

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 168 of 2010

Ashapurna Mandal

Vs.

The New India Assurance Company Ltd. & Anr.

For the Appellant :Mr. Saidur Rahaman, Adv.

For the Insurance Company :Mrs. Sucharita Paul, Adv.

Heard on : April 13, 2023

Judgment on : April 25 , 2023

Bibhas Ranjan De, J.

1. This is an appeal in connection with Motor Accident Claim Case.

2. On 22.02.2004 at about 13.00 hours one Sudhir Chandra Mandal s/o. Late Naresh Chandra Mandal was going to Satrasia from Aiho by a trekker No. WB-65/4189 to attend his niece

marriage. On the way said trekker dashed on buffalo cart at Krishnagar, Dargapara in front of the pond of Juttu Mandal. In effect, said Sudhir Chandra Mandal sustained fatal injury in abdomen and he was shifted Malda Railway Hospital where a major operation was held and he was referred to B.R.Singh Hospital, Kolkata, due to his physical condition. Sk. Sudhir Chandra Mandal remained under treatment from the date of accident i.e. 22.02.2004 to 29.06.2004 when he succumbed. Thereafter, dead body was post mortemed at N.R.S Medical College and Hospital, Kolkata.

3. At the time of death Sudhir Chandra Mandal, a man of 45 years, was an employee of railway as D/ Teth. Gr. II and used to earn Rs. 8,000/- per month. It is alleged that accident happened due to rash and negligent driving of the trekker no. WB-65/4189. Accordingly, wife and mother of the deceased filed the claim petition under Section 166 of the Motor Vehicles Act with a prayer for claim of Rs. 10,00,000/-.

4. Both owner of the trekker and the Insurance Company entered appearance and filed their respective written objection. Though, owner of vehicle stated in his written statement that the vehicle

was duly insured with the New India Assurance Company Limited and driver possessed valid driving licence but did not contest the claim petition. The Insurance Company contested the proceeding and denied all material averments of the claim petition and also denied particularly the alleged injury sustained by Sudhir Chandra Mandal by the involvement of the trekker no. WB-65/4189.

5. Learned Advocate, Mr. Saidur Rahaman, appearing on behalf of the appellant /claimant has referred to the evidence on record and tried to establish proximity between the alleged accident and the death of Sudhir Chandra Mandal. In support of his contention, he relied on a case of ***Divisional Manager, New India Assurance Co. Ltd. Vs. Tumu Gurava Reddy and another*** reported in ***1999ACJ 1077***, ***Divisional Manager, New India Assurance Co. Ltd. Vs Raj Kishore Jethy and others*** reported in ***1999 ACJ 858*** and ***Yalluwa and others Vs. National Insurance Co. Ltd. and another*** reported in ***2007 ACJ 1934***.

6. Per contra, Learned advocate, Ms. Sucharita Paul appearing on behalf of the Insurance Company heavily relied on the

judgement impugned in this appeal and submitted that grant of interim compensation under Section 140 of the Motor Vehicles Act does not create a right to compensation automatically under Section 166 of the Motor Vehicles Act, 1988. In support on her contention she relied on a case of ***Indra Devi and ors. Vs. Bagada Ram and ors.*** reported in ***Manu/SC/0613/2010*** and relied on a case of ***Nishan Singh and ors. Vs. Oriental Insurance Company ltd. & ors.*** reported in ***MANU/SC/0463/2018***.

7. I have gone through all the decisions cited above in terms of argument advanced on behalf of the parties to this appeal.
8. To prove the case Ashapurna Mondal, wife of deceased, and one Prafulla Kr. Sarkar adduced in this case as PW1 and PW2. A good number of documents including FIR, salary certificate, copy of PM report, seizure list, charge sheet, policy etc., were admitted in evidence.
9. Learned Tribunal took up the claim petition and after framing of issues recorded his findings. After evaluating evidence learned Judge could not find any evidence regarding treatment of said Sudhir Ch. Mondal either at Malda Railway Hospital or at B.R.

Singh Hospital, Kolkata. Learned Judge focused on a surgical operation at Malda Railway Hospital before deceased was referred to B.R. Singh Hospital and thereby a doubt has been created in the mind of the Tribunal regarding proximity between the accident by the involvement of the alleged vehicle and death of said Sudhir Chandra Mandal. Learned Tribunal further recorded the following lines for the reason best known to him:-

“ She stated in her petition that her husband died at B.R. Singh hospital, Calcutta while undergoing treatment there but the death certificate produced by the petitioner put the death nail to the claim of the petitioner. In the death certificate Ext. 7 the place of death is mentioned as District Hospital, Malda and the date of death as 14.01.07. The petitioner was disparate to sustain her claim. Of course, she has been employed by the Railway department on compassionate ground following the death of her husband.”

10. I am of the humble view that at the time of evaluation of the evidence learned Tribunal should have been circumspect in passing such caustic remark. Actually, exhibit 7 did not disclose

the death certificate of one Daupadi Mondal and she may be the mother of the deceased not the deceased.

11. However, from the First Information Report lodged by wife of the deceased, I find that after 7 days of accident FIR was lodged with the officer-in-charge of Habbibpur Police Station, District Malda and in the FIR reason of 7 days delay in lodging FIR has duly been explained. It is stated in the FIR that immediately after the accident on 22.02.2004 deceased was taken to Malda Railway Hospital and he underwent a major operation thereat and considering his serious condition he was referred to BR Singh Hospital Calcutta. Therefore, I am unable to disbelieve the reasons explained in the FIR itself.

12. Now I come to the proximity between the accidental injury sustained by Sudhir Chandra Mandal on 22.02.2004 and his death on 29. 06.2004 at B.R. Singh Hospital, Calcutta . It is fact that widow of the deceased could not file the medical papers of the two railway hospitals but she clearly stated in the claim petition about the treatment of her husband and that statement of the claim petition was duly corroborated by her evidence (PW1) before the Tribunal. In her cross-examination she has

specifically stated that she was employed as reservation clerk at Chandra, Malda and she got job on Compassionate ground after demise of her husband. On careful perusal of cross-examination, I do not find any single contradiction let alone any specific suggestion. Learned Tribunal also accepted the fact of getting job of the wife of deceased in the railway on compassionate ground. Claimant also produced the salary certificate (exhibit 6) issued by the railway authority showing income of the deceased at the time of death. So there is no dispute that at the time of deceased was a railway employee. Besides , entire facts of treatment immediately after the accident till death of the Sudhir Chandra Mandal has not been contradicted in the cross examination of PW-1 which was further supported by the Post Mortem report and the charge sheet . Post Mortem report shows the final opinion of doctor regarding cause of death which was due to the effect of the injuries – antimortem in nature.

- 13.** PW2, brother of PW1, claiming himself to be an eye witness also corroborated the entire fact of accident and death of Sudhir Chandra Mandal. Though, suggestion was thrown to him in cross-examination denying death of Sudhir Chandra Mandal

due to accidental injury but that was not substantiated by any evidence adduced on behalf of the insurance company. It was not disputed that offending vehicle was duly insured with New India Assurance Company at the relevant point of time.

14. On scrutiny of unchallenged testimony of PW1 further corroborated by FIR, charge sheet and Post Mortem Report, I find hardy any space to draw any adverse presumption against the claim.

15. I also do not find any reason to disbelieve the salary certificate issued by the Railway Authority (exhibit 6) which was produced before the Tribunal from the natural possession of the wife of the deceased and that too admitted in evidence without any objection. Therefore, after deduction of professional tax, monthly income of the deceased stands as Rs. 8,000/- per month.

16. Now, I propose to assess the compensation in terms of aforementioned income after applying multiplier in terms of deceased as follows:-

Monthly salary	Rs. 8,000/-
Yearly income	Rs. 96,000/-

Future Prospects (30%)	Rs.28,800/-
	Rs. 1,24,800/-
Less: Personal Experience (1/3 rd)	Rs. 41,600/-
	Rs. 83,200/-
Multiplier X 14(45 years)	Rs.11,64, 800/-
General damages	Rs. 70,000/-
Total compensation	Rs.12, 34, 800/-
Already paid	Rs. 50,000/-
Balance to be paid	Rs.11,84, 800/-

17. Therefore, claimant is entitled to compensation to the tune of Rs. 11,84,800/- along with interest @ of 6% per annum from the date of the filing of the claim application till the date of deposit of the amount.

18. New India Assurance Company is directed to deposit the amount of Rs. 11,84,800/-- along with interest as stated above, before the office of the Ld. Registrar General, within 6(six) weeks from date.

19. Ld. Registrar General is requested to disburse the amount in favour of appellant/ claimant on proper identification and proof.

- 20.** With the aforesaid observation this appeal being FMA 168 of 2010 stands disposed off.
- 21.** Let the records of Tribunal along with copy of the judgement be transmitted back immediately.
- 22.** Pending applications, if there be any, stand disposed off.
- 23.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]