Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Rabindranath Samanta

F.M.A.1274 of 2011
With
CAN 2 of 2022 (Old CAN 10524 of 2011)

1.Champa Debi
2. Gouri Sankar Chowhan……Appellants/Claimants
-vs-
1. The New India Assurance Company Limited
2. Dut Kumar Roy…..Respondents

Mr. Amit Ranjan Roy … for the appellants/claimants

Mr. Rajesh Singh …. For the respondent no.1.

Heard on : 24th August, 2022

Judgment on : 24th August, 2022

Rabindranath Samanta, J.:

Challenge in this appeal is against the judgment and order passed by the learned Judge, Motor Accident Claims Tribunal (hereinafter be referred to as the Tribunal), 4th Court, Krishnagar, Nadia in MAC Case No.484 of 2006. By the impugned judgment the learned Tribunal dismissed the claim case brought by the appellants.

The facts emanating from the claim application under Section 163A of the Motor Vehicles Act and which are necessary for adjudication may be adumbrated as under:

On 21st May, 2006 Tripurari Chowhan, son of Gouri Sankar Chowhan of Village-PaliBeldaria, P.O.-Ukharia, Golabazar, P.S.-Kowakole, Dist.-Nowada, Bihar, was working as a Khalasi in a lorry bearing registration No. W.B-15/4079. The lorry met with an accident at Kalyani Express Way at Iswar Gupta Setu and fell down from the bridge. As a result of which, Tripurari Chowhan and another cyclist died on the spot. The driver of the vehicle became injured. The claimants allege that due to rash and negligent driving on the part of the driver of the offending vehicle, the accident took place and the victim lost his life because of the accident.

The victim used to maintain his family by his earning. He died at the age of 24 years. As a khalasi under the owner of the offending vehicle, the victim used to earn Rs.3,200/- per month.

At the time of the accident, the offending vehicle was insured with the respondent No.1, the New India Assurance Company Limited. Over the accident as above an FIR was lodged at Kalyan Police Station and the FIR was registered as Kalyani P.S. Case No.132 of 2006 dated 21st May, 2006 under Sections 279/304A of the Indian Penal Code.

Owing to sudden and untimely demise of the victim, the claimants who happen to be his parents fell in acute financial crisis.

On the facts as above, the claimants sought for a compensation of Rs.4,35,200/- and other statutory costs.

Despite service of notice upon him, the owner of the offending vehicle, the respondent No.2 herein, did not contest the claim case. However, the respondent No.1, the New India Assurance Company Limited contested the claim case by filing a written statement wherein averments/allegations made by the claimants in the claim application were denied. The Insurance Company stated that the claim made by the claimants was excessive and the claim was made without applying proper method. The respondent No.1 asserted in the written statement that the victim was a gratuitous passenger of the vehicle and on his death no claim could be made by the claimants. On such grounds, the respondent No.1 sought for dismissal of the claim case.

In order to prove their case, the claimant No.2 Gouri Sankar Chowhan got himself examined as P.W.2. The claimants examined Ranada Prasad Sharma, an employee of Ranaghat S.D. Hospital as P.W.1, Manoranjan Das as P.W.3 and Dut Kumar Roy as P.W.4. Some documents upon which the claimants placed reliance were marked as exhibits 1 to 5.

No oral or documentary evidence was adduced on the part of the Insurance Company.

Upon hearing the learned advocates appearing for the parties and on consideration of the evidence on record, the learned Tribunal by the impugned judgment dismissed the claim case.

Perusal of the judgment of the learned Tribunal shows that the learned Tribunal dismissed the claim case mainly recording the following observations:

> "***It appears from the FIR that it was lodged on 21.5.06 by Manoranjan Das who has been examined as P.W.3 and he proved the FIR and in the said FIR it was stated that the driver of the vehicle and one cyclist died in the said accident. Subsequently one Khalasi was mentioned in the said FIR that***

he died in the said accident, which has been incorporated subsequently. The petitioners did not try to bring the original record from the court to place before this court that actually the Khalasi of the said vehicle met with the accident for which he died on the spot and in the certified copy of the FIR by way of incorporating the fact of the involvement of the Khalasi in the said accident was made with an oblique motive to claim compensation in this case. The incorporation was made so that the tribunal does not take it seriously and by overlooking the matter the award may be granted to the petitioners. Since, the petitioners did not come with clean hands and for the purpose of establishing the claim such incorporation was made and the charge sheet was not submitted wherefrom it can be ascertained that the victim died in the said accident.

Having regard to the facts and circumstances of the case that the petitioners failed to prove that the victim Tripurari Chowhan died in the said accident I hold that the petitioners will not be entitled to get any compensation as prayed for."

As observed by the learned Tribunal, since the fact that the victim Khalasi met with an accident was incorporated in the FIR subsequently and since the petitioners/claimants did not come to the Tribunal with clean hands, the claimants were not entitled to get the compensation.

Now, the question is whether the findings recorded by the learned Tribunal are based on evidence on record and justified.

Learned lawyer appearing for the appellants submits that if the certified copy of the FIR and the true copy of the inquest report are read conjointly, it may be clearly evident that the Khalasi of the offending lorry died due to the accident. Learned lawyer points out that since the certified copy of the FIR was obtained from the concerned court, no question arises that the FIR was manipulated by incorporating the factual as above. Learned lawyer argues that the claimants by adducing occular evidence have been able to prove the case as made out by them in the claim application.

Per contra, learned lawyer appearing for the Insurance Company, submits that the owner of the offending vehicle failed to carry out the legal obligations as required under Section 134 of the Motor Vehicles Act to inform the respondent no.1 about the date, time and place of accident, the insurance policy number and period of its validity, the number of persons injured or killed in the accident and the name of the driver and the particulars of his driving licence. On the contrary, the owner of the offending vehicle though did not prefer to contest the claim case despite service of notice upon him, got himself examined as a witness in proof of the case of the claimants. Learned lawyer argues that on failure on the part of the owner of the offending vehicle to carry out the legal obligations as cast upon him under Section 134 of the Act, the Insurance Company should not be burdened with paying the compensation if awarded by the Court. Learned lawyer emphasises that compensation, if any, awarded by the Court, should be borne by the owner of the offending vehicle.

As it appears from the certified copy of the FIR, on 21st May, 2006, the offending vehicle being registration number WB-15-4079 met with an accident at Kalyani Express Way at Iswar Gupta Setu and fell down from the bridge. As a result of which one cyclist died at the spot and the driver of the offending vehicle became injured. It is also stated in the FIR that one Khalasi of the offending vehicle also died on the spot.

The learned Tribunal suspected the genuinity of the FIR on the reason that the fact that the Khalasi of the vehicle died was incorporated in the FIR subsequently.

What it appears, the claimants obtained the certified copy of the FIR from the concerned court.

As required under Section 157 of the Code of Criminal Procedure every Officer-in-Charge of a Police Station shall immediately transmit the FIR after the FIR is lodged at the Police Station to the concerned Magistrate either Chief Judicial Magistrate or Additional Chief Judicial Magistrate as the case may be. As quoted above, the claimants obtained the certified copy from the concerned Court. That being so, the concerned Court below took note of the FIR and proceeded on the FIR directing the Investigating Officer to submit his report. Under such legal scenario, I do not find any reason to disbelieve the certified copy of the FIR as produced before the learned Tribunal. Therefore, from the FIR it is clear that the victim Tripurari Chowhan who was in the offending vehicle as its Khalasi met with the accident and died.

The claimants claimed that the victim was a Khalasi of the offending vehicle. In the inquest report prepared by the concerned police officer it has been opined as a prima facie case that one of the deceased was the victim Tripurari Chowhan and he happened to be the Khalasi of the offending vehicle. However, in order to prove that the victim was a Khalasi, the claimants have examined P.W.4, Dut Kumar Roy. It is in the evidence of the P.W.4, Dut Kumar Roy that Tripurari Chowhan was a

Khalasi in his lorry. He used to pay Rs.3200/- per month to him as his salary. Nothing has been elicited from his cross-examination to discredit the evidence. However, no oral or documentary evidence has been adduced from the side of the Insurance Company to show that the Tripurari Chowhan was not a Khalasi of the offending vehicle.

Having considered the inquest report and specially the evidence of P.W.4, I am of the view that the victim Tripurari Chowhan at the time of accident was a Khalasi of the offending vehicle and because of the accident, he died on the spot.

The claimants state that at the time of the accident, the victim was aged about 24 years. The post mortem examination report shows that the victim at the time of death was aged about 24 years. However, there is no other evidence to the contrary to invalidate such evidence. Therefore, it is found that at the time of the accident, the victim was aged about 24 years.

Admittedly, at the time of the accident, the offending vehicle was insured with the respondent no.1, the New India Assurance Company Limited.

In such context, the provision under Section 163A may be excerpted hereinunder:

> ***"Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be."***

The allegations in the FIR as quoted above indicate that due to the accident, the victim died. P.W.3, Manoranjan Das in his evidence states that he was working under a Contractor and collecting Toll from Iswar Gupta Setu situated at Kalyani Bansberia Express Way. On 21st May, 2006 he was on duty there at that time. On that day at 4 a.m. an accident took place. One lorry was coming from Mogra side to Kalyani side at a high speed and the said lorry dashed one cycle and the said cyclist died on the spot. One Khalasi of the said lorry also died on the spot and the driver of the lorry sustained injuries. After sustaining injuries he was removed to hospital. The number of the said lorry was WB-15/4079. He lodged the FIR at the local police station. From the cross-examination of this witness I find that the evidence of this witness in chief remains unshaken. It is trite to say that for the proof of a motor accident claim case, the standard of proof will be adopted on the principle of preponderance of probability and not the standard of proof 'beyond the reasonable doubt'. Having regard to the evidence of P.W.4 it stands proved that the victim died due to the accident arising out of the offending vehicle. Therefore, I am of the view, that the claimants have been able to prove their case as made out by them in the claim application under Section 163A of the Motor Vehicles Act.

It is true that in terms of Section 134 of the Motor Vehicles Act, it is the legal duty cast on the owner of the offending vehicle to furnish all the particulars as required by the provision under Section 134 of the Act to the insurer. But having considered that sthe Motor Vehicles Act is a beneficial legislation towards awarding compensation to the dependent family members of the victim, I think that the provision under Section 134 may not dilute or whittle down the provisions, which enable the claimant/claimants to get compensation under Section 163A of the Act.

Therefore, in view of the above, it is found that the claimants have been able to prove their case.

Accordingly, the appeal merit success and the appeal is allowed on contest against respondent No.1 and *ex parte* against respondent No.2. The judgment and order passed by the learned Tribunal in MAC Case No.484 of 2006 is hereby set aside.

Now, the point which falls for determination as to what will be the compensation to be awarded to the claimants?

In the absence of any documentary evidence, it may be inferred that at the time of the accident in the year 2006, the monthly income of the vicitim as a labourer or worker would be assessed at Rs.3000/- per month. Since, the victim died at the age of 24 years, multiplier 17 would be applied and as per the second schedule of the Motor Vehicles Act, deduction to the extent of $1/3^{rd}$ should be made.

In view of the above, the compensation should be calculated in the following manner:

Monthly Income	=	Rs.3,000.00
Annual Income Rs.3000 x 12	=	Rs.36,000.00
Deduction to the extent of $1/3^{rd}$	=	Rs.12,000.00

Total=	Rs.24,000.00
By Adopting Multiplier 17	
Rs. 24,000 x 17=	Rs.4,08,000/-
General Damages	
Loss of estate + funeral expenses	Rs. 4,500/-
Total=	Rs.4,12,500/-

Therefore, total Compensation towards loss of dependency comes to Rs.4,12,500/-.

Accordingly, the appeal merit success and the appeal is allowed on contest against respondent No.1 and *ex parte* against respondent No.2. The judgment and order passed by the learned Tribunal in MAC Case No.484 of 2006 is hereby set aside. The respondent No.1, the New India Assurance Company Limited is directed to deposit Rs. 4,12,500/- with interest @ 6% per annum on this awarded amount of money from the date of filing of the claim application on 14th November, 2006 by way of cheque in favour of the learned Registrar General of this Court with his office within six weeks from date. After such amount of compensation is deposited, the learned Registrar General shall release the awarded amount in favour of the claimants in equal share after being satisfied with their identity.

With the aforesaid direction, the appeal and the connection application stand disposed of. No order as to costs.

Send down the LCR along with a copy of this judgment to the learned Tribunal for information.

Urgent certified copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta, J.)

(SKB)