

06.10.2023
SL No.6
Court No. 551
Ali

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

FMA 360 of 2003

**Smt. Mrinalini Dey & Ors.
Vs.
United India Insurance Co. Ltd. & Anr.**

Mr. Saidur Rahaman
..... for the appellants-claimants.

Mr. Parimal Kumar Pahari
...for the respondent Insurance Co.

The instant appeal has been preferred against the judgment dated 20th October, 2001 passed by learned Judge, Motor Accident Claims Tribunal, Murshidabad at Berhampore, in MV Case no. 205 of 1994.

The brief fact of the case is that the present appellants being the claimants preferred an application before the learned tribunal for getting compensation under Section 140 as well as read with Section 166 of the M.V. Act, 1988 on the ground that their predecessor was died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the insurance company.

The claim case was contested by the insurance company and the learned tribunal after hearing has dismissed the claim case.

Being aggrieved by and dissatisfied with the order of dismissal the present appeal has been preferred.

The learned advocate for the appellants submits that two vehicles were involved in the alleged accident one is the Ambassador Car another is a Truck. The Truck dashed the Ambassador Car while the Ambassador Car and the truck both, were riding the vehicles in a rash and negligent manner. The Truck was fled away could not be traced out. The deceased was within the Ambassador Car so the insurer and the owner of the Ambassador Car was made party in this proceeding. The learned tribunal after considering the materials on record erroneously disbelieve the case of the petitioner on the ground that the Ambassador Car was not at all involved in the alleged accident. He further argued that by virtue of the decision of Hon'ble Supreme Court in **T.O. Anthoney Vs. Karvarnan & Ors.** any one of the tortfeasors may be made party to the proceeding and may be directed to pay the compensation. In this case as the Truck was fled away thus the Ambassador Car who was carrying the deceased at the time of accident and driving recklessly may be liable to pay the compensation.

Learned advocate appearing on behalf of the insurance company submits that the learned tribunal has committed no error. The PW-2 was

placed before the learned tribunal as eye witness. The FIR disclose about the persons present inside, and travel through the Ambassador Car. The PW-2 was not there or traveled along with the deceased; thus the evidence of PW-2 cannot be believed. Moreover, the evidence of the PW-2 is totally different to that of the claim case and the police case. Thus, the learned tribunal has no other opportunity but to dismiss the claim application on the basis of the false evidence of PW-2. He further argued that the deceased was within the Ambassador Car and the deceased died in a road traffic accident so the application under Section 140 of M.V. Act may be maintainable but the claimant has miserably failed to prove the rash and negligent driving of the driver of the offending vehicle which is a *sine-qua-non* to prove the case under Section 166 of the M.V. Act.

Heard the learned advocate perused the materials on record. The peculiar facts and circumstances of this case need be looked into very cautiously. By filing claim application, the claimants has stated that the deceased was proceeding through the Ambassador Car on 21.06.1994 through NH-34 at the time a Lorry without any prior alarm coming from the opposite side with high speed dashed on the left side of the Ambassador Car and fled away by such deceased

sustained severe injuries and thereafter succumbed to his injuries. The PW-1 i.e. the wife of the deceased was not travelled with the deceased in the Ambassador Car and she could not state about the manner of the accident. She only stated that her husband was died in the Motor vehicle accident. After the said accident her husband was brought to the Berhampore New General Hospital in injured conditions and succumbed to his injuries.

One person, namely, Sukhendra Nath Dey who is the full brother of the deceased deposed before the learned tribunal as PW-2 who stated that at the relevant point of time he was travelling in that vehicle alongwith the deceased. It is his deposition that the Taxi was moving in excessive speed and while the Taxi was trying to overtake a matador van over the road in high speed at the time a lorry was suddenly appeared from the opposite direction and in order to avoid accident, the driver of the Ambassador Car turned his vehicle towards the extremely right side of the road as a result the vehicle overturned and fell into a ditch.

After such accident one FIR was lodged by one Promatha Halder who stated the name of the persons travelled inside the said vehicle along with the deceased. FIR stated about the manner of the

accident that at the time of overtake a lorry the Ambassador Car go to the right, side at the time suddenly one Truck which was coming from the opposite side dashed the left side of the Ambassador Car.

After perusing the manner of accident as stated by the PW-2 and the FIR, they are appears to be different. The PW-2 proved to be not present in the Ambassador Car by virtue of the FIR.

It further appears that there are not much difference about the manner of accident as stated in the claim applicant and in the FIR. The case of fell down inside the ditch is missing as stated by the PW-2. It is true from the fact of the FIR that the Ambassador Car at the relevant point of time was trying to overtake a lorry which was proceeding towards the same direction; at that time one Truck i.e. offending Truck which was coming from the opposite side came in just in front of the Ambassador Car. If the said fact is visualized, there must have a head on collision between the Ambassador Car and the offending lorry but it is a case of FIR as well as the claim application that the left side of the Ambassador Car was dashed. The left side of the Ambassador Car can only be dashed if the Ambassador Car proceeded extreme right side of the High Way. At this juncture, it appears to me that the

Ambassador Car must have such a great speed that he tried to avoid the head on collision and proceeded towards the extreme right side of the road. Though it is true that the evidence of PW-2 may not be believed to the extent that he was not present at the time of accident but the factum of accident and manner thereof cannot be disbelieved. It is also cannot be disbelieved that the Ambassador Car was involved for the commission of such accident. In my view, both the Ambassador Car as well as the Truck was jointly responsible for the accident. Thus, the application under Section 166 of the M.V. Act is maintainable and the claimants are entitled to get the just and proper compensation of this case.

It appears that the claimant has not proved the income of the deceased by submitting cogent or convincing evidence. The deceased died in the year 1994. So, in my view, the income of the deceased can be calculated Rs. 1,500/- per month.

In considering the just and proper compensation of this case:-it appears to me that the monthly income was deceased was calculated to be Rs. 1,500/- so the yearly income comes to Rs. 18,000/- $\frac{1}{3}$ rd is deducted towards his personal expenses so after deduction the yearly dependency comes to Rs. 12,000/-. The deceased was within the age group of 35-40 years so the claimants are

entitled to get the future prospects which would be added to be 40% of the income which calculated to be Rs. 4,800/- so after adding the future prospects the yearly dependency comes to Rs. 16,800/- the applicable multiplier in this case is 16. After multiplying the multiplier the award comes to Rs.2,68,800/-. The claimants are also entitled to get the general damages of Rs. 70,000/- according to the direction of Hon'ble Apex Court passed in **Pranay Sethi**. After adding all the heads the award the award comes to Rs. 3,38,800/-.

The insurance company is directed to pay the compensation amounting to Rs. 3,38,800/- along with interest @ 6% per annum from the date of filing of the claim case that is from 19.12.1994 within ten weeks from the date of passing of this order with the office of the learned Registrar General, High Court, Calcutta. On such deposit the office of the learned Registrar General, High Court, Calcutta shall disburse the amount in favour of the claimants vide three equal account payee cheques. The claimants are at liberty to receive the same according to the prevalent Rules subject to the ascertainment of payment of requisite Court Fees.

The instant FMA 360 of 2003 is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

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

(Subhendu Samanta, J.)