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

FMA 665 of 2019
With
IA No. CAN 2 of 2017(Old No. CAN 8036 of 2017)
Bajaj Allianz General Insurance Company Limited
-Vs-
Shibdas Majhi @ Shibu Maji & Anr.

Mr. Rajesh Singh
... for the appellant-Insurance Company

Mr. Amit Ranjan Roy
... for the respondent No.1-claimant

This appeal is preferred against the judgment and award dated 16th December, 2016 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track, 2nd Court, Burdwan in M.A.C. Case No. 67 of 2013 (128 of 2013) granting compensation of Rs. 5,11,880/- together with interest under Section 163A of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 26.02.2012 at about 12.00 hours in the afternoon while the victim was returning home from Kamarpara to Khurul, at that time the offending vehicle bearing registration No. WB 41C-0203 dashed the victim on Kurumba-Kamarpara Road near Nildanga more, as a result of which the victim was severely injured and subsequently his right leg was

amputated at Burdwan Medical College & Hospital and consequent thereto, he became permanently disabled. On account of injuries sustained and disablement, the injured filed an application for compensation of Rs. 6,00,000/- under Section 163A of the Motor Vehicles Act, 1988.

The respondent No. 1-claimant in order to establish his case examined himself and two other witnesses and also produced documents, which have been marked as **Exhibits- 1 to 6** respectively.

The appellant-insurance company also examined three witnesses including the owner and driver of the alleged offending vehicle. In cross-examination of P.W. 3, the discharge certificate of Burdwan Medical College & Hospital dated 15.03.2012 has been marked as **Exhibit-A** on behalf of the insurance company.

Upon considering the materials on record and the evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs. 5,11,880/- together with interest in favour of the claimant-injured under Section 163A of the Motor Vehicles Act.

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

Mr. Rajesh Singh, learned advocate for the appellant-insurance company submits that the

insurance company challenged the award in the present appeal on the ground of non-involvement of the offending vehicle and such challenge to involvement of the offending vehicle has also been specifically averred in the written statement filed by the insurance company. Raising the plea of non-involvement of the offending vehicle, Mr. Singh at the first instance indicates that there has been inordinate delay of almost 341 days in lodging the FIR. Such delay has not been explained properly either in the written complaint or by evidence during the proceedings and, therefore, the delay is fatal to the claim of the claimant. He further submits that in his evidence, the injured has admitted that he did not see the number of the offending vehicle. However, he stated that one Shibaji Mondal, Arup Hati and his wife told him about the number of the offending tractor. It is curious to note that none of the eye-witnesses informed the police about the accident. Far less, his wife who also witnessed the accident failed to intimate the police. Further, the driver of the offending vehicle stated in his evidence that he informed of the accident to the owner, which has been also admitted by the owner O.P.W. 1 in his evidence but neither the owner nor the driver informed the matter to the police and the FIR comes into existence after a lapse of 341 days without any explanation. He further draws the attention of the Court to the cross-examination of the

sole eye-witness P.W. 2, who categorically deposed in cross-examination that the number plate of the offending vehicle was white with black ink which suggests that the offending vehicle was a private vehicle and not a commercial one as has been alleged by the claimant, which raises a serious doubt as to the involvement of the offending vehicle. Further more, he submits that none of the medical documents produced before the learned Tribunal records the number of the offending vehicle or its involvement. Thus, the evidence and the facts emanating from the materials on record clearly indicate that the vehicle has been afterwards implanted to get compensation from the Court. In support of his contentions, he relies on the decision of the Hon'ble Supreme Court passed in **Anil and Ors. Vs. New Indian Assurance Co. Ltd & Ors. (Civil Appeal Nos. 3291-3292 of 2011)** reported in **AIR 2018 SC 612** and another decision of this Court passed in **Smt. Kalpana Ruidas & Ors. Vs. The Shriram Insurance Company Ltd. & Anr. (FMA 2124 of 2013)**.

In reply to the contentions raised on behalf of the appellant-insurance company, Mr. Amit Ranjan Roy, learned advocate for the respondent No. 1-claimant indicated from the evidence of the P.W. 1 that the wife of the victim namely, Purnima Majhi informed the police about the accident after 3/ 4 days from the date of accident and, therefore, the argument advanced on

behalf of the insurance company that the fact of accident was not informed is out and out not acceptable. Further, relying to the evidence of the sole eye-witness P.W. 2, he submits that the said witness has categorically stated of the involvement of the vehicle. Save and except that the number plate of the said vehicle is white in colour with black ink, there is no other contradictory evidence to disbelieve his evidence. Relying on ***Basthi Kasim Saheb (Dead) by L.Rs. Vs. The Mysore State Road Transport Corporation and Others***, reported in ***AIR 1991 SC 487***, he submits that the driver of the offending vehicle is the best witness of an accident and in the present case, the driver of the offending vehicle has admitted of the involvement of the vehicle and supported the version of the claimant which should be accepted for adjudication of the dispute.

Relying on the decision of the Hon'ble Supreme Court passed in ***Ravi Vs. Bardrinarayan and others***, reported in ***2011 (1) T.A.C. 867 (S.C.)***, he submits that the delay *per se* is not fatal to the claim of the claimant and, therefore, the delay in the present case in lodging the FIR cannot affect the claim of the injured-claimant, who suffered amputation due to injuries sustained in the accident. Moreover, he submits that no proceeding for quashing of the FIR has been initiated which establishes the occurrence and the involvement of the vehicle. Relying on the decision of the Hon'ble Supreme

Court passed in **SLP (Civil) No. 21077 of 2019 (Janabai WD/O Dinkarrao Ghorpade & Ors. Vs. M/S. I.C.I.C.I. Lambord Insurance Company Ltd.**, he submits that the FIR in the said case was initiated against the unknown vehicle and unknown driver and upon oral evidence of the wife of the victim, the Hon'ble Court accepted the involvement of the vehicle. In the light of the aforesaid submissions, he prays for dismissal of the appeal.

None appears on behalf of the respondent No. 2, owner of the offending vehicle in spite of service of notice of appeal.

Having heard the learned advocates for the respective parties, it is found that the insurance company has thrown challenge to the award solely on the ground of non-involvement of the offending vehicle. In order to appreciate the aforesaid issue, it would be profitable to refer to the written statement submitted by the insurance company. The insurance company in its written statement filed in the proceeding has categorically denied the allegation of involvement of the offending vehicle. In order to establish the involvement of the offending vehicle, the claimant has adduced the evidence of victim (injured) as P.W. 1 and another witness, Shibaji Mondal as P.W. 2. Though the P.W. 1, the victim of the alleged accident stated in his affidavit-in-chief that while returning home from Kamarpara to

Khurul, the tractor being registration No. WB 41C-0203 going towards Khurul dashed him, yet in his cross-examination, he stated that he became senseless as a result of the accident and could not see the number of the offending vehicle. Therefore, the evidence of the victim so far as the involvement of alleged tractor becomes inconsequential. Turning to the evidence of the sole eye-witness P.W. 2, it is found that he stated in his evidence that the victim was dashed by the tractor bearing registration No. WB 41C-0203. Both O.P.W. 1, owner of the alleged offending vehicle and O.P.W. 2 stated in their evidence- in- chief that the alleged vehicle was a commercial vehicle. However, the sole eye-witness P.W.2 stated in his cross-examination that the number of the offending vehicle was fitted in a number plate in a rear portion of the offending vehicle and it was written down in a white board with black ink.

Rule 50(2)(d) of the Central Motor Vehicles Rules, 1989 provides as hereunder:

[(d) the letters of the registration mark shall be in English and the figures shall be in Arabic numerals and shall be shown:-

(A) in the case of transport vehicles in Black colour on Yellow background; and

(B) in other cases, in Black colour on White background,

the registration mark on the trailer shall be exhibited on the left hand side in Black colour on Yellow background. In addition, the registration mark of the drawing vehicle shall be exhibited on the trailer also and this shall be done on the right

hand side at the rear of the trailer or the last trailer as the case may be, in Black colour on retro-reflective type Yellow background:

Provided that where provisions of this clause have not been complied with in respect of motor vehicle, on or before the commencement of the Central Motor Vehicles (8th Amendment) Rules, 2001, then the provisions shall be complied with,-

- (i) in respect of transport vehicle on or before 1st February, 2002; and*
- (ii) In other cases, on or before 1st July, 2002”]*

As per the aforesaid Rule, the commercial vehicle's number plate should be yellow with black colour numerals. Therefore, the evidence of P.W. 2, sole eye-witness that the number plate of the alleged vehicle was white with black ink raises a doubt with regard to the involvement of a tractor having a commercial registration, which is alleged to have been involved in the present case. The victim P.W. 1 has stated in his cross-examination that the P.W. 2, one Arup Hati and his wife Purnima Majhi witnessed the accident. Save and except P.W. 2, the claimant has not adduced the evidence either of his wife or Arup Hati.

It is not in dispute that there is delay in lodging of the FIR of more than 300 days. In backdrop of the evidences discussed above, let me examine as to whether the delay is properly explained or whether such delay is fatal to the claim case. It is pertinent to note that the FIR has been initiated on the basis of an application filed before the learned Chief Judicial Magistrate, Burdwan under Section 156(3) of the

Criminal Procedure Code on the ground of refusal by the police authority to accept the FIR. There is no iota of evidence that prior to filing of the application under Section 156(3) of the Code, the complainant approached the police authority. P.W. 1 (victim) stated that his wife informed the police about the accident after 3 /4 days of the accident. Neither such fact has been stated in the petition under Section 156(3) of the Code nor any document or general diary has been called for to establish the fact that the wife of the victim lodged complaint before the police alleging of such accident. That apart, none of the eye witnesses namely, Shibaji Mondal or Arup Hati informed of the accident to the police. More so, O.P.W. 1, owner of the offending vehicle and the O.P.W.2, driver of the offending vehicle who admitted that they knew about the accident also did not inform the police of such accident. It is curious to note that none of the witnesses who had knowledge of the accident informed the police of such accident which raises a doubt. There is no plausible reason coming up as to why these witnesses failed to inform the police if such occurrence in actuality has taken place.

Mr. Roy, learned advocate for the respondent/ claimant referring to the report of the Hon'ble Supreme Court in *Ravi (Supra)* tried to impress upon the court that the delay in lodging the FIR is not fatal to the claim case. The Hon'ble Supreme Court in the aforesaid report

has observed that in case 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 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 delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.

Bearing in mind the aforesaid proposition, upon scrutiny of the evidence of the witnesses as discussed above, it is already found that none of the witnesses to occurrence or the victim or the owner or the driver informed the accident to the police. The FIR has come to existence after an inordinate delay of more than 300 days. Though it has been stated that due to injury the complaint could not be made but it is found that the injured has been discharged on 15.03.2012 whereas the complaint was filed in Court on 21.01.2013 under Section 156(3) of the Code. More so, the fact of accident though stated to have been intimated to the police by the wife of the victim has not been supported by any document. The medical documents on the record do not speak of any road traffic accident. So far as the decision of the Hon'ble Supreme Court passed in *Janabai (supra)*, it is found that the same is distinguishable in facts and thus, does not apply to the facts of the present case. Therefore, bearing in mind the evidence of

witnesses discussed above, the witnesses not informing the police without plausible reason together with unexplained inordinate delay in lodging FIR, the involvement of the vehicle in the accident becomes doubtful and is very much fatal to the claim of the claimant. I find substance in the submission of Mr. Singh relying on *Anil (supra)* and *Smt. Kalpana Ruidas (supra)*.

In view of the above discussions, the appeal stands allowed. The impugned judgment and award of the learned Tribunal is set aside.

The appellant-insurance company is at liberty to withdraw the statutory amount of Rs. 25,000/- deposited vide OD Challan No.3405 dated 20.03.2017 and the deposit of Rs. 6,71,848/- made in terms of the order dated 04.07.2017 vide OD Challan No.962 dated 17.07.2017 along with accrued interest.

All the connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Let a copy of this order along with the Lower Court Records be sent to the learned Tribunal in accordance with law.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)