

S/L No. 5
11.01.2023
Ct-297
(PA.RD)

FMA 322 of 2006
With
CAN 4 of 2020 (CAN 2323 of 2020)

Tukni Devi & Anr.
Vs
Mr. Niranjana Gupta & Ors

Mr. Krishanu Banik, Advocate
Mr. Amit Ranjan Roy, Advocate
Mr. Sarat kr. Mullick, Advocate

... for the Appellant/ Claimants

Ms. Gopa Das Mukherjee, Advocate

... for the respondent no. 2/ Insurance Co.

This appeal is directed against the judgement passed by Motor Accident Claim Tribunal, 11th Court, Alipore in connection with Motor Accident Claim Case No. 24 of 2004 whereby Ld. Tribunal dismissed the claim application filed under Section 163A of the Motor Vehicles Act. The claim petition under Section 163A was filed by one Tukni Devi and Raghu Nandan Prasad Mahato claiming themselves to be the wife and son of the deceased Lakhan Mahato.

The claim petition was filed on account of death of one Lakhan Mahato on 15.11.2003 at about 10.25 p.m. by the involvement of a bus being no. WBS 3129 running with high speed dashed the deceased, who was proceeding towards his residence

from service place through A.P.C road from North to South. After the accident, he was taken to N.R.S Hospital where he was declared dead. At the relevant point of time said Lakhan Mahato was aged about 50 years having monthly income of Rs. 2,000/- from his employment at M/s. K.M Shaw and Smt. P Shaw ,24 A, R.G. Kar Road Kolkata.

Owner of the offending vehicle did not contest the claim petition but respondent/ New India Assurance Company Ltd. contested the claim petition by filing a written statement specifically disputing the age of the victim and relationship between the deceased and the claimants.

To prove the case on behalf of claimants two witness were examined namely Raghu Nandan Prasad Mahato as PW-1 and Sukdeb Sharma as PW-2. PW-1 claiming himself to be the son of deceased testified that his father suffered an accident on 15.11.2003. He did not see the accident, some friends of his father informed him over phone about the accidental death of deceased. After hearing the news, he came from Hazaribagh to Calcutta. He went to N.R.S Hospital and saw the dead body of his father at morgue. He learnt about the accident by the involvement of vehicle no WBS 3129. He stated about age and income of his father. In cross-examination, he stated that he filed Ration

Card to show that he was son of Lakhan Mahato.

PW-2 claiming himself to be an employee of M.K Shaw, a liquor at shop a 24A R.G Kar, Calcutta. He stated that Lakhan Mahato was an employee of that shop for last 35 years, he used to work as labour and earned Rs. 2,000/-. He could not show any document of identity of Lakhan Mahato.

In course of evidence, certified copy of F.I.R, lodged by one Shyamapada Sarkar, PM Repot, registration certificate of the vehicle and Voter ID Card of Tukani Devi.

After considering the entire evidence Ld. Tribunal returned his finding to the effect that claimants could not prove their relationship with the deceased Lakhan Mahato and accordingly dismissed the claim petition.

Ld. Advocate, Mr. Krishanu banik, appearing on behalf of the claimants has submitted that claim petition disclosed the name of deceased as Lakhan Mahato alias Golu and son of the deceased (PW-1) identified the dead body of his father in the hospital morgue and no cross-examination was made on behalf of the Insurance Company with regard to relationship. Mr. Banik has referred to a document by which it is seen that Investigating Officer of the accident in case sent information to the Ld. Chief Judicial Magistrate regarding identification of the

dead body by his son Raghu Nandad Mahato, which was not brought on record of the Tribunal ever. Mr. Banik has further submitted that Insurance Company could not show any claim with regard to accidental death of Lakhan Mahato by any other person or persons.

Ld. Advocate, Ms. Gopa Das Mukherjee, appearing on behalf of the Insurance Company has submitted that claimant failed to show any documents whatsoever in support of relationship between the deceased and claimants. It is submitted that Insurance Company by filing written statement specifically denied the relationship between claimants and deceased.

After careful perusal of the FIR lodged by one Shayampada Sarkar , I find that FIR (exhibit-1) was lodged due to accidental death of one unknown male person. From the Post Mortem Report (exhibit-2), it is seen that Post Mortem was conducted over a dead body of unknown male about 50 years. That apart, I do not find any document admitted in evidence save and except other three (3) documents i.e. registration certificate of the vehicle (exhibit -3), copy of the Insurance Policy (exhibit -4) and one photocopy of Voter ID Card of claimant Tukani Devi (exhibit-5).

It is needless to mention that, burden of proof

of relationship between the claimants and deceased solely lies on the claimants. FIR(exhibit-1) and Post Mortem Report (exhibit-2) did not disclose name of the deceased. Only photocopy of Voter ID Card shows the identity of the claimant Tukani Devi, wife of one Golu Mahato.

In the background of this case burden of proof can not be said to be on the respondent/ insurance Company. Claimants filed the petition under Section 163A of the Motor Vehicles Act, claiming compensation on account of death of husband of claimant no. 1 and father of the claimants no. 2. Before advertng to the issue it would be profitable to recapitulate the Provision of Section 103 and 106 of the Evidence Act which runs as follows:-

*“103. Burden of proof as to particular fact.-
The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.*

106. Burden of proving fact especially within knowledge- when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

In our case, claimants wish this Court to believe the relationship between the deceased and the claimants and moreso, existence of such relationship is within the knowledge of claimants.

But, unfortunately, such relationship has not been proved by showing any document except the oral evidence of claimant no.2 (PW-1). Identification of the dead body cannot be said to be a tool for proving relationship. Causing here for a moment, I can look back on the evidence of PW-1 who stated in his evidence that friends of his father informed him about death of Lakhan Mahato and he then came to Calcutta from Hazaribagh. Unfortunately, none of those friends has been examined in this case. Mr. Banik on behalf of the claimants tried to make this Court understand that Lakhan mahato was called as Golu in the village and that is why the Voter ID Card (exhibit -5) of claimant no. 1 shows the name of husband as Golu Mahato. In support of that submission of Mr. Banik no evidence was adduced.

However, on careful perusal of the entire documents exhibited in this case, I do not find any single paper to establish the relationship between the claimants and deceased Lakhan Mahato. Existence of relationship can not be said to be proved only on the basis of 'no denial'. Even if it is not denied burden lies on the claimants to prove the relationship by adducing corroborative evidence and producing cogent documents.

Mr. Banik has strenuously argued that Insurance Company could not show any other claim

application filed with regard to the alleged accident by any other person or persons. I am not agreeable with Mr. Banik. Such failure on the part of the Insurance Company does not necessarily mean that claimants of this case are entitled to compensation in spite of failure to prove the relationship with the deceased Lakhan Mahato.

In the aforesaid view of the matter, I find no other option but to hold that claimants failed to prove the relationship with deceased Lakhan Mahato. Accordingly, judgement passed by Ld. Tribunal in connection with MAC Case No. 24 of 2004 is hereby affirmed.

F.M.A 322 of 2006 is being disposed of without any order as to cost.

Let the record of the tribunal along with a copy of this order, be send back, at once.

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

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

(Bibhas Ranjan De)