

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1292 of 2010
with
IA No. CAN 2 of 2014 (CAN 11759 of 2014)

The New India Assurance Co. Ltd.
Vs.
Halima Seikh & Ors.

Ms. Gopa Das Mukherjee
... For the appellant/Insurance Company

Mr. Uday Sankar Chattopadhyay
Ms. Trisha Rakshit
Mr. Debdipto Banerjee
Ms. Rajashree Tah
... For the respondents/claimants

This appeal is directed against the judgment and award passed on 27th March, 2009 by the learned Judge, Motor Accident Claims Tribunal, 3rd Court, Burdwan in connection with MAC Case No.58 of 2007/191 of 2007 whereby the learned Judge awarded compensation to the tune of Rs.2,49,500/-.

The claim petition arose out of an application filed under Section 163A of the Motor vehicles Act, 1988 on account of death of one Nurhuda Seikh on 27th February, 2006 at about 9.30 hours by the involvement of a Truck, bearing registration no.WMH-777, in the goods shed. After the accident, the victim was taken to Burdwan Medical College and Hospital where he succumbed to his injuries and Burdwan P.S. Case No.558 of 2006 dated 26th August,

2006 under Sections 279/304A of the Indian Penal Code was lodged and after investigation, charge sheet was filed against the driver of the offending Truck.

This appeal has been filed by the appellant/New India Assurance Company Limited particularly on two grounds. One is that victim died in a railway accident for which GRPS UD Case No.34 of 2006 dated 27th February, 2006 was started and secondly the First Information Report was lodged by the wife of the deceased after expiry of six months, i.e., on 26th August, 2006.

There is no dispute regarding assessment of compensation by the parties to this appeal.

Ms. Gopa Das Mukherjee, learned advocate appearing on behalf of the appellant/Insurance Company has referred to the charge sheet and tried to establish that after the accident, GRPS UD Case No.34 of 2006 was started and thereby it shall be presumed that it was a railway accident.

After careful perusal of the entire evidence, particularly, the evidence of PW-2 and other documents, including the charge sheet and report of unnatural death case, I find that the accident took place at the goods shed area used for loading and unloading the materials and that area is surely within the jurisdiction of railway property but it cannot be said that the accident happened in the goods shed area by the involvement of a Truck is a

railway accident. That is why a specific case under Section 279/304A of the Indian Penal Code was started under Burdwan P.S. Case No.558 of 2006 dated 26th August, 2006 after receiving a complaint from the wife of the deceased. Therefore, I do not find any merit in the submission of the learned advocate appearing on behalf of the appellant/Insurance Company with regard to the issue of railway accident.

Next I propose to come to the issue of delay in lodging FIR by the wife of the deceased. From the evidence of eyewitness (PW-2), it is found that the accident took place at the goods shed of Burdwan railway station and he witnessed the accident happened on 27th February, 2006 but he could not identify the number of the vehicle. From the FIR, sufficient explanations are found to have been given for delay in lodging complaint before the police. That apart, it is found from the case record that initially GRPS UD Case was started and subsequently on receipt of the written complaint, specific case under Section 279/304A of the Indian Penal Code was started by Burdwan Police Station. Considering the social status of the deceased, I find no reason to disbelieve the case on the ground of delay in lodging FIR.

Mr. Uday Sankar Chattopadhyay, learned advocate appearing on behalf of the respondents/claimants has relied on a case of **Ravi v. Badrinarayan & Ors.** reported

in **(2011) 4 SCC 693** where the Hon'ble Apex Court observed as follows:-

“17. It is well settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a 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 to 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 the aforesaid view of the matter, I am unable to accept the argument advanced on behalf of the appellant/Insurance Company with regard to delay in lodging FIR.

With the aforesaid observation, I do not find any reason to interfere with the judgment assailed in this appeal. The appeal, being FMA 1292 of 2010, stands dismissed.

The respondents/claimants are at liberty to withdraw the awarded amount with accrued interest.

The learned Registrar General is requested to disburse the amount with accrued interest to the respondents/claimants in the manner as prescribed in the order of the learned Tribunal on proper identification.

All pending applications, if there be any, also stand disposed of.

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

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

(Bibhas Ranjan De, J.)