

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 1056 of 2009

Raj Kumar Das

Vs.

National Insurance Company Ltd. & Anr.

For the Appellant/ :Mr. Ashique Mondal, Advocate
claimant Mr. Anup Kumar Bag

For the Respondents/ :Mr. Rajesh Singh, Advocate
Insurance Co.

Hearing concluded on : September 19, 2022
Judgment on : September 27, 2022

Bibhas Ranjan De, J.

1. Feeling aggrieved by the Judgment and Order passed by Ld. Judge, Motor Accident Claim Tribunal, South 24 Parganas in connection with Motor Accident Claim Case No. 163 of 2007, the instant appeal has been preferred on the ground

that the judgment and order passed by the Ld. Tribunal was in violation of settled principle of law and liable to be set aside.

- 2.** This appeal arose out of claim application under Section 163A of the Motor Vehicles Act on account of 100% disability due to injury sustained by the claimant Raj Kumar Das in an accident on 21.05.2004 at about 5.00 p.m. It is alleged that on that date and time one vehicle (Lorry) bearing Reg. No. **WB-41-3999** coming from Singha Hat in rash and negligent manner dashed the one van rickshaw which turned upside down near Mondalpara Bus Stoppage. As a result, the claimant along with other passengers seriously injured. Claimant was taken to nearby Nursing Home and subsequently shifted to different Government Hospitals for treatment. The claimant being an employee of brick field and a man of 37 years, claimed compensation to the tune of Rs. 2,50,000/-.
- 3.** Respondent/National Insurance Company entered appearance before the Tribunal by filing a written statement denying all material allegations in support of claim.
- 4.** In support of claim application, three (3) witnesses were examined namely Raj Kumar Das/claimant as PW-1, Dr.

Prasanta Kumar Mondal as PW-2 and Ram Prasad Mondal as PW-3.

5. PW-1 in his evidence stated that while he was paying fare to rickshaw puller the offending Lorry knocked him down. Thereafter, he was taken to Diamond Harbour Hospital, Kulpi Hospital, CMRI Hospital and Bangur Hospital one after another for treatment.
6. PW-2 testifies in his evidence that he issued certificate of disability to the claimant/ Raj Kumar Das after examining on 28.05.2007.
7. PW-3, Manager of Ram Krishna Bricks ratified the employment of claimant/ Raj Kumar Das in respect of that brick field and he used to earn Rs. 2,500/- per month.
8. Ld. Tribunal after appreciation of all evidences on record and examining the document admitted in evidence returned his findings that claimant/ Raj Kumar Das could not produce the medical papers in support of his treatment in different hospitals. Relying on exhibit-13 (medical paper), Ld. Judge disbelieved the factum of accident mentioned in the claim petition as no independent witness was examined on behalf of the claimant/ Raj Kumar Das. Ultimately, Ld. Judge returned

his findings to the extent of no involvement of the offending vehicle in the accident and disallowed the compensation by recording an order of dismissal of the Motor Accident Claim Case.

9. Mr. Ashique Mondal, Ld. Advocate, appearing on behalf of the claimant/appellant emphasized on the Police reports including charge-sheet which was submitted against the driver of the offending vehicle. Mr. Mondal has further submitted that inspite of evidence on record including the exhibited documents showing accidental injury of the claimant/ Raj Kumar Das. Ld. Judge of the Motor Accident Claim Tribunal refused to grant compensation as prayed for.

10. In support of his contention, Mr. Mondal relied on the following authorities :-

- ***Ravi vs. Badrinarayan (2011) 4 SCC 693***
- ***The New India Assurance Co. Ltd Vs. Mita Samanta 2009 SCC OnLine Cal 2142***

11. Mr. Rajesh Singh, Ld. Advocate appearing on behalf of the Respondents/National Insurance Co. Ltd, strenuously contended that inordinate delay in lodging FIR in connection with alleged accident has not been explained satisfactorily. Mr.

Singh also referred to exhibit-13 (report of MRI Scan Centre dated 24.05.2004) and submitted that the **reason** of injury mentioned in the report was **“Fall from lorry”**. Mr. Singh further contended that there is hardly any proximity between the alleged accident and the injury sustained by the claimant. In support of his contention Mr. Singh relied on a case of ***Anil and ors Vs. New Indian Assurance Co. Ltd. and ors, (2018) 2 SCC 482.***

Decision:-

12. At the very outset, I would like to focus on the accident alleged in this case. On careful scrutiny of the column 23 of the claim petition, it is found that the offending lorry dashed the van rickshaw near Mondalpara bus stoppage and the said van rickshaw turned turtle and as a result, victim Raj Kumar Das/Claimant and other passengers sustained injury. The claimant petition was filed by the claimant himself with verification. Now if I turn to evidence of claimant (PW-1), I find that regarding accident he testified as follows:-

“ I have filed the instant MACC No. 49/05 on 21.05.04 I met with an accident at about 5.00 P.M. after getting down from rickshaw and while I was paying the van fare to the rickshaw puller a lorry bearing No.

WB/41/2999. Suddenly came in a rash and negligent manner and knocked me down and as a result of which I lost my sense.”

Now, I turned to the written complaint submitted before Officer-in-charge, Kulpi PS on 08.08.2004. From the said First Information Report, it appears that one lorry bearing Reg. No. **WB 31-3999** coming with high speed, pressed sudden break to save one child crossing road. At that time, that lorry dashed claimant/ Raj Kumar Das and turned upside down.

- 13.** If three (3) statements namely incident stated in the claim petition, evidence adduce by claimant/injured (PW-1) and incident alleged in the First Information Report (exhibit-1) are placed in juxtaposition, it is found that all three (3) aforesaid statements do not corroborate one other. That apart, according to the case of the claimant, the incident took place at 05.00 P.M. i.e in the evening at bus stoppage a crowded place, but unfortunately no independent witness has been examined to corroborate the accident by the involvement of any vehicle (Lorry). That apart, registration number of the vehicle differs between the evidence of claimant (PW-1) and First Information Report. The aforesaid contradictory

statement has been further clouded by exhibit-13 wherein the column of history speaks – **“Fall from lorry”**.

14. In **Ravi** (supra) it was observed

“ 17. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.

18. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents C.A. @ of the FIR should also be scrutinized more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences.”

15. **Ravi** (supra) viewed that delay in lodging FIR cannot be a ground of doubt the claimant’s case provided if the Court finds that there is no indication of fabrication or it has not been

concocted or engineered. Therefore, Hon'ble Apex Court did not ignore delay in lodging FIR without any proviso clause of 'fabrication and concoction' etc. That apart, In **Ravi** (supra), Hon'ble Apex Court dealt with a case where owner of the vehicle acknowledged the accident by the involvement of his vehicle in response to a notice issued under Section 133 of the Motor Vehicles Act. More so, immediately after the incident, Police went to hospital to record FIR but on account of mental agony and stress Suresh Kumar, father of the victim, could not assist the Police.

16. The facts dealt with by the Hon'ble Apex Court in **Ravi** (supra) is not identical with that of ours where there are glaring discrepancies regarding the accident and Police was not put into motion by any sort of information save and except First Information Report after 77 days of the accident at the instance of brother of the claimant for the first time.

17. In **Mita Samanta** (supra) it was held as follows:-

“ 16. The aforesaid principle applies with greater force when a party even does not dispute the statement made in the pleading of the other side and decides to remain ex parte. We are quite conscious that in the proceedings for compensation under the Motor Vehicles Act, when the offending vehicle is insured, the owner of the vehicle

may not be interested to appear at the witness box in spite of the fact that he is a party to the proceedings. For that reason, the legislature has incorporated the provision contained in Section 170 of the Act permitting the Insurance Company to contest the proceedings on all points. Once such leave is granted, it is the duty of the Insurance Company to summon the owner of the vehicle to appear as a witness for disputing the allegation of the claimants. If the Insurance Company after taking leave of the Tribunal under Section 170 of the Act, decides not to lead any evidence by summoning the relevant witnesses including the party whose liability it has undertaken, its position in law will be just like the party who is afraid of appearing in the witness box to face the cross-examination of the claimants. It is preposterous to suggest that the Court will hold against the claimants notwithstanding the fact that in spite of the allegation of rashness or negligence against the driver, the driver or the owner of the vehicle is deliberately avoiding the Court and the claimants are unable to cross-examine the owner against whom the compensation is claimed or the errant driver whose identity has been disclosed in a civil proceeding.”

- 18.** The ratio of **Mita Samanta** (supra) is not applicable in this case as claimants/ appellant failed to prove the factum of accident far to speak of negligence on part of the driver of the alleged lorry. In our case, manner of accident disclosed in the claim application filed by the injured himself has not been

corroborated by the appellant / injured himself who has been examined as PW-1 and more over FIR disclosed a different story of accident. And to add to that, exhibit 13 disclosed the accident due to fall from the lorry.

19. In these circumstances, it would be convenient to refer the ratio of Anil and other (supra) where it was held as follows:-

“ 3. In appeal, the High Court has adverted in significant detail to a number of disturbing facts which have emerged from the narration of the case by the claimants. The High Court has adverted to the relevant aspects of the evidence thus : 2. There are disturbing facts that emerge from the narration of the case by the claimants. In this case, the deceased was Ram Kanwar and his brother, Satbir Singh, was the owner of the tractor. PW-1 Bhawani Shankar, who claims to be an eye-witness, states that he, along with two other persons namely Rohtas and Ghanshyam (PW2), were in the tractor driven by Dharampal. Ram Kanwar deceased was stated to have travelled in the same tractor also from Behrod to Shehjahanpur and alighted at Foladpur for some work and asked the driver to pick him up on his return. The tractor was returning at about 6.30 PM and the deceased Ram Kanwar was standing on the road. While he signalled the tractor to stop, the tractor ran over the deceased by rash and negligent driving of the tractor. It is stated that he was run over under the wheel of the tractor. The deceased was said

to have been taken immediately to hospital at Kotputli where he was found bleeding excessively. Dr O.S. Mehra (PW4), who was at the hospital, has recorded this fact in the OPD slip (Ex. P2) and said to have referred the deceased for further treatment at the GH at Gurgaon. It is not known whether the deceased died at the hospital at Gurgaon or he had died at GH, Kotoputli itself. Admittedly, no post-mortem had been conducted. Significantly, no post-mortem was conducted. The High Court also noticed the fact that though the accident took place on 12 January 1995, a complaint was lodged only on 15 February 1995. As regards the evidence of the driver, the High Court noted that while at one stage he had stated that the deceased was brought dead, at another place he stated that he was referred to the government hospital for further treatment. The circumstance that no post-mortem was conducted is an extremely significant aspect of the case which in our view has justifiably weighed with the High Court. Moreover, the High Court found that if there were three passengers in the tractor, all of whom had known that driver Dharampal had by his negligent act run over Ram Kanwar, the most natural conduct would have been to lodge a complaint. The person who died was the brother of the owner of the tractor. **Hence, the fact that a complaint was not lodged for nearly one month is a significant omission in the case.** The High Court has also noticed that there were no hospital records to indicate, from the nature of the injuries, that death had occurred due to an accident of the nature alleged. The deceased was conducting a transport business with his brother and was an income tax assessee. The fact that

proper medical records were not available has, in this background, weighed with the High Court. Besides the above aspects, the High Court has found that the assessment of compensation by the Tribunal is perverse. “

- 20.** From the entire medical documents filed in this case I find some discrepancies which have already been taken care of by the Ld. Tribunal as follows:-

“ Moreover, on a perusal of ext. 13 I find that medical officer noted the history in his MRI Scan report and disclosed the fact that victim fell from a lorry four days back. The certificate was issued on 24.05.2004. So as per MRI Scan report of the victim I find that the accident took place on 20.05.2004 and not 21.05.2004. Besides, the P.W. 1 deposes that he was taken to Dimaond Harbour Hospital after the accident, whereas exhibit 3 (Referral card) shows that he was referred to M.R Bangur Hospital by the medical Officer on 22.05.2004. There is no note on exhibit-8 that the victim was brought to the hospital on 21.05.2004. There is no document whether the victim was treated on 21.05.2004. It is further interesting to note that the victim was not admitted in M.R. Bangur Hospital. As per referral card he was admitted at M.C. Hospital from 22.05.2004 to 29.05.2004. (ext. 11). Exhibit-10 shows that the victim was admitted at Bangur Hospital of Neurology from 05.07.2004 to 17.09.2004.....”

- 21.** A further scanning of entire discussions in the foregoing paragraphs in terms of evidence and documents available on

record I am unable to interfere with the judgment and order of the Ld. Tribunal. In the result, I find no merit in this appeal.

22. For the reasons, the appeal being no. 1056 of 2009 stands dismissed. There shall be no order as to cost.

23. All pending applications, if any, stand disposed of accordingly.

24. Let the records of the Tribunal, be sent back immediately.

25. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]