

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 874 of 2013

KALPANA BISWAS & ORS.

Vs.

THE NATIONAL INSURANCE COMPANY LTD. & ANR.

For the Appellants :Mr. Amit Ranjan Roy, Advocate

For the Respondents :Mr. Sanjay Paul, Advocate

Heard on : March 15, 2023

Judgment on : March 29, 2023

Bibhas Ranjan De, J.

1. One Swapan alias Jhantu Biswas died in a motor accident on 23.03.2006 at about 00.30 hours by the involvement of one ambassador car bearing Registration No. WNW/8403 because of

its rash and negligent driving. Accident took place at Suri Rajnagar Pucca road and the victim died on the spot. The persons accompanying him raised hue and cry and tried to intercept the vehicles but failed. Ultimately, one Uttam Mahaladar who somehow noted the number of the vehicle. Police was informed and Suri PS case no. 193 / 2006 dated 11.11.2006 under Section 304A IPC was started. Deceased aged about 45 years and used to earn Rs. 4,000/- from his profession as driver. As a result, one application under Section 163A of the Motor Vehicles Act, 1988 was filed by the legal heirs of the deceased with a claim of Rs. 3,69,500/- as compensation.

- 2.** Owner of the vehicle filed his written statement contending, inter alia, that the vehicle was insured with National Insurance Company and admitted the accident occurred on the alleged date by the involvement of his vehicle bearing no. WNW/ 8043.
- 3.** National Insurance Company also contested the claim petition by filing written objection denying all material averments of the claim petition contending, inter alia, that an accident alleged to have been taken place on 23.03.2006 and that was reported before the police station on 16.10.2006 but the police refused to accept the FIR as that was filed only to grab money illegally. It is

further specific case of the OP/Insurance Company that immediately after the accident inquest was held by the police personal and it was revealed that victim was sleeping on the side of the bus stand and at that time one unknown vehicle dashed the victim who succumbed to injuries and nobody witness the incident.

4. To prove the claim, claimants examined three (3) witnesses namely Aparna Biswas as PW-1, Adyatia Biswas as PW-2, and one Gautam Ghosh as PW-3. In course of their evidence a good number of documents including formal FIR, complain under Section 156 (3) of the Code of Criminal procedure, charge sheet Insurance Policy, Post Mortem Report, driving licence, document showing handing over the dead body ,UD case report, & inquest report were admitted in evidence as exhibit 1 to 8.
5. In opposition to that, OP/National Insurance Company examined on Sushil Mallick, Assistance Sub Inspector of Police, as DW 1.
6. On careful perusal of the pleadings of the parties to this claim petition Learned Judge of Motor Accident Claim Tribunal/ Additional District Judge, 4th Court, Nadia framed following issues:-

Is the case maintainable in its present form?

Have proper court fees been paid? Was there any cause of action for claim?

Did the victim die as a result of the accident referred to?

Did the accident take place due to rash and negligent driving?

Are the petitioner entitled to get any compensation?

If so, to what amount?

7. Learned Judge in his judgement evaluated the evidence of witnesses adduced on behalf of the claimants and could not believe the eye-witness who were not present at the time of accident. Learned Judge by referring to the evidence of PW-2 also opined the inordinate delay in lodging FIR with the police. Learned Judge heavily relied on the evidence of DW-1 i.e. one Assistance Sub Inspector of Police attached to Saithia PS who held inquest over the dead body in connection with Suri PS Unnatural Death Case no 86 of 2006 dated 24.03.226. According to DW-1, at the time of inquest nobody revealed the number of the vehicle. According to DW-1 information was received from one Raihan Hossain on 24.03.2006 at about

11.00 a.m. and proceeded to Suri bus stand at 10.30 hours. He handed over the dead body to his elder brother on 24.03.2006.

- 8.** Considering the evidence of DW1 as well as inquest report a reasonable doubt has been created in the mind of the Learned Judge regarding involvement of any particular vehicle in the accident. Learned Judge considering the few contradictions in the evidence of PW2 finally recorded his order dismissing the claim petition under Section 163A of the Motor Vehicles Act.
- 9.** Feeling aggrieved the claimants preferred this appeal assailing the judgement delivered on 05.03.2012 dismissing the claim petition under Section 163 A Motor Vehicles Act, 1988.
- 10.** Learned Advocate, Mr. Amit Ranjan Roy, on the behalf of the appellant has contended that Learned Judge only relied on the evidence of DW-1 i.e the Police Officer and the inquest report prepared by him. Mr. Roy has further contended that Learned Judge did not consider the evidence on record as well as documents admitted in evidence.
- 11.** Ld. Advocate, Mr. Sanjoy Paul, appearing on behalf of the National Insurance Company has submitted that though accident took place on 23.03.2006 but ultimately complain under Section 156 (3) of the Code of Criminal Procedure was

filed only on 15.05.2009. According to Mr. Paul such inordinate delay in lodging complain has not been explained anywhere in this case. Mr. Paul has further contended that PW-2, brother of the deceased, claimed himself to be an eye-witness of the accident by the involvement of one particular vehicle but, unfortunately that was not disclosed before the Police Officer who held inquest over the dead body of Swapan Biswas. According to Mr. Paul, had there been any knowledge of the number of the vehicle PW-2 would have surely informed to the Police Officer who visited the place after the accident and held inquest over the dead body.

12. Before entering into the discussion, I need to spend few words on the evidentiary value of inquest report prepared by the police under Section 174 of the Criminal Procedure Code which runs as follows:-

1. When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances

raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted.

2. The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

3. When—

(i) the case involves suicide by a woman within seven years of her marriage; or

- (ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or*
- (iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or*
- (iv) there is any doubt regarding the cause of death; or*
- (v) the police officer for any other reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.”*

13. The term ‘inquest’ has not been defined in the Code of Criminal Procedure (hereinafter referred to as ‘Code’). Inquest report is held primarily to look into the causes of unnatural

death. Under Section 174 of the Code the police have been empowered to inquire and report on cases of unnatural death. The statements of witnesses which are to be so recorded during the course of the investigation are within the inhibition of Section 162 of the Criminal Procedure Code. Such statements cannot be used as a substantive piece of evidence. The report under Section 174 of the Code is made by the Police under Section 174 (1) of the Code is not exhaustive in nature. It contains in it only the first impression of the dead body. The Police Officer conducting the investigation is supposed to prepare the report.

The report must contain the following details:

1. The apparent cause of death.
2. Description of the wounds, fractures, bruises and other marks of injury found on the dead body.
3. The manner in which such marks appear to have been inflicted.
4. The weapon or instrument (if any) which appears to have been used to inflict such injuries.

14. It has become now a settled principle that the scope of an inquiry under Section 174 of the Code is limited in nature. It is

only to ascertain whether a person has died under suspicious circumstances or unnatural death and the apparent cause of death. The Provisions of Section 174 of the Code does not contemplate that the manner in which the incident took place or the names of the accused should be mentioned in the inquest report. The basic purpose of holding an inquest is to determine the apparent cause of death. The Provisions of Section 174 of the Code lay down only preliminary investigation or the 'first impression' of the body. The question related to the details as to how deceased was assaulted or who was the accused or under what circumstances he was assaulted are topics which fall outside the scope of section 174 of the Code. ***It is also well establish that inquest report is not a substantive piece of evidence and can only be looked into for testing the veracity of the witness of inquest.***

- 15.** Learned Judge recorded the order of dismissal only relying on the inquest report and the evidence of the author of the report (DW-1). On careful scrutiny of the evidence of DW1 it comes to my view that during inquiry it was revealed to him that on the alleged date of incident one person was sleeping in the bus stand and an unknown vehicle run over the said person who

died. Therefore, evidence of DW1 clearly suggests that some persons disclosed the fact before him. There is nothing mention in the evidence that inquiring officer recorded statement of any witness. From the inquest report, I find that inquiring officer took signature of three(3) witnesses but none of those person was ever examined in this case either for the purpose of corroboration or for contradiction. On the other hand DW1 never testified that the witnesses appearing in the inquest report disclosed the alleged incident to him. Therefore, the evidence adduced by the inquiry officer regarding the manner of accident cannot be taken into account save and except the apparent cause of death i.e. nature of injury etc. Inquest report (exhibit-A) cannot be accepted as a substantive piece of evidence in support of proving the incident alleged in this case.

16. In course of evidence DW-1 categorically admitted that on the alleged date of incident one fair was being celebrated in the name of 'Data Saheb Pir-baba Fair' .

17. Now, I propose to come to the argument advanced by Mr. Paul with regard to delay in lodging FIR.

18. From the evidence of PW1 i.e Adyatia Biswas it is revealed at the time of accident he along with other friends were going to

watch the fair. He saw the accident personally while they were returning from the fair. At that time, one ambassador car bearing no. WNW 8403 dashed his brother from behind and knocked him down and wheel of the said ambassador car ran over the head of his brother. He went to police station after the accident. Officer-in-charge of the Police Station accompanied them to the place of occurrence. The Police Officer told them for post mortem examination in respect of the dead body. Thereafter, the dead body was taken to the hospital in a trolley. He received the dead body and by the advice of the Police Officer they went to their native place with the dead body. According to evidence of PW-2, brother of the deceased, after performing the rituals they went to police station after two months of the accident and lodged a complaint but police officer refused to accept the said complain because of delay. Thereafter, they lodged a petition of complain before the Court of Ld. Chief Judicial magistrate. However, PW-2 elaborated the reasons of delay. After careful scrutiny of the cross-examination of PW-2, I do not find any specific cross-examination regarding reasons assigned by the PW-2 in his examination-in-Chief. That apart, PW-2 in course of cross examination has specifically testified

that they mentioned the offending vehicle and he was present at the time of inquest. PW2 could not identify the witnesses who put signatures in the inquest report. Therefore, after total evaluation of PW2, I am unable to disbelieve the evidence. That apart, we should be aware of the fact that we are dealing with a case under Section 163A of the Motor Vehicles Act, 1988 and in that proceeding strict principle of evidence should not be followed.

19. Entire case of the claimants was corroborated by the evidence of PW1 and PW2 who are also further corroborated by the complain under Section 156 (3) of the Code of Criminal Procedure, chare sheet and post mortem report.

20. With aforesaid observation, I find that Swapan alias Jhantu Biswas died in a motor accident by the involvement of vehicle no. WNW 8403(ambassador). Therefore, appellants/ claimants are entitled to compensation subject to assessment applying the quantum of income of the deceased and multiplier as per rules.

21. According to claim petition it is stated that in column no. 6 of the claim petition that Swapan @ Jhantu Biswas since deceased, used to earn Rs. 4,000/- per month as a driver by profession. PW1 'daughter of the deceased' has testified in her

evidence that her father used to earn Rs. 3,400 to 4000/- per month as he used to drive lorry of Gautam Ghosh. But, during her cross-examination the particular evidence on the point of income has not been denied even. And to add to that, one Gautam Ghosh claiming himself to be the owner testified before the Tribunal as PW3. He specifically deposed that deceased was driver of his truck bearing no, WB 252745 and he used to pay him Rs. 3,000/- per month. In cross-examination suggestion was thrown out denying ownership of the truck and also remuneration to the deceased. The evidence of profession of deceased has been further corroborated by the driving licence (exhibit 5) of the deceased.

22. Considering the evidence discussed hereinabove, I find no other option but to hold that the deceased used to earn Rs. 3,000/- per month as a driver. Claim petition shows age of the deceased as 45 years and that was further corroborated by his daughter (PW1) who stated the age of her father as 43 years. The age of the deceased is also appeared in the post mortem report as 45 years and 41 years according to Voter Identity Card (exhibit 6). If that be the position, I can easily hold that

deceased was a man of age group of 41 to 45 years relating multiplier 14.

23. Now, I propose to determine the compensation as follows:-

Monthly income (3000x12)	: Rs. 36,000/-
Deduction 1/3	: -12,000/-
Total annual income	:Rs. 24,000/-
Multiplier (age -45 years)	: x14
	Rs. 3,36,000/-
General Damages	: (+) 9,500/-
Total compensation	: Rs. 3,45,500/-

24. Therefore claimants are entitled to compensation to the tune of Rs. 3,45,500/- along with interest @ 6% per annum from the date of filing(19.12.2006) of the claim petition till the date of deposit of the amount by the respondent/ Insurance Company.

25. Respondent/ Insurance Company is directed to deposit the entire awarded amount along with interest before the office of Ld. Registrar General within 6 (six) weeks from date.

26. Ld. Registrar General is directed to disburse the amount among the appellants/ claimants in equal share on proper verification and proof of identity.

- 27.** With the aforesaid observation this appeal being no. FMA 874 of 2013 stands allowed. The judgement dated 05.03.2012 in connection with Motor Accident Claims Case no. 534 of 2006 stands set aside. All interim applications, if pending, stand disposed of accordingly.
- 28.** Let the records of Tribunal along with copy of the judgement be transmitted back immediately.
- 29.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]