

03.10.2023
SL No.11
Court No. 551
Ali

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

**F.M.A. 2882 of 2016
IA No.:CAN/2/2019 (Old No.: CAN/11383/2019)**

**Sk. Fajlul Hak & Anr.
Versus
The Reliance General Insurance Co. Ltd. & Anr.**

Mr. Uday Sankar Chattopadhyay,
Mr. Suman Sarkar,
Ms. Trisha Rakshit,
Ms. Rajashree Tah,
Ms. Aishwarya Datta
....for the appellants/claimants.

Ms. Gopa Das Mukherjee
...for the respondent Insurance Co.

The instant appeal is preferred against the judgment dated 21st August, 2015 passed by learned Judge, Motor Accident Claims Tribunal, 1st Court, Burdwan, in MAC Case no. 18 of 2014.

The brief fact of the case is that the present appellants being the parents have preferred an application before the learned tribunal for getting compensation under Section 163-A of the M.V. Act on the ground that their son was died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the insurance company.

The claim case was contested by the insurance company and after hearing the parties the learned tribunal has dismissed the claim case.

Being aggrieved by and dissatisfied with the said order of dismissal the present appeal has been preferred.

The learned advocate for the appellants submits before this court that the impugned award passed by the learned tribunal is erroneous. The learned tribunal has failed to appreciate the facts and circumstances of this case and came to an erroneous finding. He also submits that the learned tribunal has not gone through the evidences on record specially adduced by the PW-1 and the police papers and came to an erroneous finding. The learned tribunal also considered other way to the application under Section 163-A of M.V. Act on the basis of strict proof required in a criminal proceeding. He argued that the deceased died in a road traffic accident when he was employed as a Khalashi of one Truck. Moreover, the death of the deceased has successfully proved due to involvement of the offending vehicle. So, at this juncture the claimants being the fateful parents are entitled to get the compensation as prayed for. He further argued that the observation of the learned tribunal that the claimants has failed to prove that their son was a Khalashi of a vehicle and the P.M. report does not disclosed the father's name and the charge-sheet not disclose the UD Case No. is a mere discrepancy which

cannot be considered in a proceeding under Section 163-A of the M.V. Act. So, he prayed for just and proper compensation.

Learned advocate for the respondent insurance company submits that the learned tribunal has committed no error. She submits that in the instant case it would be revealed that there are accident in between two heavy vehicles wherein the deceased was claimed to be a Khalashi of one of the vehicle. The learned tribunal has specifically observed that the claimants has not adduced any evidence regarding the fact that the deceased was employed in the heavy vehicle as a Khalashi. Learned tribunal has also observed that the PW-1 i.e. the father of the deceased could not state the name of the driver and the owner of the offending vehicle wherein his son i.e. the deceased was employed. So, the observation of the learned tribunal is correct. She also argued that the police papers i.e. the FIR, charge-sheet does not disclose the fact that the deceased was a Khalashi of one of the offending vehicle. So, he support the observation of the learned tribunal and submits that the impugned award passed by the learned tribunal suffers no illegality.

Heard the learned advocate perused the materials on record.

It is the case of accident wherein a stone chips loaded truck which was proceeding towards the Kolkata side suddenly dashed against a stationary truck which was standing due to puncture of tire. It is the case the Khalashi of the truck which was running in a very high speed died in such accident. It has been stated in the FIR that both the driver and the Khalashi were injured and both of them were removed to Srerampore Walsh Hospital on 28.09.2013.

The father of the deceased i.e. the claimant No. 1 submits that he was not present at the time of accident but after receiving information he had been to the Walsh Hospital Srerampore and found the dead body of his son in the morgue of the said hospital. It is true that the FIR does not disclose the name of any injured person only stated the registration number of the vehicle. It has been stated in the FIR that the SI of concerned police station has shifted the injured person to the hospital. The PM. Report contained the UD Case No. as Serampore P.S. Case No. 161 of 2013 dated 28.09.2013. The investigation of the police ended in charge-sheet wherein the seizure has been effected in respect of both the vehicles. The final report of the police discloses the fact of accident and it has also been mentioned in the final report

that injured Abdul Haque Mallick expired at Serampore Walsh Hospital after such accident.

In considering the observation of the learned tribunal it appears to me that the learned tribunal is of a clear view that the claimant has not proved the occupation of the deceased. So, he dismissed the claim case on the ground that the deceased could not prove to be a Khalashi of the said vehicle.

This being an application under Section 163-A of M.V. Act, it is only required to prove by the claimants that the deceased was died in a road traffic accident due to involvement of the offending vehicle. The occupation and income of the deceased is immaterial in this case which is very much required under Section 166 of the M.V. Act. It is quite unjustified to deny the claim of the petitioner on the ground that the claimants could not prove the occupation of the deceased. In this case, it has sufficiently been proved that the deceased died due to road traffic accident. So, considering the same, I am of the view that the observation of the learned tribunal regarding the dismissal of the instant claim case is not justified. The charge sheet may not disclose the UD Case No. but charge- sheet specifically disclosed the name of the deceased in this case. The claim of the petitioner cannot be denied only on the fault of the

investigating officer. Considering the same, I am of the view that the claimants/appellants are entitled to proper compensation in this case.

For the just and proper compensation of this case it appears to me that the accident was happened in the year 2013 so in this case the monthly income of the deceased is fixed to be Rs. 3,000/- per month. The deceased was aged about 30 years at the time of accident, so according to the 2nd schedule the applicable multiplier would be 17. So, the just and proper compensation is assessed hereunder.

Monthly income Rs. 3,000/-, yearly income comes to Rs. 36,000/-. 1/3rd is deducted towards his personal expenses so the yearly dependency comes to Rs. 24,000/-. The applicable multiplier is 17 so after adopting the multiplier the award comes to Rs. 4,08,000/-. The claimants was a bachelor so he is entitled to get the general damages of Rs.4,500/- so after adding all the heads the award comes to Rs. 4,12,500/-.

The insurance company is directed to pay the compensation alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 25.02.2014 within ten weeks from the date of passing of this order with the office of learned Registrar General, High Court, Calcutta. On such deposit the claimants are at liberty to

receive the same. The office of the learned Registrar General, High Court, Calcutta is directed to disburse the same in the name of the appellants vide two separate equal account payee cheques subject to the ascertainment of payment of requisite Court Fees, if any.

The instant FMA 2882 of 2016 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.)