

(2018) 05 CAL CK 0188

In the Calcutta High Court

Case No : CAN 7277 OF 2013, F.M.A. 1254 OF 2012

Tanuja Bibi & Ors.

APPELLANT

Vs

National Insurance Company Ltd. & Ors.

RESPONDENT

Date of Decision : 15-05-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 170, 173
Code of Criminal Procedure, 1973 — Section 173
Indian Penal Code, 1860 — Section 279, 304
West Bengal Motor Vehicles Rules, 1988 — Rule 336

Citation : (2018) 05 CAL CK 0188

Hon'ble Judges : ASHA ARORA, J; DIPANKAR DATTA, J

Bench : Division Bench

Advocate : Krishanu Banik, Abhijit Singha Roy, Rajesh Singh

Final Decision : Allowed

Judgement

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CAN 7277 of 2013 is an application seeking early disposal of the appeal. We dispose of the application by taking up the appeal for consideration here,,

and now. Rejection of an application under section 166 of the Motor Vehicles Act, 1988 (hereafter the Act) by the judgment dated April 27, 2012, of",,,

the Motor Accident Claims Tribunal, Hooghly, is under challenge before us in this appeal under section 173 thereof.",,,

In a motor vehicular accident that took place on May 23, 2009, one Abdul Ohid (hereafter the victim) passed away on the spot succumbing to the",,,

multiple injuries sustained by him. The victim was riding a motorcycle when he was dashed from behind by a bus of route no. 13 (hereafter the bus).,,

At the time of his death, the victim was in the employment of a private employer and drawing Rs.4000/- per month. He was 46 years old and left",,,

behind him his widow, two daughters, a minor son and his mother (hereafter the claimants).",,,

The tribunal was approached by the claimants seeking compensation in a sum of Rs.5 lakh. A written statement had been filed by the respondent,,

no.1/insurer before the tribunal. Although in such written statement there was a pleading to the effect that the victim was "exclusively" at fault,,

for the accident, there was no specific pleading that the victim did not have a driving licence or that the motorcycle which he was riding had no",,,

effective registration certificate. It was, however, admitted in the written statement that the bus was covered by a policy of insurance issued by the",,,

respondent no.1/insurer.,,,

Â On behalf of the claimants, oral evidence was adduced by four witnesses, the widow of the victim was P.W. " 1, a representative of the",,,

victim's employer was P.W. " 2 and two eyewitnesses were P.Ws. " 3 and 4. While P.W. " 2 proved by producing the salary register that,,

the victim was drawing Rs.4000/- per month immediately prior to his death, P.Ws. " 3 and 4 proved the accident. While one was travelling on a",,,

motorcycle, the other was riding a bicycle when they witnessed the accident. Their common testimony before the tribunal was that the bus was being",,,

driven rashly and negligently, and such version was not shaken even after thorough cross-examination. The tribunal, however, proceeded to reject the",,,

claim application on the grounds that the driving licence of the victim and the registration certificate of the motorcycle which the victim was riding",,,

were not produced. The tribunal also viewed the post-mortem report with some degree of suspicion on the ground that the particulars of the unnatural,,

death case which was registered immediately upon the death of the victim, had not been clearly stated in such report.",,,

Having heard Mr. Banik, learned advocate for the claimants, who are the appellants before us, and Mr. Singh, learned advocate for the respondent",,,

no.1/insurer, we have no doubt in our minds that the judgment under challenge is indefensible. It is found on perusal of the lower court records that",,,

although the respondent no.1/insurer obtained leave under section 170 of the Act, it had not adduced any evidence in support of its claim that",,,

contributory negligence of the victim resulted in the accident which ultimately took away his life. In terms of Rule 336 of the West Bengal Motor,,

Vehicles Rules, it was open to the respondent no.1/insurer to pray for an order before the tribunal to issue summons upon the driver of the bus.",,

Recourse to Rule 336 was, however, not taken. It is clear from the chargesheet that has been filed under section 173 of the Criminal Procedure Code",,

that the driver of the bus has been shown as an accused. In the absence of the driver having adduced evidence in course of the proceedings before,,

the tribunal, we have no other alternative but to accept the allegation of the claimants that it was solely because of the rash and negligent driving of the",,

bus by the driver that the accident occurred. In this connection, we draw inspiration from a passage appearing in the coordinate Bench decision of this",,

Court in New India Assurance Co. Ltd. â?"vs.- Mita Samanta & Ors., reported in 2010 ACJ 2212. It reads as follows :",,

â??16. Therefore, the insurance company in spite of taking leave under section 170 of the Act having failed to summon the owner or the driver of the",,

vehicle to disprove the allegation of the claimants of the involvement of the vehicle concerned or rash and negligent driving, the court is left with no",,

other alternative but to accept the allegation of the claimants unless there is either admission of the claimants or their witness about non-involvement,,

of the vehicle or about the contributory negligence of the victim in the accident or there exists other evidence of unimpeachable nature given by,,

uninterested witness showing falsity of the allegation of claimants. In this case, there is no such admission or evidence of that nature. In this case, the",,

driver has been charge-sheeted and thus, there is no reason why the insurance company in spite of taking leave under section 170 of the Act should",,

not summon the said driver to give evidence for disclosing the truth. We are unable to presume collusion between the driver and he claimants when,,

the driver has been indicated in the criminal proceeding. It will be a travesty of justice in the facts of the present case to disbelieve the eyewitness of,,

the claimants when the owner and the driver are neither appearing nor are they even summoned by the insurance company even after taking leave,,

under section 170 of the Act to face cross-examination at the instance of claimants.â??",,

We are also inclined to hold, having regard to the decisions of the Supreme Court in Sudhir Kumar Rana â?"vs.- Surinder Singh, reported in 2008 (2)",,

T.A.C. 769 (S.C.) and Dinesh Kumar J. â?"vs.- National Insurance Co. Ltd. & Ors., reported in 2018 ACJ 535, that in the absence of any evidence",,

having been adduced before the tribunal to establish that there was contributory negligence on the part of the victim, non-production of the",,,

victim's driving licence would be of no relevance.,,,

It is quite strange that the tribunal proceeded to make out a third case in course of rendering its decision without even noticing the absence of any,,

specific pleading in the written statement of the respondent no.1/insurer that the victim had no driving licence and that the motorcycle which he was,,

riding was not registered. If indeed there were lapses on the part of the victim in obtaining a driving licence or a registration certificate in respect of,,

the motorcycle he was riding, those are distinct offences to be dealt with in accordance with the provisions of the Act but could not have afforded any",,,

ground to the tribunal to reject the claim only on such premise.,,,

We have looked into the post-mortem report which was exhibit no.5. The post-mortem on the cadaver of the victim was conducted by Dr. Partha,,

Bose, Medical Officer, District Hospital, Hooghly on May 23, 2009 itself as it appears from the endorsement made at the foot of the post-mortem",,,

report. The cause of injury has been stated to be death due to intra-cranial haemorrhage. The postmortem report bears the seal of the district,,

hospital and the words Pandua 42/09 23/5 appear at the top thereof. It appears from the written complaint lodged by the victim's brother",,,

which was registered as Pandua Police Station FIR No.99/09 dated 23 May, 2009 under sections 279/304 of the Indian Penal Code, that it refers to",,,

U.D. Case No.42 of 2009 dated May 23, 2009. It appears from the chargesheet that Dr. Partha Bose, Medical Officer of District Hospital, Hooghly",,,

was included in the list of witnesses by whom the prosecution sought to establish the charge against the driver of the bus. In our considered view, the",,,

tribunal committed gross error in failing to look into the relevant documentary evidence which could have negated the frivolous stand taken on behalf,,

of the respondent no.1/insurer by its learned advocate that the documents produced by the claimants were suspect.,,,

We have no hesitation to hold that the accident was duly proved by the claimants. Also, by reason of non-production of the driver of the bus by the",,,

respondent no.1/insurer and particularly having regard to the fact that the victim was dashed from behind by the bus, the doctrine res ipsa loquitur was",,,

clearly attracted and the tribunal ought to have returned a finding consistent

with the claim raised by the claimants.,,

In the result, the finding of the tribunal that the claimants had failed to produce sufficient evidence to prove that rash and negligent driving of the bus",,

led to the accident which ultimately resulted in the victim succumbing to his injuries, stands set aside. We could have directed a remand at this stage to",,

enable the tribunal to determine the compensation payable to the claimants but having regard to the fact that the accident occurred more or less nine,,

Sl.

No.",Heads,Calculation

(i),Monthly Income,Rs.4000/-

(ii),"Less 1/4th on account of personal and living

expenses :","Rs.4000/- =

Rs.4000/-

Rs.4000/- x 1/4 =

Rs.1000/-

=Rs.4000 -

Rs.3000/-

Rs.3000/-

Rs.3000/-

(iii),Annual Income,"Rs.3000 x 12 =

Rs.36,000/-

(iv),"Compensation after multiplier of 13 is

applied","Rs.36,000 x 13 =

Rs.4,68,000/-

(v),15 % Future Prospect,"Rs.4,68,000/-x 15%

= Rs.70,200/-

Rs.4,68,000 + 70,200 =

Rs.5,38,200/-

(vi),"General Damages [(Loss of consortium) +

(Loss of Estate & Funeral Expenses)]","Rs.52,000/- +

39,000/=Rs.91,000/-

Total Compensation,, "Rs.6,29,200/-