

19.07.2023
SL No.9
Court No. 551
Ali

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

**FMA 69 of 2013
IA No.:CAN/1/2017 (Old No.:CAN/5774/2017)**

**Sri Sakhalal Saha & Anr.
Vs.
The Branch Manager,
New India Assurance Co. Ltd. & Anr.**

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

Ms. Sayanti Santra
...for the respondent-insurance Co.

The instant appeal is preferred against the judgment and award dated 3rd March, 2012 passed by learned Judge, Motor Accident Claims Tribunal, 4th Court, Jalpaiguri in M.A.C. Case no. 182/2009 under Section 163-A of the Motor Vehicles Act, 1988.

The claim application filed by the claimant was turned down by the learned tribunal.

Hence this appeal.

The claim case mentioned the accident as follows: on 06.01.2006 at about 5.30 a.m. in the morning when the deceased was standing through the left Kutcha Flank of the Road near Ghoramara Choupathy. At that time one pick-up-van bearing no. B.73-TC-9321 was proceeding towards Kamakhyaguri with a high speed and negligently dashed the deceased and thereafter capsized on the pucca road. As a result of the accident the deceased

was received severe multiple injuries on her body and he succumbed to his injuries on the spot.

The claimant i.e. father of the deceased deposed as PW-1, one eye witness of the accident deposed as PW-2, none deposed on behalf of the insurance company. The insurance company contested the case by filing written statement, FIR, postmortem report in connection with Kumargram Police Station Case No. 04/06 dated 06.01.06 under Sections 279/337/338/304(A) IPC was filed.

On perusing the entire evidences on record and after considering the pleadings of the parties the learned tribunal has dismissed the claim application. The basic ground for dismissal of the claim application is that the fact of FIR of the police case regarding the happening of the accident is different to the fact of the case of the claimants. The learned tribunal has also observed that the postmortem report contained different police case thus learned tribunal disbelieved the case of the claimant.

Learned advocate for the appellant submitted before this court that the learned tribunal has committed error in disbelieving the fact that the claimant. He also pointed out that the learned tribunal has not considered the entire fact of the case and come to an erroneous conclusion. He again pointed out that to consider this case under Section 163A of the M.V. Act it is only required to prove that

the deceased died in a road traffic accident. In this case the learned tribunal has proceeded to find out the negligence thus there are perverse finding. He also pointed out that the learned tribunal has misguided himself in passing the impugned order he prayed for just compensation by setting aside the impugned judgment.

Learned advocate appearing on behalf of the insurance company submitted before this court that the learned tribunal has committed no error. The fact of the accident and manner thereof which was stated in the claim application is totally different to the statement of the FIR. The FIR maker i.e. the de-facto complainant never appeared before the learned tribunal. The PW-2 who appeared as an eye witness was previously acquainted with the deceased so he is an interested witness, his deposition cannot be believed. Furthermore, she argued that there are involvement of two vehicles in this case whether the vehicle in question i.e the pick up van was actually involved in the accident can not be ascertained. She further pointed out that the number of police case was specifically mentioned in the claim application but the claimant has not produced the seizure list, charge-sheet of the police case for which the involvement of the vehicle being the pick up van bearing No. WB. 73.TC/9321 is not proved. He further pointed out that the observation of the

learned tribunal is justified there is no merit to entertain the appeal.

Heard the learned advocate perused the materials on record also perused the judgment passed by the learned tribunal it appears that learned tribunal has considered the factum of accident stated in the claim application and the nature of accident stated in the FIR to be different.; I have perused the FIR of Kumargram Police Station vide Kumargram, P.S. Case No. 04/06 dated 06.01.06. It contains-On 8.35 hours when a pick up van bearing No. WB. 73.TC/9321 carrying picnic party tried cross the high way at that time one loaded lorry going to Assam side dashed the pick up van for which some persons inside the pick up van thrown away and the pick up van capsized. The injured persons were shifted to hospital and after removing the pick up van it appears that one person was crushed to death beneath the pick up van. So the FIR disclosed about the accident and death of one person. The FIR also disclosed the involvement of the pick up van. The postmortem report appears that the cause of death is accidental and antemortem in nature. The post mortem was conducted on the same day of accident. The postmortem contained the number UD case No. It is obvious that the postmortem is prepared by Autopsy Dr. and at that time of postmortem hospital

authority might not have the registration number of police case.

Cases under Section 163-A of the M.V. Act is required to be proved on the basis of the principle of no fault liability. In this case it has to be looked into whether the victim died or suffered injury in a road traffic accident. It is true, in this case the deceased died in a road traffic accident as appeared from the statement of PW-1 and PW-2 and post mortem report. The involvement of the motor vehicle in question i.e. the pick up van bearing No. WB. 73.TC/9321 is very much proved. The nature of accident and fact thereon cannot be ascertained to be true by either way. The FIR cannot be stated to be a substantive piece of evidence. The claim case filed under Section 163-A need be proved on the basis of preponderance of probabilities. In calculating the probability of this case, it appears that the deceased died in a road traffic accident they are no incident on that day that the deceased was died on other way; the post mortem report disclosed the death of the deceased to be accidental in nature. The claim case as well as the case of the FIR disclosed the involvement of the motor vehicle. Thus in my view the learned tribunal has committed error in deciding the case under Section 163-A of the M.V. Act. It appears to me that the learned tribunal has assessed the case on the basis of the principle required to be proved under Section 166 of the M.V.

Act . Considering the same in my view the claimants have proved the case and they are entitled to get the compensation. The impugned order passed by the learned tribunal is hereby set aside.

The just and proper compensation of this case is as follows:-

Monthly Income.....	Rs.3,000/-
Yearly income.....	Rs.36,000/-
Less: 1/3 rd	Rs 12,000/-
	Rs. 24,000/-
Multiplier (Rs. 24,000 X 17).....	Rs.4,08,000/-
Add: General Damages.....	Rs.4,500/-
Total.....	Rs. 4,12,500/-

The insurance company is directed to pay the compensation through the office of learned Registrar General, High Court, Calcutta alongwith interest @ 6% per annum from the date of filing of the claim application i.e. (from 26.11.2009) within eight weeks from the date of passing of this order. On such deposit the claimants are at liberty to withdraw the same according to prevalent rules.

The instant FMA 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.)

