

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

FMA 987 of 2013

With

CAN 1 of 2013 (Old CAN 6428 of 2013)

- i) Smt. Kamlesh Balmiki @ Kamalesh Balmiki**
- ii) Smt. Basanti Devi Balmiki**
- iii) Avishel Balmiki @ Abhishek Balmiki**
- iv) Manisha Balmiki**
- v) Aman Balmiki**

...Appellants/Claimants

Vs

- i) United India Insurance Company Limited**
- ii) Abdul Kalam Aazad**

...Respondents

- - - - -

Mr. Krishanu Banik, Adv.
Sk. Abu Abbas Uddin, Adv.
Mr. Sanat Mullick, Adv.
Mr. Nahid Rahman, Adv.

..... for the Appellants

Mr. Parimal Kumar Pahari, Adv.

..... for the Respondent No. 1,
United India Insurance Company
Limited

Heard On : 18.07.2022

Judgment on : 22.08.2022

Rabindranath Samanta, J:-

1. Aggrieved by the judgment and award passed by the learned Judge,
Motor Accident Claims Tribunal (hereinafter be referred to as the

Tribunal), 2nd Bench, City Civil Court, Calcutta in MAC Case No. 58 of 2007 the appellants have preferred the instant appeal. By the judgment dated 6th May, 2011, the learned Tribunal dismissed the claim case brought by the appellants/claimants.

2. Before I proceed to pen the judgment it will be apposite to record that the claimant Nos. 3 to 5 namely Avishel Balmiki @Abhishek Balmiki , Manisha Balmiki and Aman Balmiki who at the time of filing of the claim application on 19.01.2007 were minor have now attained majority. Their attainment of majority be noted in the memorandum of appeal and other relevant paper, if any. They be treated as major so far as this appeal is concerned.
3. The facts emanating from the claim application under Section 166 of the Motor Vehicles Act and which are necessary for adjudication may be adumbrated as under:

On 22nd November, 2006 at about 11:30 p.m. Rajesh Balmiki, son of Ramswarup Balmiki of 1, Belgachhia Road, P.S. Chitpur, Kolkata-700037 and also of 6B, Belgachhia Road, Kolkata- 700037 was trying to get down from the first gate of the bus bearing registration No. WB-04A/5039 at Dutta Bagan Crossing Bus stoppage on Belgachhia Road. The bus stopped at the said bus stoppage coming from western side to eastern side along Belgachhia Road. At that time the driver of the bus started driving the bus with a high speed and in a rash and negligent manner endangering to life and safety of others. As a result, Rajesh Balmiki could not control himself and he fell down on the road. He was run over by the rear wheel of the offending vehicle. As a result of which, Rajesh Balmiki sustained multiple severe injuries all over his person and he was removed to R.G. Kar Hospital by some persons where he was declared brought dead by the attending doctors. The victim died at the age of 30 years.

4. On the allegations of rash and negligent driving on the part of the driver of the offending vehicle an FIR was lodged at Ultadanga Police Station and the FIR was registered as Ultadanga P.S. Case No. 131/06 under Sections 279/304A, Indian Penal Code. At the time of the accident the offending vehicle was insured with the respondent No.1, United India Insurance Company Limited.
5. The victim was an employee of the Office of Commissioner of Railway Safety, Eastern Circle, 14th Strand Road, 12th Floor, Kolkata- 700001. He used to get salary of Rs.11,084/- per month.
6. Owing to untimely death of the victim, the appellants/claimants who happen to be his widow, mother and minor children fell in acute financial crisis.
7. On the grounds as above, the claimants sought for compensation of Rs.16,00,000/- with 9% interest thereon.
8. The respondent No.1, United India Insurance Company Limited contested the claim case by filing a written and an additional written statement wherein it denied the averments/allegations as made in the claim application. It is the specific defence of the Insurance Company that on the demise of the victim Rajesh Balmiki, the claimants have received all the monetary benefits which were admissible to them from the office of the victim. Besides, the claimant No.1 has got the pensionary benefits. On such grounds, the Insurance Company submits that the claimants are not entitled to get any compensation and accordingly the claim case is liable to be dismissed with costs.
9. Upon the pleadings of the parties the following issues were framed by the learned Tribunal:
 - i) Is the case maintainable in its present form and in prayer?
 - ii) Did the victim meet with an accident on 22.11.2006 involving the offending vehicle bearing No. WB-04A/5039 resulting in his death?

- iii) Did the accident occur on account of rash and negligent driving of the offending vehicle?
 - iv) Was the vehicle in question covered by policy of insurance issued by O.P. No.2 Insurer?
 - v) Are the claimants entitled to get compensation as prayed for?
 - vi) To what relief/reliefs are the claimants entitled?
10. To prove their case, claimant No.1 Smt. Kamlesh Balmiki @Kamalesh Balmiki got herself examined as P.W.1. They examined Dibakar Samanta, an employee of Commissioner of Railway Safety, Eastern Circle (P.W. 2), and two eye witnesses namely Ram Parikshan Roy (P.W. 3) and Ratan Kundu (P.W.4). Some documents upon which the claimants placed reliance have been marked as Exhibits 1 to 12. No oral or documentary evidence has been adduced from the side of the Insurance Company.
11. Upon hearing the learned advocates appearing for the parties and on consideration of the evidence on record the learned Tribunal dismissed the claim case.
12. Perusal of the judgment of the learned Tribunal shows that the learned Tribunal did not believe the evidence of the eye witnesses namely P.W. 3 Ram Parikshan Roy and P.W. 4 Ratan Kundu on the reasons that the evidence of these two witnesses contradicted with each other materially. It has been observed by the learned Tribunal that according to P.W. 3 the accident took place at the crossing of Belgachhia and Dutta Bagan More while the bus was in running condition and the victim attempted to get down from the bus in running condition. P.W. 3 further stated that the victim did not request the conductor to stop the vehicle when his stoppage came. But, P.W. 4 Ratan Kundu stated that the accident occurred near the crossing of Dutta Bagan and the bus stopped at the bus stoppage and some passengers got down from the bus. When one passenger aged about 28 to 30 years was trying to get down from the bus the driver

- started the bus with high speed and the said passenger fell down and sustained injuries. The learned Tribunal has observed with wonder as to how a driver can start the bus with a high speed after alighting the passengers. Learned Tribunal has further observed that it is equally mysterious to contemplate how one passenger can try to get down from the bus after some passengers got down from it and why he did not get down when the bus stopped at the stoppage and some other passengers got down. On assessment of such evidence the learned Tribunal opined that the evidence of the aforesaid two witnesses was not credible and accordingly he did not place any reliance on such evidence as to proof of the case of the claimants.
13. In the decision in the case of ***Sunita -Vs- Rajasthan State Road Transport Corporation*** reported in ***AIR 2019 SC 994*** the Hon'ble Apex Court has held that while deciding cases arising of Motor Vehicle Accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubts which is followed in all criminal cases.
 14. Since the instant appeal is the first appeal before this Court, this Court may scrutinise the evidence of the witnesses as adduced before the learned Tribunal and may on assessment of such evidence infer whether the claimants have been able to prove that due to rash and negligent driving on the part of the driver of the offending vehicle the accident took place and the victim died because of the accident.
 15. As stated above, it is the case of the claimants that on 22.11.2006 at about 11:30 p.m. while the victim Rajesh Balmiki was trying to get down from the first gate of the offending vehicle at Dutta Bagan Crossing bus stoppage on Belgachhia Road, then the driver of the offending vehicle started the bus with high speed and in rash and negligent manner. As a result of which the victim fell down and he was run over by the rear wheel of the bus and died.

16. As the case has been presented by the claimants, P.W. 3 Ram Parikshan Roy and P.W. 4 Ratan Kundu are the eye witnesses to the accident. Ram Parikshan Roy(P.W.3) in his evidence in chief has deposed that on 22.11.2006 at about 11:30 p.m. he was parking his taxi near the place of occurrence towards Dum Dum face and the offending bus came from shyambazar side towards Dum Dum and stopped at the bus stoppage. Some passengers got down from the bus. One passenger aged about 28 to 30 years was trying to get down from the said bus, but the driver of the bus started the bus with high speed towards Dum Dum. As a result of which the passenger fell down from the bus on the road and he sustained injuries. He with some people rushed to the spot. The victim was taken to R.G. Kar Hospital where the doctors declared him brought dead. I find that nothing has been elicited from the cross-examination of this witness by the Insurance Company to discredit the evidence as adduced by this witness in chief. On the other hand, P.W. 4 Ratan Kundu in chief says that the accident took place on 22.11.2006 at about 11:30 p.m. at the crossing of Belgachhia and Dutta Bagan More. The offending bus bearing No. WB-04A/5039 was going from Shyambazar to Kalindi. It was in running condition at that time. The bus did not stop at Belgachhia and Dutta Bagan Crossing totally. The victim attempted to get down from the bus in running condition and at that time he fell down. The accident took place due to fault of the driver. The victim tried to get down from the bus and subsequently they found that the victim was lying on the road stained with blood. Some passengers took him to R.G. Kar Hospital where he was declared brought dead. From the cross-examination of this witness I find that his witness was a co-passenger of the offending bus. In cross-examination a suggestion was put to this witness that the victim tried to get down from the bus while it was in running condition, but this witness denied such suggestion.

17. As held by the Hon'ble Apex Court in the decision in the case of **Sunita -Vs- Rajasthan State Road Transport Corporation** reported in **AIR 2019 SC 994** while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubts which is followed in criminal cases. On analysing the evidence of P.W. 3 and P.W. 4 this fact, in the light of the standard of proof of preponderance of probability, stands proved that on 22.11.2006 at about 11:30 a.m. while the victim was trying to get down from the first gate of the offending bus at Dutta Bagan Crossing bus stoppage on Belgachhia Road, then the driver of the bus started the bus with a high speed and in rash and negligent manner. As a result of which the victim fell down and the rear wheel of the bus ran him over. Because of this he sustained severe injuries on his person and he succumbed to the injuries.
18. The Hon'ble Apex Court in the decision in the case of **N.K.V. Bros. (P) Ltd.-Vs- M. Karumai Ammal and Others** reported in **1980 A.C.J. 435** has observed that road accidents are one of the top killers in our country, especially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the Courts as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of *res ipsa loquitur*. In the decision in the case of **Shyam Sunder and Others -Vs- The State of Rajasthan** reported in **1974 A.C.J. 296** the Hon'ble Apex Court at paragraph 9 of the judgment has held as under:
- “ The maxim is stated in its classic form by Erie, C.J.L, see Scott v. London & St. Katherine Docks (1865) 3 H & C 596 “ where the thing is shown to be under the management of the defendant or his servants and the accident is such as in ordinary course of things does not happen if those who have the management has used proper case, it affords reasonable**

evidence, in the absence of explanation by the defendants that the accident arose from want of care.”

19. As recorded above on assessment of the evidence of P.W.3 and 4, the claimants have proved that due to rash and negligent driving on the part of the driver of the offending vehicle the accident took place. But, the owner of the offending vehicle though appeared before the learned Tribunal to contest the claim case, did not examine the driver or any of the conductors of the bus to prove that it was the fault on the part of the deceased for which he met with the accident and died.
20. The Hon'ble Apex Court in the decision in the case of ***Shyam Sunder*** (supra) has held at paragraph 14 that *res ipsa loquitur* is an immensely important vehicle for importing strict liability into negligence cases. In practice, there are many cases where *res ipsa loquitur* is properly invoked in which the defendant is unable to show affirmatively either that he took all reasonable precautions to avoid injury or that the particular cause of the injury was not associated with negligence on his part.
21. Therefore, viewed from the factual matrix and bearing in mind the principles of *res ipsa loquitur* this Court without any hesitation in mind may safely hold that due to recklessness and negligence on the part of the driver of the offending vehicle the accident took place and the victim died because of the accident.
22. Learned lawyer appearing for the Insurance Company by referring to two decisions- one in the case of ***Oriental Insurance Company Limited –Vs- Meena Variyal and Others*** reported in ***2007 ACJ 1284*** and the another in the case of ***Oriental Insurance Company Limited –Vs- Premlata Shukla and Others*** reported in ***2007 ACJ 1928*** submits that the learned Tribunal was justified in not placing reliance on the evidence of the eye witnesses and according to learned lawyer the claim case brought by the claimants is liable to be dismissed.

23. Since this Court after assessment of the evidence of the eye witnesses has arrived at the finding that due to recklessness and negligence on the part of the driver of the offending vehicle the accident took place, the decisions as cited by learned lawyer appearing for the Insurance Company do not apply to the factual matrix on hand.
24. Admittedly, at the time of the accident the offending bus bearing No. WB-04A/5039 was insured with the respondent No.1, United India Insurance Company Limited.
25. From the evidence of P.W.1 Kamlesh Balmiki @ Kamalesh Balmiki, Exhibit 9 (Voter's Identity Card) and Exhibit 12 Bio Data of the victim submitted to his employer it is evident that at the time of the accident the victim was aged about 30 years. It appears from the evidence of P.W. 2 Dibakar Samanta, an employee of Commissioner of Railway Safety, Eastern Circle and the salary certificate of the victim (Exhibit 11) duly proved by P.W. 2 that the victim used to draw salary of Rs.10,974/- after deduction of Professional tax of Rs.110/- per month. It is not in dispute that the victim used to earn Rs.10,974/- per month having a permanent job as an employee under the Commissioner of Railway Safety, Eastern Circle.
26. The Hon'ble Apex Court in the decision in the case of ***National Insurance Company Limited -Vs- Pranay Sethi and Ors*** reported in ***(2017) 16 SCC 680*** has held at paragraph 59.3 that while determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years should be made. As held above, the victim died at the age of 30 years. Therefore, 50% would be added to his income towards his future prospects.
27. The Hon'ble Apex Court in an another decision in the case of ***Sarla Verma and Ors -Vs- Delhi Transport Corporation and Ors*** reported in ***(2009) 6 SCC 121*** has held at paragraph 30 that where the

deceased died leaving behind him or her 4 to 6 dependants, then the deduction towards his/her personal and living expenses would be

1/4th. In this decision the Hon'ble Apex Court at paragraph 42 has held that multiplier 17 would be applied in case the deceased died at the age group of 26 to 30 years.

28. Learned lawyer for the appellants submits that though the amount of Rs.40,000/- on the count of spousal consortium is admissible to the appellant No.1, the widow of the victim, the appellants/claimants will have no objection if this amount of money is given to all the claimants in equal share.
29. Admittedly, the victim died leaving behind him 5 dependants who are the claimants herein.
30. In view of the findings as recorded above and the decisions of the Hon'ble Apex Court supra, the assessment of compensation would be assessed in the following manner:

Monthly Income=	Rs.10,974/-
Future Prospects @50%=	Rs.5,487/-
Total=	Rs.16,461/-
Annual Income=	Rs.1,97,532/-
(Rs.16,461x12)	
Deduction to the extent of 1/4 th =	Rs.1,48,149/-
towards his living and personal expenses	
Adopting multiplier 17 considering =	Rs. 25,18,533/-
the age of the victim of 30 years	
(Rs.1,48,149 x 17)	

General Damages = Rs. 70,000/-
 Loss of Estate(Rs.15,000/-)
 Loss of Consortium (Rs.40,000/-) and
 Funeral Expenses(Rs.15,000/-)

31. Therefore, total compensation towards loss of dependency comes to Rs.25,88,533/-.
32. Therefore, the claimants who happen to be the widow, mother and the children of the victim are entitled to get the aforesaid compensation of Rs.25,88,533/-. Besides, they are also entitled to get interest @ of 6% per annum on this awarded amount of money from the date of filing of the claim case i.e. on 19.01.2007.
33. In view of the above, the appeal merits success.
34. Accordingly, the appeal is allowed on contest against the respondent No.1 and ex parte against the respondent No.2.
35. The judgment and order dated 6th May, 2011 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Bench, City Civil Court, Calcutta in MAC Case No. 58 of 2007 is hereby set aside.
36. The claim case be allowed.
37. The respondent No.1, United India Insurance Company Limited is directed to deposit a sum of Rs. 25,88,533/- and the interest @ 6 % per annum on this amount from the date of filing of the case i.e. on 19.01.2007 by way of cheque with the learned Registrar General, High Court, Calcutta within six weeks from date. After this amount is deposited by the respondent No.1 with the learned Registrar General, the learned Registrar General shall release the amount to the appellants/claimants in equal share as expeditiously as possible after being satisfied with their identity.
38. With the aforesaid direction, the appeal and the connected application, if any, stand disposed of. No order as to costs.

39. Send down the LCR along with a copy of this judgment to the learned Tribunal for information.
40. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)