

28.11.2022
SL No.8
Court No. 654
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

**F.M.A. 353 of 2019
IA No: CAN/1/2018 (Old No: CAN/9598/2018)
CAN/2/2022**

**The National Insurance Co. Ltd.
Vs.
Amita Nayek & Ors.**

Mr. Sanjay Paul
....for the appellant-Insurance Co.

Mr. Subhankar Mandal
....for the respondents

This appeal is directed against the judgment and award dated 6 August 2018 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, 3rd Court, Paschim Medinipur in MAC case no. 204 of 2014 under Section 166 of the Motor Vehicles Act, 1988 granting compensation of Rs. 20,42,848/- in favour of the claimants along with interest.

The brief fact of the case is that on 6 April 2012 at about 4:30 PM/5 PM, while the victim was proceeding on his motorcycle from Jhargram towards his native village at Rohini keeping left side of Jhargram-Rohini Road, at that time offending vehicle bearing no.WB-36B/5396 (Maruti Van) coming at a high speed in rash and negligent manner dashed the victim's motorcycle, as a result of which the victim fell down on the road and

received grievous injuries on his head and body. Local people rescued the victim and immediately took him to Jhargram Hospital, where the attending doctors declared him dead. On account of sudden demise of the deceased-victim, the claimants being the parents of the deceased filed claim application under section 166 of the motor vehicles act, 1988 for compensation of Rs.18,30,000/- along with interest.

Upon considering the materials on record, the oral and documentary evidence adduced on behalf of the claimants, the learned tribunal allowed compensation in favour of the claimants to the tune of Rs. 20,42,848/- in favour of the claimant no.1 (mother) along with interest.

Being aggrieved by and dissatisfied with the impugned judgment and award the insurance company has preferred the present appeal.

Mr Sanjay Paul, learned advocate for appellant-insurance company submits that the award of the learned tribunal has been challenged in this appeal on the sole ground of non-involvement of the alleged vehicle. He submits that as per the claim case the accident took place on 6 April 2012 whereas the records show that FIR has been lodged on 13 October 2012 i.e after a lapse of more than 6 months of the alleged occurrence and such delay

has not been sufficiently explained in the written complaint and thus the delay in lodging FIR raises serious doubt with regard to the involvement of the offending vehicle in the alleged accident. He further submits that the offending vehicle had not been seized by the investigating agency soon after the accident rather it has been seized after lodging of the FIR in the month of October 2012. Furthermore it is submitted that the eyewitness to the occurrence namely PW2 in cross-examination has categorically deposed that soon after the accident he made telephone call to the family members of the deceased-victim. In spite of such information been received from the witness, the FIR maker did not lodge the written complaint disclosing the involvement of the offending vehicle which makes the claim case suspicious and points towards implanting of the offending vehicle with an ulterior motive to receive a huge compensation in the claim case. In the aforesaid backdrop he submits that the appellant-insurance company cannot be saddled with the liability of making payment of the compensation amount and he prays for setting aside the order of the learned tribunal.

Per contra Mr Subhankar Mandal, learned advocate for respondents-claimants submit that no challenge to involvement of the offending vehicle has

been made by the Insurance Company in the written statement submitted before the learned tribunal. In terms of Section 170 of the Motor Vehicles Act the insurance company had all the available defences but it did not produce any evidence before the learned tribunal namely the owner or the driver of the offending vehicle to suffice its contention of non-involvement of the offending vehicle. He further submits that delay in lodging the FIR *per se* does not make the claim case doubtful in the absence of any attending circumstances. In support of his contention he relies on the decision of Hon'ble Supreme Court passed in ***Ravi versus Badrinarayan*** reported in **(2011) 4 SCC 693** and decision of this court passed in ***New India Assurance Co. Ltd. versus Mita Samanta*** reported in **2010(3) CHN (Cal) 411** and ***Bajaj Allianz General Insurance Company Limited versus Anjali Mandal and Anr.*** (FMAT 201 of 2018). In the light of his aforesaid submissions he prayed for dismissal of the appeal.

By an order dated 16 September 2022 the service of notice of appeal upon respondent-owner of the offending vehicle was dispensed with as the said respondent did not contest the claim application before the learned tribunal.

Having heard the learned advocates of both the sides, it appears that in the present appeal the only ground raised is with regard to involvement of the offending vehicle. It is a fact that the written complaint was lodged on 13 October 2012 after expiry more than 6 months of the accident occurring on 6 April 2012. The FIR maker, father of the deceased, in the written complaint has explained that due to sudden demise of his son and debilitating mental condition he could not lodge the written complaint immediately. There is no indication of fabrication or concoction or exaggerations.

The Hon'ble Supreme Court in its decision passed in **Ravi (supra)** observed as follows.

“20. It is well settled that the delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect the 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 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. In cases of delay, the Courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If Courts 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.”

Bearing in mind the aforesaid observation of the Hon’ble Supreme Court and as in the present case at hand there is no indication of fabrication or concoction or engineering of the FIR hence the delay in lodging the FIR *per se* cannot be a ground for dismissal of the claim case. Further such delay has been duly explained in the FIR. This court in the decision passed in **Anjali Mandal’s Case** (FMAT 201 of 2018) also relied on the aforesaid observation of Hon’ble Supreme Court made in **Ravi’s case (supra)**. Accordingly, the argument of the appellant-insurance company in this regard falls short of merit.

Although the insurance company at the time of hearing raised the issue that the offending vehicle has been implanted and was not involved in the accident but it is pertinent to note that no such defence has been taken by the insurance company before the learned tribunal in its written statement. PW2, Samir Bera in his evidence-in-chief stated that he saw the accident in which the offending vehicle was involved. Such evidence of PW2 has not been rebutted in cross-examination.

The appellant-insurance company filed application for leave to avail all defences under the

provisions of Section 170 of the Motor Vehicles Act, 1988. When Section 170 of the Act permitted an insurance company to contest proceedings on behalf of the insured-owner of the vehicle, it was incumbent upon the insurance company to summon the owner or the driver of the vehicle to appear as witness for disputing the allegation of involvement of the offending vehicle. The owner of the offending vehicle was the best person to prove non-involvement of the offending vehicle by producing either garage register or movement register of the vehicle to indicate the movement of the offending vehicle at the relevant time. Similarly, the driver could have been a necessary witness to throw light as to whether the offending vehicle was really involved in the said accident or not. The appellant-insurance company did not take any steps to adduce the evidence of the owner or the driver of the offending vehicle to establish its plea of non-involvement of the offending vehicle. Failure to adopt such course the court is left with no other alternative than to accept the allegations of the claimants of involvement of the offending vehicle.

This court in the case of ***Mita Samanta (supra)*** observed as follows.

“ 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 the 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 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 the claimants. In this case, there is no such admission or evidence of that nature. In this case, 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 the claimants when the driver has been indicted in the criminal proceedings. 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 the claimants”

Keeping in mind the aforesaid observation of this Hon’ble court, I am of the view that as the appellant-insurance company in spite of taking leave under Section 170 of the Act has failed to adduce the evidence of owner or the driver of the offending vehicle to establish its defence of non-involvement of the vehicle, it will be a travesty of justice to disbelieve the eyewitness namely PW2 examined on behalf of the claimants in this regard. Needless to mention that the insurance company also did not

produce the evidence of the investigating agency to disprove the claim of the claimants regarding the involvement of the offending vehicle. The FIR **(Exhibit 1)**, charge sheet **(Exhibit 2)** and seizure list **(Exhibit 3)** clearly shows involvement of the offending vehicle in the said accident. In view of the above discussion the argument advanced on behalf of the appellant-insurance company of non-involvement of the offending vehicle in the said accident does not hold good.

In view of the above discussion I find that the grounds taken by the insurance company in the present appeal regarding non-involvement of the offending vehicle falls short of merit and accordingly the appeal is liable to be dismissed.

Mr Sanjay Paul, learned advocate for appellant insurance company informs the court that the insurance company has already deposited the entire awarded sum along with interest before the learned Registrar General, High Court Calcutta. It appears that an amount of Rs. 26,59,732/- has been deposited before the Registry of this Court vide OD Challan no.258 dated 13.5.2019 and statutory deposit of 25,000/- has been made vide OD Challan no.2479 date 3.1.2019.

Accordingly, learned Registrar General, High Court Calcutta is directed to disburse the aforesaid

amount alongwith accrued interest in favour of the respondent no.1 upon satisfaction of her identity.

The appeal is accordingly dismissed. The impugned judgment and award of learned tribunal dated 6 August 2018 passed in MAC case no. 204 of 2014 is hereby affirmed. No order as to costs.

All connected applications, if any, stands disposed of.

Interim order if any stands vacated.

Let a copy of this order be forwarded to learned tribunal for information.

Urgent photostat certified copy if applied for, be supplied to the parties upon compliance of legal formalities.

(Bivas Pattanayak, J.)