

25.07.2023
SL No.22
Court No. 551
Ali

IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

FMA 149 of 2016
IA No.:CAN/2/2018 (Old No.:CAN/946/2018)
CAN/3/2020 (Old No.:CAN/1973/2020)

Kamala Sarder
Vs.
Sk. Abdul Haleim & Anr.

Mr. Ali Imam Shah,
Mr. F.R. Hazari
...for the appellant-claimant.

Mr. Rajesh Singh
...for the respondent No. 2-Insurance Co.

The instant appeal is preferred against the judgment dated 31st August, 2015 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Burdwan in M.A.C. Case no. 55 of 2014.

The claimant is the appellant here. The erstwhile appellant (now deceased Kamala Sarder) filed the claim case before the learned tribunal under Section 163-A of the Motor Vehicles Act, 1988. On the ground that her son, namely, Pasupati Sardar who was the Khalasi of a Dumper bearing No. WB-41F/8900 died on 18.12.2013 while he proceeding in the said Dumper at about 21.30 hours.

The brief facts of the case is that while the Dumper bearing No. WB-41F/8900 was proceeding with the said deceased as a Khalasi towards the Pairachali from Manbazar for loading sand at

Pairachali ghat and when reached at Basudib Village in high speed and negligent manner, the driver of the Dumper lost control and same capsized at the side of the road. As a result the deceased was seriously injured and died on the way to Manbazar Hospital.

After filing of the case the opposite party no. 1 i.e. the owner of the Dumper did not contest the case. Opposite party no. 2-New India Assurance Co. Ltd. contested the case by filing written statement. The evidences were adduced on behalf of the claimants. The opposite party No. 1 i.e. owner of the vehicle appeared before the learned tribunal as PW-2. The police papers were produced before the learned tribunal. The learned tribunal after perusing the entire documents both oral and documentary and after perusing the pleadings of the parties dismissed the claim application.

Hence this appeal.

Learned advocate for the appellant submitted before this court that the learned tribunal has committed error in rejecting the claim application. He also pointed out that the learned tribunal has misguided himself in passing the impugned order. He also pointed out that the learned tribunal has observed the entire documents and police papers but the impugned judgment passed by the learned tribunal was not justified. He

also pointed out that the learned tribunal is of view that the claimant could not prove that the deceased was a Khalasi in the said Dumper at the time of the accident which is erroneous. He pointed out that there are several papers including police paper which shows that the deceased was a Khalasi at the said Dumper. He also pointed out that PW-2 i.e. the owner of the Dumper appeared before the learned tribunal and stated that the deceased was employed by him as a Khalasi in the said Dumper. He again pointed out that the learned tribunal has committed error in considering the facts and circumstances of the case otherwise, he specifically pointed out that to prove the case under Section 163-A of the M.V. Act, the claimant deposed as PW-1, the FIR as well as other police papers were produced. The accident was proved instead of which the claim case was dismissed. He specifically argued that on the basis of the said accident the Manbazar P.S. Case No.60/13 dated 19.12.2013 was stated regarding the unnatural death of the said deceased. So at this juncture, the observation of the learned tribunal is not correct and the impugned order passed by the learned tribunal need be set aside. He prayed for just compensation.

Learned advocate for the insurance company raised an objection against the submission of the learned advocate for the appellant. He pointed

out that the observation of the learned tribunal is on the basis of his inspection of the entire case records. Learned tribunal has specifically observed that the opposite party No. 1 i.e. the owner of the Dumper did not appear in spite of receiving the summons of the tribunal but appeared at the time of evidence on behalf of the claimant. Thus the learned tribunal is of view that the evidence of PW.-2 has failed to gain any confidence of that tribunal. He pointed out that the finding of the learned tribunal is not erroneous. The PW-2 did not utter a specific date from when the said deceased was employed in the said truck as Khalasi; the de-facto complainant who is the brother of the deceased not appeared before the learned tribunal to substantiate the fact of the accident.

Moreover, no eye witness was adduced before the learned tribunal to prove the fact of the accident in this case.

The learned advocate for the insurance company specifically argued about the opinion of the doctor in the postmortem report which was exhibited alongwith the police paper on behalf of the claimant. He pointed out the page No. 6 of the postmortem wherein the autopsy Doctor is of opinion that the death was caused probably since 4.00 hours of the autopsy. He pointed out that the injuries were observed by the autopsy to be an ante mortem in nature which is sustained by the

deceased about 4.00 hours ago. On such finding of the Doctor, learned advocate for the insurance company is of view that the death of the deceased was caused on 20th of December, 2013. Learned advocate for the insurance company further submitted before this court that the learned tribunal is of correct view that the relevant time, relevant date and the manner of death of the deceased is not correlated with the alleged accident. He further submitted before this court if the postmortem report is taken to be proved then the death of the deceased was happened otherwise then the accident. So he submitted before this court that there is no point to entertain the instant appeal and the instant appeal is liable to be dismissed.

Heard the learned advocate perused the materials on record.

In considering the entire case it is true that this is a case under Section 163-A of the M.V. Act and the mother of the deceased filed the claim case before the learned tribunal for getting compensation due to the sad demise of her son in a road traffic accident. It is the pleading of the claimant that the deceased was a Khalasi of the Dumper which suffers an accident and capsized, by such the deceased sustained bodily injury and he died on such injuries on the way to the Manbazar Hospital. It is the case of the claimant that the postmortem was held at

Deben Mahato (Sadar), Hospital, Purulia. To prove the case PW-1/claimant deposed before the learned tribunal and produced all the police papers. It appears from the seizure list that the Dumper was seized on 19.12.2013 between 16.40 hours to 16.55 hours and the wearing apparels of the deceased Pasupati Sardar was seized on the same day at 18.50 hours. The seizure reflected the name of the person who died to be Pasupati Sardar. On 21.12.2013 the papers of the offending vehicle was seized. The police investigation was conducted and concluded with C.S. by fixing the liability in the accident upon the driver to be the accused of that police case. In perusing the charge-sheet it appears to me that the charge-sheet reflected, prior to the initiation of the said police case the dead body of the Khalasi was forwarded to the Sadar Hospital for postmortem in connection with UD Case No. 25/13 dated 19.12.2013. During the course of investigation, the I.O. of the case has collected the postmortem report. The driver was arrested and was produced during the course of investigation before the Magistrate who was enlarged on bail by the order of the learned Magistrate. The investigation was ended by submission of the charge-sheet. In perusing the postmortem report it appears that the postmortem report contained the Manbazar P.S. U.D. Case No. 25/13 dated 19.12.2013. It is true

that the date and time of commencement of autopsy was 2.00 p.m. on 20th December, 2013. No name of police officer/constable, who brought the dead body was mentioned in the postmortem report which appears to me surprisingly. When the dead body was appeared before the Morgue under the specific UD P.S. Case No. 25/13 dated 19.12.2013. The hospital authority should have mentioned the name. On further observation of the postmortem report it appears to me that the opinion of the autopsy surgeon regarding the probable time since death is mentioned as before 4.00 hours of Autopsy and under the said column the injuries are mentioned as ante mortem before 4.00 hours. In respect of general observation it appears to me that the Autopsy Doctor observed dead body before the initiation of the postmortem is under the "Rigor Mortis" i.e. the dead body has already attended the circumstances of "Rigor Mortis". "Rigor Mortis" is a condition where after the death of a person, the body joints and muscles of the dead body became stiff. Usually "Rigor Mortis" appear in a dead body after 6 to 8 hours of death and it exists till 24 to 30 hours thereafter. It is not possible that "Rigor Mortis" shall appear after 4 hours of death of a person.

Hence, it appears to me that the autopsy surgeon must have remarked something erroneous in the postmortem report regarding probable time of

death. I find no infirmity regarding the connection of the dead body with alleged accident. The entire police papers in several places including the seizure list and the charge-sheet disclosed the involvement of the deceased of such alleged road traffic accident. Thus in my view, the learned tribunal has committed error in calculating the death of the deceased with the alleged accident. The evidence of PW-2 have gathered some importance regarding occupation of the deceased. The other police paper shows that the deceased was not a gratuitous passenger in the said offending vehicle and it is also proved that the death of the deceased caused by use of the motor vehicle. Considering the same, I think the impugned order passed by the learned tribunal is erroneous and the same is hereby set aside.

The deceased was a Khalasi of the said vehicle so the income of the deceased is assessed notionally Rs. 3,000/- per month the yearly income comes to Rs. 36,000/-. Thus, the just and proper compensation of this case is as follows:-

Calculation of compensation

1.Monthly Income	Rs.3,000/-
2.Annual Income	
.....(Rs.3,000/- X 12).....	Rs.36,000/-
3. Less 1/3 rd	<u>Rs. 12,000/-</u>
	Rs. 24,000/-
4. Multiplier apply 18	
(Rs.24,000/-X 18).....Total Rs.....	Rs.4,32,000/-
5. Add: General Damage.....	<u>Rs.4,500/-</u>
Total.....	Rs. 4,36,500/-

The Insurance Company is directed to pay the compensation within eight weeks from the date of passing of the order alongwith interest @ 6% per annum from the date of filing of the claim i.e. from 26.08.2014 through the office of the learned Registrar General, High Court, Calcutta. On such deposit the present appellants are at liberty to withdraw the same, subject to the ascertainment of payment of sufficient Court Fees. The office of the learned Registrar General, High Court, Calcutta shall issue the awarded amount vide three equal account payee cheques in the name of the appellants. The appellant No. 3, namely, Parimal Sardar (minor) appears to be major at present so there is no impediment to issue a cheque in his favour.

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.)

