

09.10.2023
Ct. no.654
Item no.189-190
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**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)**

**FMA 625 of 2019
CAN 1 of 2019 (Old CAN 3335 of 2019)**

The National Insurance Co. Ltd.

Vs.

Bela Ghosh & Ors.

With

COT 102 of 2019

Bela Ghosh & Ors.

Vs.

The National Insurance Co.Ltd.

Mr. M.P. Chakraborty
Ms. Swarnali Biswas
Ms. Ratnadipa Karmakar
...for the appellant-insurance company

Mr. Jayanta Banerjee
Mr. Sandip Bandyopadhyay
Mr. Argha Bhattacharjee
..for the respondents-claimants

This appeal is preferred against the judgment and award dated 5th December, 2018 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 6th Court, Paschim Medinipur in MAC case no. 193 of 2014 granting compensation of Rs.21,89,824/- together with interest in favour of the claimant no. 1 to 3 under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 18th October, 2013 at about 8-30 p.m. while the victim was returning to his house from Jhakra market and when he reached near Jhakra Shib Mandir at that point of time the offending vehicle bearing registration no. WB-34AF/0550 (motor-cycle) in a

rash and negligent manner dashed the victim from behind, as a result of which the victim sustained serious fracture injury on his head and other parts of the body. Immediately the local people shifted the victim to Chandrakona Gramin Hospital and thereafter he was referred to Midnapur Medical College and Hospital, wherefrom he was referred to Calcutta for better treatment. However, on the way the victim succumbed to his injuries and died. On account of sudden demise of the deceased, the widow, sons and sister of the deceased filed application for compensation of Rs. 20,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined two witnesses and produced documents, which have been marked as **Exhibits 1 to 13** (series) respectively.

The appellant-insurance Company also adduced the evidence of one witness and produced documents which have been marked as **Exhibit-A/1 and B** respectively.

The inquest report has been marked as **Exhibit-A.**

The respondent no.5, owner of the offending vehicle, did not contest the claim application and the case has been disposed of *ex-parte* against him. In the aforesaid backdrop, service of notice of appeal

upon the respondent no.5, owner of the offending vehicle, stands dispensed with.

Upon considering the materials on record and evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs.21,89,824/- together with interest in favour of the claimant no. 1 to 3 under Section 166 of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the insurance company has preferred the present appeal.

Challenging the impugned judgment and award of the learned Tribunal, the claimants have also preferred a cross-objection being COT 102 of 2019. Both the appeal and cross-objection are taken up together for consideration and disposal.

Mr. M.P. Chakraborty, learned advocate for the appellant-insurance company submits that in the present appeal the insurance company has precisely challenged the involvement of the vehicle. He indicates that as per inquest report **(Exhibit-A)** the registration number of the vehicle involved in the accident is WB-34B/8861 which has also been taken note of by the autopsy surgeon while issuing post mortem report **(Exhibit-8)**. The claimants in their claim application have asserted that the registration number of the vehicle is WB-34AF/0550, which is

frivolous in view of the notings in the inquest report and post mortem report. Therefore, the offending vehicle bearing registration no. WB-34AF/0550 was not at all involved in the alleged accident. In the light of his aforesaid submissions, he prays for setting aside the impugned judgment and award passed by the learned Tribunal.

In reply to the aforesaid submissions, Mr. Jayanta Banerjee, learned advocate for the respondent nos.1 to 4 (claimants) submits that the inquest report has not been proved by the insurance company by examining officer who conducted inquest in relation to the unnatural death case. He further submits that the inquest report is primarily to ascertain the cause of death and is not a substantive piece of evidence. Since the substantive evidence which clearly indicates the involvement of the offending vehicle, has not been rebutted by any contrary evidence, the ground raised by the insurance company is liable to be dismissed. He further submits that the learned Tribunal erred in not granting compensation in favour of the respondent no.4, married sister of the deceased. Moreover, he submits that the learned Tribunal granted less interest on the awarded sum, which needs to be increased in view of the prevalent banking rate of interest. In the light of his aforesaid

submissions, he prays for modification of the impugned judgment and award.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the offending vehicle was involved in the accident. *Secondly*, whether the respondent no.4, married sister of the deceased, is entitled to compensation and *Lastly*, whether the interest on the compensation amount needs to be increased.

With regard to the first issue relating to involvement of the vehicle, it is found that the insurance company by way of additional written statement has categorically stated that the offending vehicle being registration no. WB34AF/0550 was not involved in the accident rather, the motor cycle bearing registration no. WB-34B/8861 was involved in the accident which is revealed in the post mortem report and other documents. The inquest report was marked as **Exhibit-A** (under objection) by the learned Tribunal in relation to a petition dated 30th January, 2016. Although the inquest report was exhibited on behalf of the insurance company, however, subsequent thereto no evidence has been led by the insurance company in support of the inquest report. The object of proceeding under Section 174 of the Code of Criminal Procedure is merely to ascertain whether a person has died under suspicious

circumstances or an unnatural death and if so what is the apparent cause of death. The inquest report is not a substantive piece of evidence. Further the insurance company has not led any other evidence in support of non-involvement of the vehicle. On the flip side the claimants have adduced the evidence of claimant no.2, son of the deceased, eyewitness to the occurrence as PW-1. The witness has categorically stated of the involvement of the vehicle. The evidence of involvement of the offending vehicle deposed by the witness has remained unchallenged in the cross-examination. Further, FIR **(Exhibit-1)**, Seizure list **(Exhibit-2)** and the Charge-sheet **(Exhibit-3)**, also are corroborative of involvement of the offending vehicle. In the aforesaid backdrop, I do not find any infirmity in the finding of the learned Tribunal holding involvement of the vehicle in the affirmative. Accordingly, the ground of appeal fails.

With regard to the second issue relating to entitlement of compensation by the respondent no.4, married sister of the deceased, it is found that the learned Tribunal did not grant any compensation in her favour. As per Section 8 of Hindu Succession Act, the respondent no.4, married sister of the deceased, is not the legal heir of her deceased brother. Therefore, the order of the learned Tribunal not granting compensation in favour of the petitioner does not call for interference.

So far as the last issue is concerned, it is found that the learned Tribunal has granted interest @ 4% interest per annum on the compensation amount. However, bearing in mind the prevalent banking rate of interest the compensation shall carry interest @ 6% per annum from the date of filing of the claim application till payment.

It is found that the insurance company has deposited an amount of Rs.30,94,551/- vide O.D. challan no.672 dated 27th June, 2019 as well as Rs.25,000/- as statutory deposit vide O.D. challan no.088 dated 9th April, 2019 before the registry of this Court. Both the aforesaid deposits together with accrued interest shall be adjusted against the entire awarded sum.

The appellant-insurance company is directed to deposit balance interest amount by way of cheque before the learned Registrar General, High Court, Calcutta within a period of four weeks after reopening of the Court after the ensuing puja vacation.

Upon deposit of the balance amount of interest, the learned Registrar General, High Court, Calcutta is directed to release the amount in favour of the respondent nos. 1,2 and 3(claimants) after making payment of Rs.40,000/- in favour of the respondent no.1 towards spousal consortium in the proportion that 70% shall be released in favour of the

respondent no.1 and 15% each in favour of the respondent nos. 2 & 3.

Respondents-claimants are directed to deposit *ad valorem* court fees in terms of the order of the learned Tribunal.

With the aforesaid observations, the appeal and the cross objection stand disposed of. The impugned judgement and award is modified to the above extent. No order as to costs.

All the connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Let a copy of this order along with the Lower Court Records be sent to the learned Court below for information in accordance with the rules.

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

(Bivas Pattanayak, J.)