

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 868 of 2012

The New India Assurance Company Limited
Vs.
Smt. Pramila Roy & Ors.

Mr. Rajesh Singh
... For the appellant/Insurance Company

Ms. Sucharita Paul
... For the respondent no.4/Bajaj Allianz
General Insurance Company Limited

Learned advocates appearing on behalf of the appellant/Insurance Company as well as the respondent no.4 are present. None appears on behalf of the claimant and other respondents even on repeated calls. This appeal is pending since 2012.

Learned advocate appearing on behalf of the appellant/Insurance Company submitted that the appeal may be disposed of due to long pendency.

In such circumstances, the appeal is taken up for disposal on merit.

This appeal has been preferred by the appellant/New India Assurance Company Limited against the judgment and award dated 25th April, 2011 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Siliguri, in connection with MAC Case No.73 of 2009

whereby the learned Tribunal awarded compensation of Rs.7,24,500/- in favour of the claimant on account of death of Surinder Roy, son of the claimant, in a motor accident occurred on 28th March, 2009.

The claim petition was filed under Section 166 of the Motor vehicles Act, 1988 by the mother of the deceased who met an accident while driving the motor cycle. At that time, one Truck, bearing registration no.WB-59/6818, coming through wrong side from opposite direction, dashed against the scooter, bearing registration no.WB-74-H/3901, owned by the deceased himself. It is also seen from the record that the scooter was insured with Bajaj Allianz General Insurance Company Limited. At the time of accidental death, the deceased was aged about 25 years having income of Rs.12,000/- per month from his business.

Both the Insurance Companies of the vehicles contested the claim petition by filing their respective written statements denying all material allegations of the claim petition contending, inter alia, that the claimant is not entitled to any compensation. It is the specific case of the respondent no.4/Bajaj Allianz General Insurance Company Limited that the accident took place due to rash and negligent driving on the part of the driver of the truck and from that point of view, Bajaj Allianz General Insurance Company Limited is not liable to pay any compensation.

To prove the case, claimant examined four witnesses, i.e., the claimant herself as PW-1 who corroborated the entire averments of the claim petition. One Ashim Kar examined as PW-2, who claimed himself to be the eyewitness, testified that he had seen the accident. While he was standing beside the road to board on a bus on 28th March, 2009 at about 3 p.m. near Paribahan Nagar, Matigara on NH-31, he saw a truck, bearing registration no.WB-59/6818, coming from Siliguri through wrong side of the road with high speed and dashed one scooter, bearing registration no.WB-74-H/3901.

One Mahesh Roy was examined as PW-3. In course of his evidence, he submitted RC Book of the scooter before the Court. One Abhoy Kumar Sinha, examined as PW-4, an employee of Income Tax Department submitted the Income Tax Return for the assessment year 2008-2009 which was admitted in evidence.

In course of their evidence, a good number of documents were admitted in evidence as Exhibit 1 to 11, including First Information Report, post-mortem report, birth certificate, driving licence, voters identity card, original insurance policy etc.

Mr. Rajesh Singh, learned advocate, on behalf of the appellant/New India Assurance Company Limited assailed the judgment by submitting that it was a case of contributory negligence between the truck and the scooter

but the learned Tribunal after assessing compensation directed only the New India Assurance Company Limited, i.e., the insurer of the truck, to pay the entire compensation to the claimant. Mr. Singh did not raise any issue of computation of compensation by the learned Tribunal.

Therefore, I have to consider whether this is a case of contributory negligence or not, in this appeal.

On careful scrutiny of the evidence, I find that the accident took place on 28th March, 2009 at about 3 p.m. under Police Station Matigara and as a result Surinder Roy, son of the claimant, died. Immediately, after the accident, FIR was lodged by one Sanjay Roy before the Officer-in-Charge of Matigara Police Station. From the FIR, it is found that at the relevant point of time the deceased was proceeding on his motor cycle towards Bagdogra and at that time one truck, bearing registration no.WB-59/6818, coming with high speed from the opposite direction through wrong side of the road, dashed the scooter of the deceased. As a result, he sustained severe injury and shifted to North Bengal Medical College and Hospital where he succumbed to his injuries. Now, if I come to evidence of PW-2, who also claimed himself to be the eyewitness to the incident, I find that on the alleged date and time PW-2, Ashim Kar, was standing in the bus stand at Paribahan Nagar, Matigara on NH-31, the truck, bearing registration no.WB-59/6818, coming with high

speed through wrong side of the road, dashed against the scooter of the deceased.

In the aforesaid view of the matter, I find that the claim petition has been duly corroborated by the FIR and also by the evidence of PW-2 wherefrom I find that it was not a case of contributory negligence and the accident happened only due to rash and negligent driving of the truck, bearing registration no.WB-59/6818, leaving no question of contributory negligence on the part of the driver of the scooter and also no question of liability of the insurer of the scooter. Thus, I find that the appeal preferred by the New India Assurance Company Limited having no merit and the same is liable to be dismissed.

Hence, the appeal, being FMA 868 of 2012, stands dismissed on merit.

The respondent no.1/claimant is at liberty to withdraw the entire amount with accrued interest from the office of the learned Registrar General of this Court as it is reported that the entire amount has already been deposited by the appellant/New India Assurance Company Limited with the office of the learned Registrar General.

The learned Registrar General is requested to disburse the entire amount along with all accrued interest to the respondent no.1/claimant on proper identification.

Let the respondent no.1/claimant be intimated to this order by the Department forthwith.

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

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)