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Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 1053 of 2012
with
IA No. CAN 2 of 2014 (CAN 5465 of 2014)

Smt. Puspa Mondal
Vs.
The National Insurance Company Limited & Ors.

Mr. Amit Ranjan Roy
... For the appellant/claimant

Mr. M.P. Chakrabarty
Ms. Ratnadipa Karmakar
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment dated 19th March, 2010 by the learned Judge, Motor Accident Claims Tribunal, Fast Track, 2nd Court, Asansol, in connection with MAC Case No.40 of 2006/106 of 2006 under Section 163A of the Motor Vehicles Act, 1988 whereby the learned Judge dismissed the claim petition.

On 8th May, 2002 at about 11.30 p.m. while the victim Monbodh @ Manbudh Mondal, aged about 25 years, was going with the *Barat Party* to attend marriage ceremony from village Baijapathar, Bankura to Jospur (Nirsha) and boarded on the roof of the bus, bearing registration no.WGC-2673, as per instruction of the bus staff. While the said bus reached near village Jospur, at that time the said victim sustained fatal injuries after having a hit by a tree due to rash and negligent driving of the said bus, bearing registration no.WGC-2673. Accordingly, Nirsha Police Station Case No.66 of 2002 under Sections 279/337/338/304A of the Penal Code was started and ended with charge sheet. Accordingly, the claim petition was filed by the widow of the deceased with the compensation to the tune of Rs.4,00,000/-.

The respondent no.1/National Insurance Company Limited entered appearance in the case before the learned Tribunal by filing written statement thereby denying all material allegations of the claim petition contending, inter alia, that the Tribunal had no jurisdiction to adjudicate the above case and, therefore, the claimant was not entitled to have any compensation.

In course of trial, on behalf of the claimant four witnesses were examined. Claimant herself has been examined as PW-1. In course of her evidence, she narrated the accident, age and income of her husband as 25 years and Rs.3,000/- per month, respectively. In course of evidence, certified copy of First Information Report, charge sheet, insurance policy in respect of offending vehicle and post-mortem report were admitted in evidence and marked as Exhibit-1 to 4. In cross-examination, she stated about the occupation of her husband but she could not file any document to substantiate tea stall business of her husband.

One Khudiram Mondal, examined as PW-2, who claimed to be an eyewitness, also corroborated the factum of incident. He faced a long cross-examination. He stated about the residence of the victim. He has specifically stated that after marriage, PW-1 used to reside at village Bonkathi in the district of Purulia.

One Dipak Kumar Karmakr, Assistant Rationing Officer, examined as PW-3. He testified about his identity and proved the ration card issued in favour of the claimant and the ration card was admitted in evidence as Ext.-5. He has further stated that the ration card was issued after thorough inquiry.

PW-4 translated the copy of the First Information Report and charge sheet.

On behalf of the National Insurance Company Limited, one Anuj Kumar Banerjee, Assistant Manager of the National Insurance Company Limited, Divisional Office, Asansol, filed affidavit-in-chief. In the cross-examination, he stated that he joined in the Company in the year 2005 and he denied other suggestions thrown to him in cross-examination.

In course of argument, Mr. Amit Ranjan Roy, learned advocate appearing on behalf of the appellant/ claimant has submitted that the learned Tribunal dismissed this claim petition only on the ground of jurisdiction, holding, inter alia, that the Ration Card (Ext.-5) was not incorporated the signature of the owner in whose favour the said Ration Card was issued on 19th

September, 2008 after the death of the deceased. Thereby the learned Tribunal returned his finding that the Ration Card is a produce of post-facto document as no other document was filed in support of the residence of the claimant within the jurisdiction of Asansol. Mr. Roy has also submitted that the claim petition cannot be disregarded only on the ground of jurisdiction if it is not prejudicial to the respondent/Insurance Company. In support his contention, he relied on the following cases:-

(1) **Mantoo Sarkar v. Oriental Insurance Co. Ltd. & Ors.**, **2009 SAR (Civil) 167**,

(2) **Malati Sardar v. National Insurance Company Limited & Ors.**, **2016 SAR (Civil) 249**.

Per contra, Mr. M.P. Chakrabarty, learned advocate appearing on behalf of the respondent no.1/ National Insurance Company Limited, has submitted that the issue of jurisdiction was duly raised both in the written statement as well as by adducing evidence of OPW-1, i.e., Anuj Kumar Banerjee, Assistant Manager of the National Insurance Company Limited, Divisional Office, Asansol.

In **Mantoo Sarkar** (supra), the Hon'ble Apex Court held as follows:-

> "**15.** We say so because ordinarily an appellate court shall not, having regard to the provisions contained in sub-section (1) of Section 21 of the Code of Civil Procedure, entertain an appeal on the

ground of lack of territorial jurisdiction on the part of the court below unless he has been prejudiced thereby. Other respondents did not raise any question of jurisdiction. Although one witness each had been examined on behalf of the truck owner and owner of the bus, neither a question of lack of territorial jurisdiction was raised nor the question of any prejudice had been argued. It is only the first respondent who raised the question of territorial jurisdiction. However, no prejudice was caused to the appellant by the claim petition being tried by the MACT at Nainital."

In **Malati Sardar** (supra), the Hon'ble Apex Court expressed the following views:-

"**11.** … This Court reversed the view of the High Court. It was held that the jurisdiction of the Tribunal was wider than the civil court. The Tribunal could follow the provisions of Code of Civil Procedure (CPC). Having regard to Section 21 CPC, objection of lack of territorial jurisdiction could not be entertained in absence of any prejudice. …"

14. The provision in question, in the present case, is a benevolent provision for the victims of accidents of negligent driving. The provision for territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of accidents. Hyper technical approach in such matters can hardly be appreciated. …."

After going through the observation of the Apex Court in the aforesaid cases, I find that unless and until the respondent/Insurance Company is prejudiced by the jurisdictional error, claim petition cannot be disregarded only on the issue of jurisdiction. Though, in this case, the appellant/claimant has tried to prove her residence within the jurisdiction of Asansol by producing a Ration Card (Ext.-5) which was proved by the Rationing Officer (PW-3).

In the aforesaid view of the matter, I, keeping an eye to that object of enactment as well as the observation of the Hon'ble Apex Court, find hardly any scope to disregard the claim petition filed by the appellant/claimant for compensation after accidental death of her husband.

It is a case under Section 163A of the Motor Vehicles Act, 1988. Therefore, there is no necessity to prove the rash and negligent act on the part of the offending vehicle. But from the FIR, charge sheet and the evidence of PW-2, there is hardly any scope to believe the accidental death of her husband of the appellant/claimant by the involvement of the vehicle, bearing registration no. WGC-2673, on the alleged date of accident.

Now coming to the income of the deceased, I find that PW-1 herself has stated that her husband was dealing in tea stall and having income of Rs.3,000/- per month. But no evidence has been adduced in support of the said business. However, there is no hurdle to take the notional income of Rs.3,000/- per month of a person aged about 25 years. Accordingly, after applying multiplier 18 in terms of the age of the victim, I find it necessary to determine the compensation as follows:-

Monthly Income	Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Less: 1/3rd Deduction (Rs.36,000/- Rs.12,000/-)	Rs. 24,000/-
Multiplier by 18 (Rs.24,000/- x 18) (age of the victim was 25 years)	x 18 Rs.4,32,000/-
Add: General Damages	Rs. 9,500/-
Total Award	Rs.4,41,500/-

For the reasons, it is seen that the appellant/claimant is entitled to the total compensation to the tune of Rs.4,41,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 25th April, 2006 till the deposit of the amount.

Accordingly, the respondent no.1/National Insurance Company Limited is directed to deposit the compensation amount of Rs.4,41,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 25th April, 2006, till the deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The appellant/claimant is entitled to withdraw the compensation amount with interest, subject to payment of additional *ad valorem* court fees on the amount of Rs.41,500/- (Rs.4,41,500/- – Rs.4,00,000/-) before the learned Tribunal.

The learned Registrar General is requested to disburse the amount to the appellant/claimant on proper identification.

With the above observation, the appeal, being FMA 1053 of 2012, is disposed of.

All pending applications, if there be any, stand disposed of.

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)