

04.07.2023
SL No.2
Court No. 551
Ali

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

**F.M.A. 684 of 2006
IA No: CAN/1/2005 (Old No:CAN/10379/2005)
CAN/3/2007 (Old No:CAN/2893/2007)
CAN/4/2008 (Old No:CAN/10456/2008) (not found)
CAN/5/2009 (Old No:CAN/7708/2009)) (not found)
CAN/6/2015 (Old No:CAN/4836/2015)) (not found)
CAN/7/2016 (Old No:CAN/6737/2016)) (not found)**

**National Insurance Co. Ltd.
Versus
Smt. Sandhya Rani Sau & Ors.**

Mr. Rajesh Singh
...for the appellant-Insurance Co.

Mr. Krishanu Banik
.....for the respondents-claimants.

Mr. Sumon Ghosh
Mr. Buddhadeb Adak
.....for the State.

The instant appeal has been preferred by the Insurance Company against the judgment passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track, 1st Court, Contai, Purba Medinipur on 14th July, 2005 in M.A.C.C. No. 165 of 2004/M.A.C.C. No. 156 of 2003.

The brief fact of the case is that the predecessor of the claimants died in a road traffic accident on 1st of February, 2003. Thus the claim case was preferred by the learned tribunal. The learned tribunal after receiving the written statement from the insurance company and after having the oral evidences on behalf of the claimants

passed the impugned judgment directing the insurance company to pay the compensation to the claimants amounting to Rs.3,21,500/-the award was directed to be paid within three months failing which 12% interest shall ordered to be incurred.

Insurance company has preferred this appeal on the sole ground that the offending vehicle bearing No.WB-34C/7212 is not at all involved in the alleged accident. It is the submission of the insurance company that the vehicle bearing No. WB-32-4582 was involved in the said accident. The FIR was made in respect of the involvement of the said vehicle bearing No. WB-32-4582 but reasons best known to the claimants, they have filed to the claim application in respect of the new vehicle bearing No. WB-34C/7214. Learned advocate for the insurance company argued heard on the point that now-a-days there are several instances when several vehicle were running in the street without any insurance coverage and in all motor accident claim cases, several other vehicles having insurance coverage were implanted. The view was observed by Hon'ble Apex Court in the judgment of **Safiq Ahmad Vs. ICICI Lombard General Insurance Co. Ltd. & Ors.** and the Hon'ble Supreme court is also of the view in the judgment of **Anil and Ors. Vs. New India Assurance Co. Ltd. and Ors.** that though there are

eye witnesses to prove the case of the claim but it appears that the case is a false case.

Learned advocate for the respondents-claimants submitted before this court that the claim application was filed on the basis of the number of the offending vehicle bearing No. WB-34C-7214 the claimant No. 1 i.e. wife of the deceased appeared before the court stating the number of the vehicle to be WB-34C-7214. Two eye witnesses who were cited a charge-sheeted witnesses of the police case arising out of the same accident, deposed before the tribunal stating the number of the vehicle to be WB-34C-7214. Thus, there is no confusion in the case of the claimants regarding the involvement of the vehicle in the alleged accident. He further submitted that the insurance company has contested the claim case by filing written statement. The insurance company has also taken the leave under Section 170 of the M.V. Act to contest the claim proceeding on all available grounds; but the insurance company has adduced no witnesses whether oral and documentary to prove their pleadings. Moreover, the fact of implantation of new vehicle was never raised before the learned tribunal. On that score he cited a decision of the Division Bench of this Hon'ble Court in **Mita Samanta** wherein the Division Bench of this Court is of a specific view that when the insurance company has

not produced any evidences though they have obtained the leave from the learned tribunal under Section 170 of the M.V. Act, their plea before the appellate court regarding implantation of new vehicle cannot be entertained. He also cited the decision of ***Pratima Barick*** wherein the ratio of ***Mita Samanta*** was followed.

Learned advocate for the claimants also cited the decision of ***Anjali*** wherein FIR was lodged on wrong vehicle number but the investigation of the police was ended in charge sheet by citing the correct vehicle number and the claim application was filed on the basis of the involvement of such vehicle whose number was mentioned in the charge sheet. In that case, the claim application was very much applicable. He also cited the decision of Hon'ble Apex Court passed in ***Ashalata Suryakant Patil and Others Versus new India Assurance Company Ltd and Another*** wherein the FIR was lodged without mentioning the number of any offending vehicle but after the investigation of the police the number of the vehicle appears and the Hon'ble Supreme Court is of the view that there is no justification to disbelieve the investigation of the police regarding the involvement of the offending vehicle.

He argued that in this case, the accident happened in night. Thereafter, FIR was lodged in a

hasty manner. Thus the number of the vehicle was mentioned in the FIR erroneously. He further pointed out that after receiving the knowledge from the witnesses the de facto complainant appeared before the learned jurisdictional Magistrate and made a confessional statement under Section 164 CrPC in respect of the correct number of offending vehicle. On that score, he submitted that the point raised by the insurance company in this case is baseless and the appeal is liable to be dismissed.

Heard the learned advocate perused the materials and the paper book. During the course of argument, it appears to me that FIR of the case was registered with the Erga. P.S. on 1st February, 2003 at about 23.05 Hrs. it was contended in the FIR that accident took place by the offending vehicle No. 32/4582. The seizure list was also exhibited which stated that article was seized i.e. the Motor cycle was seized on 28th February, 2003 which is a Bajaj M-80 Motor cycle (Red Colour). It further appears that the witnesses who were cited as charge-sheeted witnesses in the police paper, deposed before the learned tribunal as PW-2 and PW-3; both of them has stated number of offending vehicle to be WB-34C-7214, during their cross examination they disclosed the offending vehicle was a Hero Honda (Blue colour).

Considering the confessional statement, the specific order was passed by this court to bring the CD of Egra PS Case No. 12/2003 dated 02.02.2003.

Learned advocate for the State Mr. Sumon Ghosh alongwith Mr. Buddhadeb Adak appeared with the Memo of Evidence and the CD of Egra PS Case No.-10/2003 dated 02.02.2003.

Perused the CD. It appears that just after the accident has been happened the police reach the spot vide U.D. Case No.-07/2003 dated 01.02.2003. The inquest was held upon the dead body. The inquest report was prepared on the spot. The inquest report stated that the accident was caused due to rash and negligent driving of the driver of a Motor cycle bearing No.WB-32/4582. After such inquest, the I.O. has collected the P.M. report from the hospital but no such progress of investigation is made in the CD. Thereafter, suddenly on 21st February, 2003 there are two witnesses alongwith 161 statement of the de facto complainant. On the basis of which the I.O. made a submission before the learned jurisdiction Magistrate to record statement of the de facto complainant. The statement available witnesses recorded under Section 161 CrPC and the statement of de facto complainant recorded under Section 164 CrPC contained the vehicle number to be WB No.-34C/7214. After such, the offending vehicle was

seized by preparing proper seizure list and the report from the M.V. Department was collected regarding the cause of accident and the charge sheet was submitted. On perusal of the entire C.D, it appears to me that there are no investigation in this case regarding the involvement of the vehicle mention in FIR and also whereabouts of the vehicle No. WB-32/4582. It is surprising on the part of the I.O. as to why he did not make any inquiry regarding the Vehicle No. WE-32/4582 in Police Case. It is also to be noted why the persons present during the inquest were not cited as charge sheeted witness?

The I.O. has submitted charge sheet on the basis of the statement of the witnesses who deposed before this court as PW-2 and PW-3. The evidence of PW-2 and PW-3 is contradictory so far as 161 statements as well as the statements deposed before this court. I make it clear that PW-2 has stated before the tribunal that PW-3 appeared at the spot after 3-4 minutes of the accident but in the police paper they have stated that they were driving the cycle at that relevant time altogether. Moreover the identification of the vehicle by the eye witnesses is appeared to me confusing. The inquest report conducted by the police is appeared to me the independent one and believable. The inquest report specifically mentioned that the vehicle bearing No.

WB-32/4582 is involved in the alleged accident. Thus at this juncture, I find that there is merit in the submission of the learned advocate for the insurance company. On that score after perusing police paper as well as the materials on record also the LCR and the CD. It appears to me that the case of the claimant is not at all believable and liable to be dismissed.

Thus the instant appeal has got merit to entertain and the impugned order passed by the learned tribunal is hereby set aside.

The instant FMA is allowed.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Appellant-insurance company is at liberty to withdraw the amount already deposited with the learned Registrar General, High Court, Calcutta allowing with accrued interest, if any.

Returned the C.D.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions. Argument on behalf of

(Subhendu Samanta, J.)