

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 630 of 2011

Poli Das & Anr.
Vs.
The Divisional Manager,
National Insurance Co. Ltd. & Anr.

Mr. Saidur Rahaman
... For the appellants/claimants

Mr. Parimal Kumar Pahari
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and order dated on 31st July, 2010 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Malda, in connection with MAC Case No.44 of 2009 whereby the learned Judge of the Tribunal refused to grant any compensation.

The claim petition under Section 163A of the Motor Vehicles Act, 1988 was filed by the parents of the deceased Nisha Das, a five-year-old girl, who died in a motor accident by the involvement of a pick-up van, bearing registration no.WB-61/1990. On 21st April, 2007 at about 11 hours when she was playing on the road in front of their house at Nemua village near State Highway under Police Station and District Malda. At the relevant point of time, one pick-up van, bearing registration no.WB-61/1990, coming with high speed and in rash and negligent manner knocked down the said Nisha Das and

fled away. She was immediately admitted to Malda Sadar Hospital but she succumbed to his injuries on the same day. After the accident, Malda Police Station Case No.47 of 2007 dated 24th April, 2007 under Sections 279/304A of the Indian Penal Code was started and after investigation, police submitted final report as there was no number of the vehicle in the First Information Report. But at the time of acceptance of final report by the learned Magistrate, on behalf of the claimants objection was filed and case was ordered to be re-investigated. After re-investigation, police submitted charge sheet against the driver of the pick-up van, bearing registration no.WB-61/1990.

Owner of the vehicle did not contest the claim petition but the National Insurance Company Limited contested the case by filing written statement denying all material averments in the claim petition contending, inter alia, that the claimants are not entitled to any compensation, as prayed for.

To prove the case, claimants examined as many as three witnesses, namely, Poli Das, mother of the deceased child, as PW-1, one Mithun Das, brother of the deceased, was examined as PW-2 and one Khakan Das as PW-3. Poli Das, mother of the deceased, has corroborated the entire contents of the claim petition and in course of her evidence, certified copy of the First Information Report, charge sheet, seizure list, post-mortem report, insurance policy and certificate of registration of the vehicle were

admitted in evidence as Exhibit 1 to 6. In cross-examination, she denied the suggestions thrown at her.

PW-2 testified in his evidence that one Khakan Das (PW-3) was present at the place of occurrence and noted the vehicle number. On the alleged date of incident, his sister met an accident at Malda road in front of their house and accident caused by a pick-up van and after the accident, the said pick up van fled away. He only took a glimpse of the said vehicle which was white colour pick-up van. He testified that Khakan Das, who was present at the place of occurrence, noted vehicle number as WB-61/1990. He lodged the FIR before the police on 24th April, 2008 and final report was submitted in that case by the police. Then he filed objection against the final report and re-investigation order was passed and charge sheet was submitted. He further testified that at the time of lodging FIR, he would know the number of the vehicle.

From the FIR, it is seen that he did not mention any number of the vehicle. From the FIR it is found that though he did not mention the number of the pick-up van but he mentioned the colour of the pick-up van and it is also seen from the evidence of PW-2 that at the time of lodging FIR, he was aware of the number which was disclosed by PW-3 Khakan Das. It may be a mistake on the part of PW-2 about mentioning the vehicle number but he deposed that he had seen the colour and nature of the vehicle and accordingly, he mentioned in the FIR that the accident caused by one white colour pick-up van.

PW-3 Khakan Das categorically stated that one white colour pick-up van, bearing registration no.WB-61/1990, coming with high speed, dashed the said Nisha Das, a five-year-old girl, who was on the road in front of their house.

From the record, it appears that after the investigation, police submitted final report on the FIR filed on 24th April, 2007 but during re-investigation, police examined the witnesses and collected the number of the vehicle and submitted charge sheet against the driver of the said pick-up van, bearing registration no.WB-61/1990.

Here in this case, on behalf of the respondent no.1/Insurance Company, no effort was taken to examine the owner or driver of the vehicle to prove the fact of no involvement of the pick-up van, bearing registration no.WB-61/1990, in the accident.

Learned Judge of the Tribunal only focussed on the evidence of PW-2 and PW-3. Learned Judge has drawn adverse inference from the evidence of PW-2 and PW-3 on the ground that had the PW-3 ever seen the number of the pick-up van, he would have surely informed PW-2, brother of the deceased who lodged FIR before the police after three days of accident.

Mr. Saidur Rahaman, learned advocate, appearing on behalf of the appellants/claimants refers to the evidence on record and submits that during investigation

by the police, pick-up van was identified and charge sheet was submitted against the driver of the vehicle.

In opposition to that, Mr. Parimal Kumar Pahari, learned advocate, on behalf of the respondent no.1/ Insurance Company has submitted that the learned Tribunal rightly came to the conclusion about the serious contradiction among the witnesses, particularly, PW-2 and PW-3. Therefore, involvement of the vehicle in the accident cannot be presumed conclusively.

After careful perusal of the evidence of PW-2 and PW-3 together with charge sheet, I find that at the time of lodging FIR, PW-2 noted down the colour and nature of the vehicle but missed to note the number of the vehicle. It may be a mistake on the part of PW-2. But, PW-3 in his evidence specifically stated that he saw the accident caused by a white colour pick-up van, bearing registration no.WB-61/1990. On the FIR lodged by PW-2 on 24th April, 2007, police took up the investigation but could not identify the vehicle and submitted final report. But during re-investigation, police examined the witnesses and came to know the number of the vehicle and filed charge sheet against the driver of the offending vehicle.

In the aforesaid view of the matter, I am sorry to subscribe to the view of the learned Judge of the Tribunal regarding non-involvement of the pick-up van, bearing registration no.WB-61/1990, in the accident alleged in this case.

This is an application under Section 163A of the Motor Vehicles Act. It is not disputed that the said pick-up van, bearing registration no.WB-61/1990, was insured with the National Insurance Company Limited at the relevant point of time and in that view of the matter, I am of the humble view that the appellants/claimants are entitled to compensation under Section 163A of the Motor Vehicles Act.

Accordingly, I determine the compensation in terms of the settled principle of the Hon'ble Apex Court in the case of **Kurvan Ansari & Anr. v. Shyam Kishore Murmu & Anr.** reported in **2002 ACJ 166** as follows:-

Notional Income (per annum)	Rs. 25,000/-
Multiplier by 15 (as per Second Schedule)	X 15

	Rs.3,75,000/-
Add: Funeral Expenses & Loss of Estate (Rs.2,000/- + Rs.2,500/-)	Rs. 4,500/-

Total Compensation	<u>Rs.3,79,500/-</u>

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation to the tune of Rs.3,79,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 21st February, 2009, till the deposit of the amount.

Accordingly, the respondent no.1/National Insurance Company Limited is directed to deposit the compensation amount of Rs.3,79,500/- along with interest

@ 6% per annum from the date of filing of the claim petition i.e., on 21st February, 2009, till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

In the result, the judgment passed by the learned Tribunal in MAC Case No.44 of 2009 stands set aside.

The appellant/claimant no.1 is entitled to withdraw the compensation amount with interest.

The learned Registrar General is requested to disburse the amount with interest to the appellant/claimant no.1, Poli Das, on proper identification and proof.

With the above observations, the appeal, being FMA 630 of 2011, is disposed of.

All pending applications, if there be any, 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.)