

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 806 of 2005

Sk. Akkash
Vs.
The Managing Director,
Calcutta State Transport Corporation

Mr. Jayanta Kumar Mandal
... For the appellant/claimant

Mr. Sanjay Paul
... For the respondent/CSTC

In this appeal, judgment and order passed on 16th March, 2004 by the learned Judge, Motor Accident Claims Tribunal, 9th Bench, City Civil Court at Calcutta, in connection with MJC Case No.163 of 1994, has been challenged.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 on account of injury sustained by the claimant Sk. Akkash by the involvement of a CSTC Bus, bearing registration no.WBS-5116 of Route No.12D which was proceeding through Khidderpore Road from East to West in rash and negligent manner and ultimately dashed two persons and thereafter collided with a stationary bus and one military car. As a result, the claimant sustained injury. He was taken to SSKM Hospital, Kolkata and he was admitted therein up to 23rd December, 1993. Another victim of the accident died. At the time of accident, the claimant was 28 years of age having income of Rs.700/-

per month and accordingly the claimant prayed for compensation to the tune of Rs.1,00,000/-.

Calcutta State Transport Corporation entered appearance and contested the claim petition by filing written statement denying all documents in the claim petition.

To prove the case, the claimant examined himself as PW-1 and one Rajes Singh was examined as PW-2 who claimed himself to be an eyewitness of the accident.

In course of evidence, Discharge Certificate of injured/claimant issued by SSKM Hospital, Disability Certificate also issued by SSKM Hospital, First Information Report, Registration Certificate, documents of the military car, bearing registration no.87G-17260Y, etc. were admitted in evidence.

Learned Judge of the Tribunal after considering the evidence returned his finding that the accident due to fault of the driver of the CSTC bus had not been proved by the evidence of witnesses. He also pointed out the discrepancies in the evidence of PW-1 and PW-2.

Mr. Jayanta Kumar Mandal, learned advocate, appearing on behalf of the appellant/claimant has relied on a case of **Sunita & Ors. v. Rajasthan State Road Transport Corporation** reported in **2019 (1) TAC 710 (SC)** wherein the Hon'ble Apex Court observed that standard of proof in a case under the Motor Vehicles Act

must be a preponderance of probability and not just strict standard of proof beyond all reasonable doubt.

Mr. Mandal further submitted that evidence of witnesses together with other documents proved that accident took place by the involvement of the bus and it is also cannot be disputed that the claimant did not sustain any amputated injury. Therefore, according to Mr. Mandal, compensation should be granted in terms of evidence adduced in this case.

Mr. Sanjay Paul, learned advocate appearing on behalf of the Calcutta State Transport Corporation submitted that the evidence and documents produced in this case surely proved that there was an accident and the appellant/claimant sustained injury. Mr. Paul, in his usual fairness, has submitted that the application under Section 166 of the Motor Vehicles Act may be treated as an application under Section 163A of the Motor Vehicles Act for granting compensation to the tune of Rs.1,00,000/- as claimed by the injured/claimant.

After careful perusal of the entire evidence, I am also in agreement with the learned advocates appearing on behalf of the parties to this appeal that accident took place by the involvement of CSTC bus, bearing registration no.WBS-5116, for which formal FIR was drawn up and injured was treated in the SSKM Hospital for a considerable period.

It is reported that the appellant/claimant has already received Rs.12,500/- under Section 140 of the Motor Vehicles Act, 1988.

Considering all facts and circumstances, I find no reason to refuse the compensation to the appellant/claimant only on a discrepancy between the evidence of PW-1 and PW-2. Even if we find any material discrepancy between the evidence of appellant/claimant and the eyewitness, we can treat the application under Section 163A of the Motor Vehicles Act where proof of negligence is not required, while it is undisputed that an accident took place by the involvement of a CSTC bus, bearing registration no.WBS-5116.

Considering all facts and circumstances of the case, the appellant/claimant/injured is entitled to compensation to the tune of Rs.87,500/- (Rs.1,00,000/- – Rs.12,500/-) along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 4th April, 1994, till the deposit of the amount.

Accordingly, the respondent/Calcutta State Transport Corporation is directed to deposit Rs.87,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 4th April, 1994, 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.

The appellant/claimant is entitled to withdraw the amount with interest.

The learned Registrar General is requested to disburse the amount to the appellant/claimant on proper identification.

In the result, the appeal, being FMA 806 of 2005, succeeds. The judgment and order passed on 16th March, 2004 by the learned Judge, Motor Accident Claims Tribunal, 9th Bench, City Civil Court at Calcutta, in connection with MJC Case No.163 of 1994, stands set aside.

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.)