

19.01.2023
SL No.8
Court No. 654
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

F.M.A. 236 of 2019

**Rebina Bibi @ Bewa & Ors.
Vs.
The NICL & Anr.**

Mr. Jayanta Kr. Mandal
Ms. Sima Ghosh
...for the appellants-claimants.
Mr. Kanak Kiran Bandyopadhyay
....for the Insurance Co.

FMA 236 of 2019

This appeal is preferred against the judgment dated 21 April 2018 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, Fast Track court, Rampurhat, Birbhum dismissing the claim application of the claimants filed under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 20 October 2014 at about 1:30 PM the offending vehicle bearing the registration no. WB-54M/2064 (Motorcycle) dashed the victim from behind near Jhanjhanian on Rampurhat-Dumka Road as a result of which the victim sustained serious injuries and was taken to Rampurhat S.D Hospital wherefrom he was referred to S.S.K.M Hospital, Kolkata where he died on 29.10.2014. On account of sudden demise of the deceased-victim the claimants being the widow, son, daughter and mother of the deceased

filed application under Section 166 of the Motor Vehicles Act claiming compensation.

Upon considering the materials on record and the evidence adduced on behalf of the claimants the learned tribunal dismissed the application filed by the claimants under Section 166 of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award the claimants preferred the present appeal.

Mr. Jayanta Kumar Mandal, learned advocate for appellants-claimants submits that the claimants in order to establish their case adduced the evidence of widow of the deceased (claimant no.1) and one chargesheeted witness both of whom deposed that the victim was hit by the offending vehicle and such oral evidence is supported by the first information report, seizure list and charge sheet which also discloses involvement of the offending vehicle and the rashness with which the said vehicle was driven on the relevant date resulting in the accident and death of the victim and hence the findings of the learned tribunal negating involvement of the offending vehicle in the said accident is bad in law which requires to be set aside.

In reply to the contention raised on behalf of the appellants-claimants, Mr. Kanak Kiran Bandyopadhyay, learned advocate for respondent

no.1-insurance company submits that none of the witnesses has seen the accident and as such the involvement of the offending vehicle in the said accident has not been proved by the claimants and therefore the order of the learned tribunal dismissing the claim application should be affirmed.

None appears on behalf of the respondent no.2-owner of the offending vehicle in spite of due service of notice.

Having heard the learned advocates for the respective parties, it is found that the present appeal hinges on a singular point as to whether on the relevant date of accident the offending vehicle was involved or not.

The learned tribunal while dealing with issue no.4, 5 & 6 held that the accident remains not proved in the absence of evidence of reliable witnesses. The claimants in order to establish the involvement of the vehicle as well as the accident has examined two witnesses namely Rebina Bibi @ Bewa widow of the deceased (claimant no.1) and one chargesheeted witness Abdul Alim and produced documents such as the written complaint, seizure list and charge sheet. PW1, Rebina Bibi @ Bewa though stated in her evidence of the manner of occurrence however throughout her evidence there is no whisper that she witnessed the accident. It is also not case of the claimants that the widow of the

deceased witnessed the accident. Accordingly, the evidence of PW1 widow of the deceased is inconsequential so far as the accident and the involvement of the vehicle is concerned. PW2, Abdul Alim is a chargesheeted witness who also deposed in his examination-in-chief that on the relevant date of accident the victim was dashed by the offending vehicle however it is pertinent to note that in cross-examination he admitted the fact that he has not seen the accident which goes without saying that the evidence of this witness also fails to lend support to the case of the claimant with regard to the accident and involvement of the vehicle. The claimants had the opportunity to produce other witnesses in the chargesheet or any independent eyewitness in support of the involvement of the vehicle and the accident taking place on the relevant date however no such endeavour was taken to adduce the evidence of other witnesses. Although the first information report, seizure list and charge sheet notes involvement of the vehicle however those are not substantive evidence. Therefore in the absence of cogent evidence in support of involvement of the vehicle in the accident I have got no manner to interfere with the order passed by the learned tribunal dismissing the claim application. In view of the above discussion the appeal fails and stands dismissed. The impugned judgment and

order of the learned tribunal is affirmed. No order as to cost.

All connected applications if any stands disposed of

Interim order if any stands vacated.

Let a copy of this order along with lower court records be sent to the learned tribunal for information.

Urgent photostat certified copy if applied for be supplied to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)