

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Rai Chattopadhyay

F.M.A. 1395 of 2017
with
IA No. CAN 1 of 2017 (Old No.CAN 3318 of 2017)

ICICI Lombard General Insurance Co. Ltd. & anr.
versus
The State of West Bengal & ors.

For the Appellants : *Mr. Tanay Chakraborty,*
Mr. Debapratim Guha.

For the State : *Mr. Jahar Lal De,*
Ms. Debarati Sen (Bose).

Hearing is concluded on : *7th June, 2022.*

Judgment On : **22nd June, 2022.**

Rai Chattopadhyay, J.

1. The appellant no.1, a private sector general insurance company and its functionary, being the appellant no.2 are aggrieved by an order dated 9th March, 2017 passed by the learned Single Judge in WP 5924(W) of 2017.

2. Shorn of unnecessary details the facts are that a two wheeler/motorcycle bearing registration number 30H 5378 (a red Bajaj Platina vehicle) was insured with the appellant no.1 *vide* policy No.3005/67740044/00/B00. The policy was issued on 28th November 2011 and the period of insurance was from 07:37:30 hours on 17.11.2011 to midnight of 16.11.2012. The policy was issued in the name of one Pankaj Kumar Bera. In usual course of business the appellant no.1 received two applications on 28th May, 2012 filed under Section 166 of the Motor Vehicles Act, 1988 before the Court of Motor Vehicles Accident Claims Tribunal (District Judge) Purba Medinipore at Tamruk which was registered as MACC 46 of 2012 and MACC 115 of 2012. Both the said applications were connected with an alleged accident dated 25th December, 2011. On 5th February, 2012, a complaint was lodged by the wife of one Mrinmoy Halder against one Manik Lal Manna alleging that due to rash and negligent driving of a motorcycle, the same collided with two innocent passers-by, namely Mrinmoy Halder and Pranab Kumar Das when both of whom sustained severe injuries and the said Mrinmoy Halder ultimately succumbed to the injuries sustained. The said complaint was registered as Sutahata Police Station Case No.26 of 2012 under Sections 279/337/338/304A of IPC. Upon completion of investigation a charge sheet was submitted on 26th March, 2012. About five years thereafter the writ petition was preferred on 5th April, 2017 primarily praying for the following reliefs :-

- a) *A Writ of and/or in the nature of Certiorari directing the respondents to certify and transmit before this Hon'ble Court the entire records of the said case being First Information Report No.26 of 2012 dated 6th February, 2012, so that conscionable justice may be done by quashing the complaint dated 5th February, 2012, First Information Report bearing First Information Report No.26 of 2012 dated 6th February 2012, being annexure "p-3" and the Charge-sheet dated 26th March, 2012 being annexure "P-4" in the instant petition;*
- b) *A Writ of and/or in the nature of Mandamus directing the respondents and its men, agents and assigns to immediately appoint an independent Investigating authority to investigate into the alleged incident which had allegedly occurred on 25th December, 2011 involving Mrinmoy Halder, since deceased and Mr. Pranab Kumar Das.*

3. The said writ petition was disposed of by the order impugned in the present appeal. The learned Single Judge observed that as neither the insurance company nor any of its officers are accused persons in the concerned criminal case, the insurance company lacks *locus standi* to challenge the impugned criminal proceeding. It was further observed that it would be open to the accused persons to raise their defences available under the law before the Criminal Court, if so advised.

4. Mr. Chakraborty, learned advocate appearing for the appellants submits that the accident as alleged on 25th December, 2011 is a fabricated one inasmuch as the concerned motorcycle, which was at the relevant point of time covered under the insurance policy, never met with any accident. In the FIR and the charge sheet, the date of the accident was stated to be 25th December, 2011 but in the seizure list dated 5th December, 2011, the date and time of seizure was noted to be '05-12-11'. The '*Discharge Summary*' issued by West Bank Hospital would indicate that the concerned person suffered injuries as he fell down from a motorcycle on 25th December, 2011.

5. He argues that the factum of such accident is only a concocted story presented before the court of law to defraud the appellant company in connivance with the police authorities and the private respondents and the sole purpose is to extract money from the appellants, who in turn, would have to pay the compensation amount from the Government exchequer.

6. He further argues that there was deliberate inaction and negligence on part of the police authorities in conducting the investigation and during such investigation the relevant materials and documents have been fabricated in order to substantiate the plea that the concerned vehicle met with an accident which is otherwise untrue and imaginary. Such investigation is perfunctory and unfair. In view thereof, the appellants are entitled to invoke the jurisdiction of this Hon'ble Court and pray for appointment of an independent investigating authority to

investigate into the alleged incident since the police authorities have miserably failed to discharge their statutory duties.

7. Reliance has also been placed by Mr. Chakraborty upon a list of cases to show that cases similar in nature are being conducted in a very perfunctory manner inasmuch as, the same person is being relied on sometimes as a witness in a case and sometimes as the driver of the offending vehicle in other claim cases. On the other hand the same person is being cited as the material witness in various matters at the same time. Such glaring discrepancies would only suggest about the perfunctory manner of investigation and the vicious nexus between the applicant and the investigating authority to victimise the appellants and to jeopardize the fundamental and vital rights of the insurance company as ensured under the Constitution of India.

8. In support his arguments, Mr. Chakraborty has placed reliance upon the judgments delivered in the cases of *Bimal Barman -vs- State of West Bengal*, reported in 2009 (2) CHN 442, *Binay Taggy -vs- Ishat Ali alias Dipak and others*, reported in (2013) 5 SCC 764 and *Jasvai Motivai Deshai -vs- Roshan Kumar Hazi Bosir Ahmed and others*, reported in (1976) 1 SCC 671.

9. *Per contra*, Mr. De, learned advocate appearing for the State submits that issue of fraud involves disputed questions of fact which can only be established upon leading evidence. The Writ Court cannot take upon itself an investigative mantle and proceed to decide disputed questions of fact. No legally protected

right of the appellants, which can be judicially enforced, has been infringed. Furthermore, there has been an inordinate unexplained delay in filing the writ petition. No complaint whatsoever was registered by the appellants before any authority stating that the accident was a concocted story set up to defraud the appellant company.

10. Mr. De argues that in order to have the *locus standi*, the writ petitioner should be an aggrieved person and a person aggrieved must be a man, who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused something or wrongfully affected his title to something. The averments made in the writ application do not disclose any such deprivation of any legal right. An application by a person who is in no way connected with the criminal proceeding or criminal trial cannot be entertained by the High Court and as such the learned Single Judge has rightly arrived at a finding that the appellants lack *locus standi* to challenge the criminal proceeding.

11. Heard the learned advocates appearing for the respective parties and considered the materials on record.

12. There is no averment in the writ application as whether any personal or individual rights of the appellants have been infringed which is necessary for the appellants to establish their *locus standi*. The appellants admit not to be parties to the police case. The appellants' liability under the Motor Vehicles Act extends to calculation and disbursement of the compensation

claimed and their challenge to the criminal case should have been reclined upon setting the criminal justice system in motion by it, which the appellants admit not to have done during all these years.

13. In the case of *Binay Taggy* (supra) the Hon'ble Apex Court was pleased to observe that the higher judiciary in exercise of extraordinary or inherent jurisdiction has power to direct fresh/denovo investigation/re-investigation by the same or any other specialised agency. In the case of *Jasvai* (supra) it was held that prejudicial effect to the commercial interest of a person shall put him in the category of an aggrieved person, entitled to a writ remedy. In the case of *Bimal Barman* (supra) it was held that when there is an exercise of fraud by anybody at any level, the question of *locus standi* cannot be a prime factor to dismiss the writ application. There is no dispute as regards the proposition of law as laid down but the said judgments are distinguishable on facts and have no manner of application in the present case. A decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight difference in fact or an additional fact may make a lot of difference in the decision making process.

14. A criminal trial of an accused is conducted in accordance with procedure as prescribed by the Criminal Procedure Code. Charge is an accusation made against a person in respect of an offence alleged which he has to face. Even if there are million questions of law to be deeply gone into and examined

in a criminal case registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties.

15. We, thus, do not find any illegality or impropriety in the order impugned, warranting interference in the present appeal.

16. Accordingly, the appeal being F.M.A. 1395 of 2017 and the application being IA No. CAN 1 of 2017 (Old No.CAN 3318 of 2017) are dismissed.

17. There shall, however, be no order as to costs.

18. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Rai Chattopadhyay, J.)

(Tapabrata Chakraborty, J.)