

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 720 of 2010

With

CAN 4 of 2018 (CAN 10291 of 2018)

Smt. Tulsi Roy & Ors.

Vs.

National Insurance Company Ltd. & Ors.

For the Appellants/
claimants :Mr. Jayanta Banerjee, Advocate
Ms. Ruxmini Basu Roy

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

Heard on : September 22, 2022
Judgment on : September 28, 2022

Bibhas Ranjan De, J.

1. Being aggrieved by and dissatisfied with the Judgment and Order dated 30.05.2009, passed by Ld. Judge, Motor Accident

Claim Tribunal, Katwa, Burdwan in connection with MAC Case No. 120 of 2005 under Section 163A of the Motor Vehicles Act, 1988, this appeal has been preferred on the ground that the Ld. Tribunal could not appreciate the evidence and documents available on record and came to his erroneous findings.

2. The Motor Accident Claim Case no. 120 of 2005 arose out of an application under Section 163A of the Motor Vehicles Act, 1988 on account of accidental death of Raju Roy, son of late Rama Kanta Roy, aged about 39 years and an employee of the vehicle involved in the accident. On 21.01.2005 at about 11.30 a.m. said Raju Roy was travelling by the truck bearing no WB-57-7657 which was moving rashly and negligently towards Nagar and near Tentultala bus stand the said truck lost its control and capsized. As a result, passengers travelling by the truck sustained injury. One Subhodip Ghosh died at the spot and Raju Roy among other injured passengers admitted to hospital and died.

3. Claimed application has been filed with a prayer for compensation to the tune of Rs. 4,000,00/- as Raju Roy was an

employee of the offending vehicle having monthly income of Rs, 3,000/-.

4. Both the Opposite party/ Insurance Company and owner contested the case by filing their respective written statements denying material allegations in the claim petition.
5. In course of trial of the case, claimant no. 1/ widow of deceased Raju Roy examined herself as PW-1 and in course of her evidence Police Reports, PM Report, Ration Card, Insurance Policy were admitted in evidence.
6. On careful scrutiny of the judgment passed by Ld. Tribunal, it comes to my view that Ld. Tribunal focused on the written statement on behalf of owner of the vehicle involved in this case and non-filing of documents in support of employment of Raju Roy. Ld. Tribunal held that opposite party/owner denied his ownership of the vehicle involved in this case, by filing a written statement and thereby Ld. Tribunal returned his findings that actual owner of the vehicle involved in this case has not been made party and the Motor Accident Claim Case was not maintainable. On the other hand, Ld. Tribunal disbelieved the employment of Raju Roy and returned his findings that

deceased Raju Roy was gratuitous passenger of the vehicle involved in this case. Thus, being the position, Ld. Tribunal dismissed the claim application filed on behalf of the legal heirs of deceased Raju Roy.

7. Mr. Jayanta Banerjee, Ld. Advocate, appearing on behalf of the appellants has submitted that exhibit 6 (Insurance Policy) and exhibit 8 (Registration Certificate) clearly proved that Anfar Sekh was the owner of the vehicle involved in this case. It is further submitted by Mr. Banerjee that though Insurance Policy number and registration number were not supplied in the claim petition at the time of filing but subsequently by filing an amendment application the policy number and registration number were supplied and accordingly claim petition was amended.

8. Mr. Rajesh Singh, Ld. Advocate, appearing on behalf of the National Insurance Company has contended that at the time of accident admittedly there was no registration which was issued on 02.03.2005 i.e. after the alleged accident. Assailing the Registration Certificate and Insurance Policy, Mr. Singh has tried to make this Court understand that Anfar Sekh was not

the owner of the said vehicle which was further corroborated by the written statement filed on behalf of the so called owner/ Anfar Sekh. Before parting with his argument, Mr. Singh has submitted that no evidence has been adduced in the case in support of employment of deceased Raju Roy and that being the position Raju Roy was a gratuitous passenger. Mr. Singh concluded his argument by submitting that Ld. Tribunal rightly dismissed the claim application.

9. From the entire Police reports including First Information Repot, seizure list and charge-sheet in connection with Khargram PS Case No. 10/2005 dated 21.01.2005 under Section 279/ 338/304A of the Indian Penal Code as well as Post Mortem report in respect of deceased Raju Roy, I find no reason to disbelieve that an accident took place on 21.01.2005 at about 11:30 hours by the involvement of a vehicle bearing no. WB-57-7657 and Raju Roy was travelling by that vehicle along with other passengers.

10. Registration Certificate (exhibit 8) clearly shows that Anfar Sekh, son of Sekh Rajemal is the owner of the vehicle and Insurance Policy (exhibit-6) also shows the policy was issued in

the name of insured/ Anfar Sekh, son of Sekh Rajemal. Now, if I turn to the written statement filed on behalf of the Anfar Sekh, I find that, though he stated that he was not the real owner of the vehicle but he admitted that he was authorized by his father Rajemal Sekh, who is the owner of the said vehicle. Tone and tenor of the written statement filed by Anfar Sekh together with the Insurance Policy and Registration Certificate in respect of vehicle in question clearly show that Anfar Sekh was the owner of the vehicle.

11. Mr. Singh has strenuously contended that on the alleged date of accident, the vehicle was driven without any registration certificate. It is true that registration certificate was issued on 02.03.2005 and accident alleged in the case took place on 21.01.2005. Now the question is whether driving of a vehicle without registration can be the ground for refusal of claim under Section 163A of the Motor Vehicles Act. Section 192 of the Motor Vehicles Act speaks volume of the consequences for driving a vehicle without Registration certificate. Actually, driving of a vehicle without registration certificate is a punishable offence under section 192 of the Motor vehicles Act,

1988. Therefore, I am of the view that driving of the offending vehicle on the alleged date of accident without registration certificate does not make any difference to the claim application filed by the legal heirs of deceased Raju Roy.

12. It is true that no evidence has been adduced before the Tribunal showing employment of deceased Raju Roy who was then a gratuitous passenger. Considering minimum wages, monthly income of the deceased at the time of death may be taken as Rs. 3,000/-.

13. For the reasons, I propose to determine the compensation as follows:-

Annual Income (Rs. 3000 x 12)	: 36,000.00
Less:- 1/3 rd for the personal expenses	: 12,000.00
	24,000.00
Adding Multiplier:- x '16'	: 24,000.00 x 16
	3,84,000.00
Add:- General Damages	: 9,500.00
Total Award	: 3,93,500.00

14. National Insurance Company is directed to deposit the entire amount of compensation before the Ld. Registrar General, along

with interest @ 6% per annum from the date of filing of the claim petition till the date of deposit of compensation amount, within six (6) weeks from date.

- 15.** Respondent/ National Insurance Company is at liberty to recover the entire compensation amount with interest from the owner of the vehicle being registration no. WB-57-7657 directly through execution proceeding instead of filing separate suit.
- 16.** Claimant is entitled to the amount of compensation subject to payment of *ad velorem* Court fees, if not already paid, thereon.
- 17.** Ld. Registrar General will disburse the amount in favour of the claimant on proper identification and also on verification of payment of Court fees on the award of compensation.
- 18.** In the result, the judgment passed in MAC Case No. 120 of 2005 stands set aside.
- 19.** Mr. Banerjee has drawn attention to this case to the CAN 4 of 2018 (CAN 10291 of 2018), whereby it is prayed for recording the attainment of majority of the appellant No. 2 & 3. The prayer is allowed. I record the attainment of majority of the appellant no. 2 & 3 namely Mampi Roy and Chumki Roy respectively.

Department to make necessary correction in the cause title of the memo of appeal.

20. F.M.A 720 of 2010 stands disposed of without any order as to cost.

21. All pending applications stand disposed of accordingly.

22. Let the records of the Tribunal be sent back immediately.

23. 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.]