
(2006) 06 CAL CK 0028
In the Calcutta High Court
Case No : F.M.A. No's. 1582 and 1583 of 2003

Smt. Hadiram Bewa

APPELLANT

Vs

The New India Assurance Co. and Another

RESPONDENT

Date of Decision : 26-06-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2007) 1 CALLT 66

Hon'ble Judges : Pratap Kumar Ray, J;Arunabha Basu, J

Bench : Division Bench

Advocate : Krishanu Banik, for the Appellant;Rejesh Singh and Parimal Kumar Pahari, for the Respondent

Final Decision : Allowed

Judgement

1. Heard the learned Advocates appearing for the parties.
2. Both the two appeals are taken up for hearing analogously.
3. The appeal being F.M.A. No. 1582 of 2003 is an appeal challenging the Judgment and order dated 29th day of January, 2003 passed by the learned Judge, Motor Accident Claim Tribunal (Additional District Judge), 1st Court, Malda in M.A.C. Case No. 94 of 1999 arose out of an application u/s 140 of the Motor Vehicles Act, 1988 and the appeal being F.M.A. No. 1583 of 2003 is an appeal challenging the Judgment and award dated 29th day of January, 2003 passed by the learned Judge, Motor Accident Claim Tribunal (Additional District Judge), 1st: Court, Malda in M.A.C. Case No. 95 of 1999 arose out of an application u/s 166 of the Motor Vehicles Act. The application u/s 140 of the Motor Vehicles Act as well as the application u/s 166 of the Motor Vehicles Act both were dismissed on two-fold grounds:
 - 3.1. Firstly, that the applicant who is the mother of the victim who breathed last in the accident as alleged could not prove the fact that due to accident her daughter breathed last and that too with reference to the offending vehicle as it

is the finding of the learned Tribunal below that no documents relating to the unnatural death case and/or records of the police case were produced and

3.2. Secondly, on the ground that in view of the admission in the cross-examination by the claimant herself, the mother of the victim, that her daughter left behind two children and her husband, non-implication of them as parties in this proceeding either as claimants or as the opposite parties of the claim application had made the application as filed non-maintainable.

4. The learned Advocates appearing for the parties have urged by inviting the Court's attention to the material evidence on record. From the material evidence on record it appears that the mother of the victim deposed categorically that she along with her daughter, the victim who breathed last in the accident was traveling in the offending vehicle No. WGR-2460, which collided with a loading truck coming from the opposite direction. There was no cross-examination on that point save and except a suggestion made that the deponent was not traveling by the said taxi, which, however, was answered as "not a fact". Even the suggestion that the concerned vehicles were not involved in the accident also was answered by mentioning "not a fact" in the cross-examination.

5. Having regard to such state of affairs it appears that there is sufficient oral evidence to prove the accident, the particulars of the offending vehicles as well as the death of the victim due to such accident. The learned Tribunal below failed to consider the issue in that angle. The application u/s 140 of the Motor Vehicles Act as well as the application u/s 166 of the said Act are nothing but outcome of a social welfare legislation to provide the financial assistance in the nature of compensation to the family of the deceased who faced death in an accident.

6. In that view of the matter, the rigours of a civil proceeding as well as the criminal proceeding in stricto sensu has not applicability. It requires a liberal consideration of the evidence on record to identify the claim.

7. In that view of the matter, this Court is of the view that the findings of the learned Tribunal below to this effect that the claimants failed to prove the death due to an accident is not legally sustainable. As a resultant effect, the Judgment in both the two appeals are required to be set aside and quashed as the material evidence was not considered and more particularly the deposition of P.W. 1 that is the claimant mother, which stood even the storm of cross-examination was not considered in proper angle. Furthermore, from the records it appears that the Insurance Company also did not produce any witness and owner of vehicle also did not examine the driver. Hence, there was no denial on the part of the opposite parties of the said two applications that there was no accident and the victim breathed last due to such accident. Sitting in the, appellate jurisdiction, this Court now could have considered the claim application itself allowing of the appeal, but in view of one embargo as it appearing, namely, the other legal representatives, the husband and the two children of the victim as admitted by the claimant herself in the cross-examination are not before this Court. The

learned Tribunal below dismissed both the two applications also on that ground which mean that the claim as lodged under a social welfare legislation admittedly by one of the legal representatives in view of the Mohamedan Law of Inheritance has been undecided and claimant has been non-suited due to the technical reason of non-implicating the other legal representatives in terms of proviso of Section 166 of the Motor Vehicles Act. The learned Tribunal below ought to have granted proper opportunity to the claimants to add the other legal representatives as parties in this proceeding when it came to the notice of the Court. It is a settled law that impleading of the necessary parties in terms of the CPC is also within the domain of the procedural law and thereof any technicalities would not debar a party to proceed with the litigation for appropriate relief without first giving him any opportunity to rectify the defect. The addition of party for ends of justice could be made at any stage of hearing. Reliance is placed to the Judgment passed in the case Probodh Verma v. State of Uttar Pradesh reported in 1985 (2) SLR 714 and decision of Division Bench of Calcutta High Court passed in the case Municipal Commissioners Vs. Gangamani Chaudhurani, . The entire CPC is a procedural law and it cannot deny the substantive right to the party about the relief. Reliance may be placed to the Judgment passed in the case Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, , which has recently been followed in the case Mr. Shaikh Salim Haji Abdul Khayumsab Vs. Mr. Kumar and Others, . The same view has been reiterated by the Apex Court in the case Rani Kusum v. Kanchan Dassi reported in (2005) 5 SCC 705 and Kailash Vs. Nanhku and Others, .

8. Having regard to such state of affairs, this Court is of the view that on the reflection of the social welfare legislation the learned Tribunal below ought to have proceeded with the matter by allowing the claimants to add the legal representatives as parties in this proceeding as opposite parties and thereby to adjudicate upon the application u/s 140 and the application u/s 166 of the said Act.

9. Considering the basic issue in question as due to the technicality a claimant has suffered the Judgment under appeal, the impugned Judgment and award of both the two aforesaid appeals accordingly are set aside and quashed. The matter is remanded back for de novo hearing by giving proper opportunity to the claimants concerned to add the legal representatives as parties in this proceeding and also granting opportunity to place the relevant documents of the accident, if any, in their support. On considering the matter the learned Tribunal below is directed to decide the case by disposing of the application u/s 140 of the said Act first and thereafter u/s 166 of the said Act within six months from this date positively.

Both the two appeals accordingly succeed to that extent.

Both the parties are at liberty to lead their respective evidence, oral and documentary further in both the two cases.