
(2023) 08 CAL CK 0061

In the Calcutta High Court

Case No : FMA No. 958 Of 2011 , IA No.:CAN/1/2012, 3/2017, 4/2023 (Old No.:CAN/1539/2012, 3132/2017)

Rinku Singh & Ors.

APPELLANT

Vs

New India Assurance Co. Ltd. & Ors.

RESPONDENT

Date of Decision : 18-08-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 170
Code Of Criminal Procedure, 1973 — Section 161

Citation : (2023) 08 CAL CK 0061

Hon'ble Judges : Subhendu Samanta, J

Bench : Single Bench

Advocate : Krishanu Banik, Rajesh Singh

Final Decision : Disposed Of

Judgement

Subhendu Samanta, J

In Ref: CAN 4 of 2023

This is an application for amendment in respect of name and address of the appellants and also for recording the death of appellant No. 4. Heard the learned advocate, perused. The application being CAN 4 of 2023 is disposed of with a direction that the name and address of minor appellant No. 2 of the instant appeal be amended according to the table of paragraph 2 of the said application. The name of appellant No. 4 be struck out from the memo of the appeal as she has expired during the pendency of the appeal and the present appellants are the surviving legal heirs of the deceased.

The office is directed to carry out the said amendment within a fortnight.

The instant appeal is preferred against the judgment dated 15th day of September, 2010 passed by the learned Judge, Motor Accident Claims Tribunal, 3rd court, Paschim Medinipur in MAC Case No. 356 of 2006 under Section 166 of the M.V. Act.

The brief fact of the case is that the present appellants being the claimants preferred an application under Section 166 of the M.V. Act before the learned tribunal for getting compensation from the insurance company on the ground that the predecessor of the present appellant was died in a fateful road traffic accident due to the rash and negligent driving of the driver of the offending vehicle duly ensured under the respondent insurance company.

The joint owners of the offending vehicle did not contest the case before the learned tribunal and the case was heard ex-parte against them. The present respondent-insurance company contested the case by filing written statement. The claimant adduced 2 oral witness alongwith some documentary evidences. The insurance company has also adduced one witness as OPW-1. Some documents were also exhibited on behalf of the insurance company.

The learned tribunal after hearing both the parties and after perusing the evidence both oral and documentary dismissed the claim application. Hence this appeal.

Learned advocate for the appellants submitted before this court that the impugned award passed by the learned tribunal is palpably illegal in the eye of law; learned tribunal has not considered the materials and evidences regarding the fact of accident and came to an erroneous findings. Learned tribunal has also not considered the police papers regarding the alleged accident and thus there is a miscarriage of justice. Learned advocate for the appellant further argued that the evidence of PW-1 and PW-2 was not at all considered by the learned tribunal. The learned tribunal has considered only the evidence of OP-1 who is interested witness. He further argued that the finding of the learned tribunal regarding the non involvement offending vehicle is completely erroneous so he prayed for setting aside the impugned award.

Learned advocate appearing on behalf of the insurance company submitted before this court that an entire false story was created to get compensation from the insurance company. The alleged motor vehicle was not at all involved in the alleged accident. From the fact of the case, it would be evident that the deceased was fell into a ditch and sustained injury in his spine thereafter he was admitted to the several hospitals with the spinal injury. Nowhere, it was written in the medical papers that it was a road traffic accident. He submitted that the alleged date of accident was on 29th March, 2006. The FIR and the instant case were registered with the police station on 24th of April, 2006. There is no sufficient explanation in the case of the claimant that how such inordinate delay was caused in lodging FIR. The deceased may have suffered some spinal injuries but after he admitted to the different Hospitals; the claimants have created the cock-and- bull story of the alleged road traffic accident for getting compensation. There is no document to prove that the deceased was any way connected with the alleged road traffic accident. He again argued that the OPW-1 is an investigator of the insurance company, after thorough investigating the matter has deposed before the learned tribunal that the deceased sustained accidental

injury due to landslide while collecting earth in a cavity by the side of a slivery road for the purpose of loading into the tractor. He has collected some medical papers from the hospital where the deceased was admitted. On the strength of the same, he is of the opinion that the medical papers and reports suggested that the deceased sustained spine injury due to landslide in a cavity. The investigator also deposed that he has examined several local witnesses regarding the fact of the incident.

The learned advocate for the insurance company also submitted before this court that this is a glaring instances where vehicles were falsely implicated to procure money from the insurance company. After long 25 days of the alleged incident, the false FIR was registered with the police and with the help of the police some police papers were also created. He frankly argued that in this case, the learned tribunal has committed no error in dismissing the insurance claim case and the instant appeal is liable to be dismissed.

Learned advocate for the appellant has cited some decisions in support of his contentions.

He cited the observation of Hon'ble Supreme Court in Ravi Vs. Badrinarayan & Ors (2010) ACJ 2212 wherein the Hon'ble Supreme Court has held that delay in lodging FIR cannot be ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to fast rush to the police Station immediately after an accident.

He also cited National Insurance Company Vs. Smt. Pratima Barick & Anr. 2018 ACJ 77 on the same principle of delay lodging of FIR. Wherein the division Bench of this High Court is of view that a fortnight's delay in registration of the FIR per se cannot defeat the claim of the claimant and we are unable to hold that the case pleaded in the claim petition, because of the belated registration of the FIR, was doubtful and therefore unreliable".

The learned advocate for the appellant cited a decision of Hon'ble Supreme Court in Saroj Devi and Other Versus Narendra Singh and Others [2023 (2) T.A.C. 707 (S.C.)] the Hon'ble Supreme Court in Saroj Devi has held that the learned Tribunal has not given much credence to evidence of AW-3, who was eye-witness to the accident, but has relied on the sketch which was available to conclude that there was 50% negligence-MCT was not justified in merely drawing certain assumptions based on the sketch.

Learned advocate for the appellant also cited a decision of Hon'ble Apex Court passed in Sunita & Ors. Vs. Rajasthan State Road Transport Corporation & Anr. regarding the credibility of eye-witness.

He also cited the decision of Hon'ble division Bench of this High Court passed in Mita Samanta with the principle that the insurance company to prove his case must have to produce the driver of the offending vehicle when the insurance company has filed the application under Section 170 of M.V.Act to contest the

claim case on all available grounds.

On the other hand, learned advocate for the insurance company cited a decision of Hon'ble Supreme Court passed in Anil and a decision passed by this court in Haripada Halder on the principle that instead of evidence of eye witness the Hon'ble Supreme Court has held that the vehicle was implanted. It is the further argument for the learned advocate of the insurance company that there are several cases in the State wherein the vehicles were falsely implicated and implanted for getting huge compensation when the vehicle was not at all involved in the alleged accident.

Heard the learned advocates perused the materials on record in considering the entire case in hand it appears to me that the learned tribunal on considering the evidence of PW-2 and OPW-1 has possessed some doubt in his mind.

During the cross examination, PW-2 stated that the deceased fell down from the height near about 20ft/30ft. The case of the claimant has stated in the claim application is that on the fateful date when the deceased was walking through the left side of the road at Silaboti Bridge near Dhadika the offending tractor bearing No. WGB-6150 also proceeding to the same direction with a terrific high speed, recklessly dashed the deceased from back side for which the deceased sustained injury on her back bone and admitted to the Hospital. The learned tribunal has opined that the evidence of PW-2 regarding falling of deceased from the height near about 20ft/30ft is not matching with the alleged accident. Learned tribunal has also placed his reliance of the same doubt in the evidence of OPW-1 who deposed that during the cutting of earth the deceased felt down inside the ditch and sustained spinal injury. On the basis of such evidences, learned tribunal could not find any medical papers regarding the admission of the deceased at different Hospitals which creates the doubt of the mind of the learned tribunal to be justified that the claim is a false case.

Let me consider whether the observation of the learned tribunal on the basis of a single line of cross examination of PW-2 and mainly on the basis of the evidence of OPW-1 is at all justified in the attending facts and circumstances of this case.

Starting from the beginning of the instant case, the accident said to be happened near Silaboti Bridge over N.G-60 which was alleged that the offending vehicle dashed the deceased from the back side. Thereafter, the deceased was admitted firstly to the Garbeta Hospital, thereafter Bisnupur Hospital, thereafter Midnapore Medical College & Hospital and lastly he was admitted at N.R.S. Medical College & Hospital at Kolkata where he died on 02.05.2006. The deceased appears to be a mason and the claimants/appellants are belong to rural community. The fact suggests that the deceased had his family members of his wife, minor sons and her old mother obviously the family members and the well wishers would be involved to admit the deceased in different Hospitals. In this particular case, the lodging of FIR after 25 days is not appears to me unjustified.

In considering the FIR, it appears to me that the FIR was lodged by the brother

of the deceased contending inter-alia that when the deceased was proceeding towards his house at the time the offending vehicle dashed him near the Bridge of Silaboti from the back side on such he fell down by rolling beneath the Bridge. The FIR does not suggest the height of the road to the lower portion of the Bridge to be 25ft or 30ft. On the basis of such FIR, the Garbeta Police Station Case No. 47 of 2006 dated 24.04.2006 was started. After completion of investigation, the police has submitted charge-sheet, the offending vehicle was seized during the course of investigation. The police also enquire the available witnesses including eye witnesses of the alleged accident and recorded their statement under Section 161 CrPC. The present PW-2 is also appeared as a charge sheeted witness No. 2 in the CS. The police also collected the injury reports from the different Hospitals during the course of investigation wherein the Doctor has opined the injury of the deceased to be "spinal injury". The deceased succumbed to his injuries on 2nd May, 2006. After his demise, a post-mortem was conducted wherein the history of injury was stated to be knocked by the offending tractor bearing No. WGB 6150 on 23rd March, 2006 over NH-60 near Bridge over Silaboti River.

On the other hand, the investigator of the insurance company who admittedly not the eye witnesses of the accident investigated the matter on the direction of the insurance company and after thorough inquiry prepared a report contending inter-alia to the fact that the alleged accident is not correct, the deceased fell down on the ditch when he was cutting the earth. In his report, he stated that he asked the local people about the accident who stated him that while the deceased was lifting soil inside the Silaboti river suddenly sand slide occurred and deceased fell down cause fatal injury on his spinal cord. He also collected the medical papers from the different Hospitals regarding the injury of the deceased in all the papers it was mentioned the injury to be "accidental spinal injury". He also mentioned the name of the local person whom he enquired.

Considering the peculiar facts of this case-on the side of claimants there are facts of accident for rash and negligent driving of the driver of the offending vehicle (tractor) bearing No. WGB-6150 PW-1 and PW-2 appeared to support the claimant's case. The documentary evidences standing in favour of the claimants are FIR, charge sheet and post-mortem report.

On the other hand, the insurance company has adduced OPW-1 including his report totally contradictory to the facts of the claimant. Learned tribunal has picked up the single line of cross examination of the PW-2 regarding falling down of deceased from 20ft/30ft height and made its connection with the facts of the insurance company.

Let me consider whether the probative value of FIR, charge sheet and post-mortem report including evidence of the PW-2 and PW-2 can be brushed aside against the probative value of OPW-1 including his report.

Let me assess the evidence of PW-2 who is appeared to be eye witness before

the learned tribunal. The eye witness was examined by the police during the course of investigation thus it cannot be said that PW-2 is outside to the fact. He stated the entire fact regarding the rash and negligent driving of the driver of the offending vehicle and also dashing the victim from the back side. During his cross examination he stated the deceased fell down from 20ft/30ft height at the time. The FIR suggests that after such accident, the deceased rolled down beneath the Bridge from the N.H.-60 road. The FIR suggests the statement of PW-2 has its corroboration. During the course of investigation, the IO has collected the injury reports from the Hospital and doctors are of opinion of spinal injury of the deceased. Merely not mentioning the form "road traffic accident" at the time of admission, cannot falsify the fact of accident. Moreover, the post-mortem report contained the history of injury regarding the alleged accident sustained by the victim. The post-mortem report generally recorded on the basis of the Hospital bed head tickets and records. The post-mortem report is prepared by the Doctor. At the time of preparation of post-mortem report obviously the influence of police or the claimants could not be possible thus the post-mortem report appears to me independent and trustworthy.

In considering the evidentiary value of the OPW-1, it appears that he is the investigator appointed by the insurance company. After such investigation, he submitted the report directly to the office of the insurance company. No doubt functioning of the investigator is underneath to the office of the insurance company. Thus the investigator must have to act according to the wish of the insurance company. An investigator did not witness the accident; he came the place of occurrence after a substantial period. He visited the place after police investigation. Thus, his enquiry in locality after a long period of accident may have a chance of revealing distorted facts. On that score the evidence of investigator cannot be said to be independent or impartial though it has some corroborative value. The investigator has submitted his report contending the name of some persons whom he enquired during his investigation. The insurance company must have produced such local witnesses before the learned tribunal to contradict the statement of the eye witness i.e. PW-2 who is also a charge-sheeted witnesses. The observation of Hon'ble Supreme Court in Anil as well as the observation of this court in the case of Haripada Halder is on the basis of the particular case only. The principles as laid down by the Hon'ble Supreme Court in different cases are on the basis of the peculiar fact of that particular case.

The impugned judgment passed by the learned tribunal on the basis of the report of the investigator and denying the other oral and documentary evidences, appears to me not justified. Considering the probative value of the evidences of either parties in this case, I am of the opinion, that the evidence adduced by the claimants before the learned tribunal is trustworthy. After considering the entire facts and circumstances of their case and after discussion made above I am of the view the impugned order passed by the learned tribunal suffered illegality and is liable to be set aside. FMA is allowed.

The claimants being the fateful heirs of the deceased is entitled to get compensation as prayed for. To assess the just and proper compensation of this case. It appears to me that in the absence of any particular evidence of income of the deceased by virtue of the judgment of Hon'ble apex Court passed in Sarla Verma and Pranay Sethi the notional income is taken to be Rs.3,000/- per month. The claimants are also entitled to get 40% of establishment income towards the future prospect according to the direction of Hon'ble Supreme Court passed in Pranay Sethi. The appellants are three in number thus the deduction on personal grounds of the deceased of this case would be 1/3rd. Post-mortem report suggest that the age of the deceased more than 35 years thus the applicable multiplier case would be 15. The claimants are also entitled to get an amounting to Rs. 70,000/- towards the general damages.

The just and proper compensation of this case is as follows:---

1. Monthly Income..... Rs. 3,000/-
 2. Annual Income..... Rs. 36,000/-
(Rs.3000 X 12)
 3. 40% Future Prospect Rs. 14,400/-
Rs. 50,400/-
 4. 1/3rd deduction..... Rs. 16,800/-
 5. After deduction..... Rs.33,600/-
(Rs.50,400-Rs.16800/-)
 6. Multiplier as per age is 15..... Rs.5,04,000/-
(Rs.33,600/-X 15)
 7. General Damages..... Rs. 70,000/-
- Total Rs. 5,74,000/-

The insurance company is directed to pay the compensation alongwith interest @ 6% per annum from the date of filing of this case i.e. from 23.06.2016 within eight weeks through the office of the learned Registrar General, High Court, Calcutta. On such deposit the claimants are at liberty to withdraw the same subject to the ascertainment of payment of requisite court fees.

Accordingly, the FMA is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

LCR be sent down immediately.

Parties to act upon the server copy and urgent certified copy of this order be

provided on usual terms and conditions.