S/L No. 35
16.01.2023
Ct-237
(PA.RD)

FMA 1227 of 2014

Pradip Rakshit & Ors.
Vs
Tarun Kanti Ghosh & Ors

Mr. Uday Sankar Chattopadhyay, Advocate
Mr. Suman Sarkar Chatterjee,Advocate
Mr. Santanu Maji, Advocate
Ms. Trisha Rakshit

... for the Appellants/ Claimants

Mr. Rajesh Singh, Advocate

... for the respondent no. 3/ Insurance Co.

This appeal is directed against the judgement passed by Motor Accident Claim Tribunal, Fast Track 1st Court, Burdwan in connection with Motor Accident Claim Case No. 17 of 2011, 105 of 2009, 241 of 2009 under Section 166 of the Motor Vehicles Act whereby Ld. Judge dismissed the claim petition. On the ground that it was a case of pre-planned murder and also on the ground the claimants could not produce any document showing dependency.

The claim petition arose out of an application under Section 166 of the Motor Vehicles Act, on account of death of Uttam Raksit, brother of the claimants, aged about 48 years having income of Rs. 8,000/- from his business. On 06.10.2008 at about 22.00 hours the deceased Uttam Raksit along with his wife, daughter and other family members were travelling with one TATA SUMO being Registration No. WB16F-6566 which was driving with high speed and in rash and negligent manner and ultimately lost its control at Chowberia Canel Pool and vehicle fell into the canel. As a result, all family members including Uttam Raksit died. That is why the claim petition was filed with a prayer for compensation of Rs. 8,40,000/-.

Owner did not contest this case. National Insurance Company contested the application denying all averments of the claim petition, contending inter alia, that there was no fault or negligence on the part of the driver of the vehicle and Insurance Company was not liable to pay any compensation.

To prove the case only one of the claimant namely Pradip Raksit was examined in this case as PW-1. In course of his evidence, it is seen that he has corroborated the averments of the claim petition. But in cross-examination he has specifically stated that he was not present at the time of accident. He has stated that after the accident driver of the vehicle survived and absconded. He further stated that his brother Dilip Raksit filed a case before the Hon'ble High Court at

Calcutta with the allegation that one Shankar Mallick in collusion with the driver caused the murder of his brother. It was a pre-planned murder.

PW-1 specifically deposed before the Ld. Tribunal as under:-

> *" **We have no proof to establish that Uttam Rakshit was the head of our family or the petitioners were the dependants of himself. It is true that at the relevant time of the accident we the petitioners used to live separately with the families of each other and we used to maintain our respective families individually. It is also true that my deceased brother Uttam Rakshit was not maintain the families of ourselves. We have not filed any documentary proof to establish the age and income of my deceased brother.**"*

From the record, I find that claimants did not adduce evidence of any eye-witness to prove the claim petition under Section 166 of the Motor vehicles Act where rash and negligent act on the part of the driver is pre-condition.

Ld. Advocate, Mr. Uday Shankar

Chattopadhyay, has referred to the document i.e charge sheet, seizure list and Insurance Policy filed in the record but those were not admitted in evidence.

From the charge sheet, I find that initially the case was started under Section 279, 338, 427, 304A of Indian Penal Code and subsequently Section 304 of Indian Penal Code and 184 of the Motor Vehicles Act, were added. Finally charge sheet was submitted against the driver of the vehicle. From the Insurance Policy, I find that at the relevant point time the offending vehicle was duly insured with National Insurance Company limited. So far as allegation of pre-planned murder is concerned, I do not find any single scrap of paper in record to come to any conclusion that it was a case of murder and Insurance Company is not liable to pay compensation only relying on oral evidence of PW-1.

However, on perusal of the charge sheet and Insurance Policy, I have no hesitation to hold that Uttam Rakshit died in an accident by the involvement of Tata Sumo being Reg. No. WB 16F-6566 which was duly insured with the National Insurance Company Limited.

But, considering evidence of PW-1 quoted above, I have also no hesitation to hold that none of the claimants was dependent on the deceased Uttam Rakshit on the alleged date of accident. Therefore, claimants suffered no pecuniary loss.

In these circumstances relying on the ratio of ***National Insurance Company Ltd. Vs. Pranay Sethi, reported in (2017)16 SCC 680***, I have come to my opinion that claimants have entitled to only non pecuniary damage of Rs. 30,000/- towards loss of estate and funeral expenses. Therefore, claimants/appellants are entitled to non pecuniary damage of Rs. 30,000/- along with interest @ 6% per annum from the date of filing of the application till the deposit thereof.

Respondent/ National Insurance Company is directed to pay compensation of Rs. 30,000/- along with interest @ 6% per annum from date of the claim petition till the deposit thereof, before the office Ld. Registration General within six (6) weeks from date.

Ld. Registrar General is requested to disabuse the amount among all appellants /claimants in equal share on proper identification and proof.

With the aforesaid observation the instant appeal being no. F.M.A 1227 of 2014 stands deposed of.

All pending application, if there be any, stand disposed of.

Let a copy of this judgement along with Tribunal record be transmitted back immediately.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Bibhas Ranjan De)