned advocate for the insurer, respondent no. 1. He contended that there was absence of materials to indicate that the victim died in the accident. According to him, PW-1 could not mention the correct registration no. of the maruti omni of which the victim was allegedly a passenger. It was further contended that PW-2 could not say the registration nos. of the vehicles which were involved in the accident; he could not also say the date and time of his marriage. It was, therefore, doubtful as to whether he was an occupant of the maruti omni or not and the tribunal by not believing his version, did not commit any illegality. Insofar as PW-3 is concerned, Mr. Pahari submitted that he failed to say on which date and at what time his elder son was born. Having regard to the fact that PW-3 had appeared in Court on the request of the widow of the victim, it was clear that he is not a disinterested witness. Finally, it was contended that neither the name of PW-2 nor of PW-3 appears as occupants of the maruti omni in the FIR and the police report (charge-sheet), and the tribunal did not commit any error in rejecting the claim.

10. We have heard learned advocates for the parties and considered the materials in the records of the tribunal, more particularly the police papers.

11. In the police report submitted before the relevant magistrate under section 173(2) of the Code of Criminal Procedure, the driver of the dumper was shown as the charge-sheeted accused. The listed witnesses, sought to be examined to prove the offence under sections 279, 337, 338, 304A, 427 of the Indian Penal Code against the charged driver, included PW-2 and PW-3 at sl. nos. 13 and 12 of the list of witnesses. The charge-sheet further reveals that the investigation was undertaken on the basis of a written complaint of one Subhas Lohar of Beldanga, an eye witness. The FIR did suggest that the dumper and the maruti omni were involved in the accident. The FIR also reveals that the occupants of the maruti omni, who suffered injuries, were shifted to a nearby primary health centre. Obviously, the informant could not have named the victim in the FIR as one who suffered injury without knowing who he was. A surathal report appears

to have been prepared in connection with Burdwan P. S. U/D Case No. 143/2004 dated February 27, 2004. Such report reveals the version of PW-1 to the effect that the victim upon suffering injury in a recent road accident involving a motor car and a lorry was taken to Bidhannagar Hospital and shifted to Burdwan Medical College on February 25, 2004 since his condition worsened, where he passed away on February 27, 2004. The report of post-mortem conducted on the cadaver of the victim reveals that he died of the effects of injuries noted in such report, antemortem in nature. The autopsy surgeon, attached to the department of Forensic and State Medicine, Burdwan Medical College, has given a vivid description of the nature of injuries suffered by the victim which could be suffered if such person were involved in a road accident.

12. Law is well settled that in respect of claims arising out of motor accidents, the claimants are required merely to establish their case on the touchstone of preponderance of probability and the standard of proof beyond reasonable doubt is not applied.

13. In view of the police papers referred to above coupled with the statements of PWs 2 and 3 that they are illiterates and hence unable to identify the vehicles involved in the road accident by their registration nos. but were travelling along with the victim when the accident occurred, which version remains unshaken even after thorough cross-examination by the insurer and not contested by the owner of the maruti omni, the same lead us to the irresistible conclusion that the victim died as a result of a road accident while travelling in the maruti omni and the claim petition having been filed under section 163A of the Act, it was not required for the claimants to prove that the maruti omni was being driven in a rash and negligent manner. The tribunal erred in not regarding the statements of PWs 2 and 3 as correct. That apart, the tribunal also fell in gross error in taking a too technical view by giving much emphasis on the mistake committed by PW-1 in failing to say the correct registration no. of the maruti omni. Instead of WB-54B/4464 PW-1 had said WB-55B/4466, which is considered to be a minor error and could have been easily overlooked in view of the decisions cited by Mr. Banik.

14. Rejection of the claim petition by the tribunal, thus, cannot be sustained and hence the impugned award stands set aside. The appeal stands allowed, without order for costs, subject to what follows hereafter.

15. We find that the tribunal while dismissing the claim has determined the amount of compensation which the claimants would have been entitled to, had they been successful in proving the claim. The determination appears to us to be correct and instead of embarking on an exercise in that regard, we order that the claimants shall be entitled to Rs.89,500/- on account of compensation together with interest @ 9% p.a. from the date of filing of the claim petition till payment is effected. Let such payment be released within two months.

16. Should there be a failure to release payment within two months, as aforesaid, the principal and the interest component shall carry further interest @

2% till actual payment.

17. Urgent photostat certified copy of this judgment and order, if applied, may be furnished to the applicant at an early date.

Sahidullah Munshi, J. : I agree.