12.05.2023
Ct. no.654
Sl. No.109
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A.T. 480 of 2017
C.A.N. 3 of 2018 (old No. CAN 943 of 2018)

National Insurance Co. Ltd.
Versus
Dipika Pramanik & ors.

Mr. Rajesh Singh
... for the appellant-Insurance Co.

Mr. Jayanta Kr. Mandal
Ms. Sima Ghosh
... for the respondents-claimants

This appeal is preferred against the judgment and award dated 22nd December, 2016 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track Court, Suri, Birbhum, in M.A.C. Case No.02 of 2016 granting compensation of Rs.43,49,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 12th November, 2015 at about 1.30 A.M. (night) while the victim was proceeding from his residence riding bicycle to his work place at S.P. Bunglow, Rabindra Pally More, Suri and when he was passing through Suri-Bolpur Road adjacent to Suri Bus Stand and reached near old L.I.C. Building, the offending vehicle bearing registration No.WB-42J-6555 (Tata Sumo Car) dashed him from behind, as a result of which, the victim sustained severe injuries and was shifted to Suri Sadar Hospital for treatment, where he succumbed to his injuries and died at about 3.15 A.M. On account of sudden demise of the victim, the claimants being the widow and minor son filed application for compensation of Rs.50,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined three witnesses and produced documents, which have been marked as **Exhibits 1** to **11,** respectively.

The appellant-insurance company did not adduce any evidence.

The respondent no.3, owner of the offending vehicle, did not contest the claim application and the case was disposed of *ex parte* against him. In the aforesaid backdrop, service of notice of appeal upon the said respondent stands dispensed with.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation in favour of claimants to the tune of Rs.43,49,000/- together with interest 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 claimants have preferred the present appeal.

Mr. Rajesh Singh, learned Advocate for the appellant-Insurance Company submits, at the outset, that the Insurance Company has categorically denied the involvement of the vehicle in its written statement. The involvement of the alleged vehicle in the said accident is questionable inasmuch as the evidence of P.W. 2, who is the sole eye-witness, shows that after the occurrence the victim was shifted to hospital by a police van. However, the evidence on record adduced on behalf of the claimants is silent on such aspect. He further submits that the victim was a constable of police and in all probabilities since the police van shifted the victim to the hospital the police would have lodged General Diary at the police station but the said General Diary, if any, has not been produced and after lapse of 23 days the F.I.R. comes into existence and within this period there is no whisper of the involvement of the vehicle. It is quite impossible for a prudent person to believe that the occurrence happening with the police personnel within the knowledge of the police has not been reported at the police station which clearly probabilises the non-involvement of the vehicle. He further draws attention of this Court to the fact that the claimants have neither produced the inquest report held in respect of unnatural death case being No.392 of 2015 nor the hospital records been produced to primarily establish that the victim sustained injuries as has been claimed in the said accident. Thus, the involvement of the vehicle has not been established to the hilt by the claimants due to which reasons the claim against the Insurance Company should fail. He further submits that the learned Tribunal erred in granting Rs.1,25,000/- towards general damages which should have been Rs.70,000/- in view of the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 SCJ 2700.*** Furthermore he submits that bearing in mind the prevalent banking rate of interest, the interest on the compensation amount should be @ 6% per annum instead of 9% per annum granted by the learned Tribunal.

Mr. Jayanta Kr. Mandal, learned Advocate for the respondent nos.1 and 2 (claimants), in reply, referring to paragraph 15 of the written statement submits that the Insurance Company has impliedly accepted the involvement of the vehicle, since it has taken a ground of contributory negligence of the victim in the said accident. So far as the general damages and the rate of interest on the compensation amount are concerned, he leaves the matter to the discretion of the Court.

Having heard the learned Advocates for the respective parties, the following issues have fallen for consideration.

Firstly, whether the offending vehicle was involved in the accident; *secondly,* whether the learned Tribunal erred in granting general damages of Rs.1,25,000/- and *lastly,* whether the rate of interest on the compensation amount should be @ 6% per annum instead of 9% per annum granted by the learned Tribunal.

With regard to first issue relating to involvement of the offending vehicle, it is found from the written statement that the Insurance Company has categorically denied the involvement of the vehicle. The challenge to the involvement of offending vehicle has been made on two-fold grounds. *Firstly*, that the police van as per P.W.2 which took the victim to the hospital has got no reflection from the evidence adduced by the claimants and *secondly,* the subsequent delay of 23 days in lodging the F.I.R. The claimants in order to establish the aspect of involvement of the offending vehicle have adduced the evidence of P.W.2, Anwar Hossain and also filed certified copy of F.I.R. **(Exhibit 1)**, charge-sheet **(Exhibit 2)** and seizure list **(Exhibit 3)**. P.W. 2 in his evidence in chief deposed that while the victim was proceeding towards Benimadhab More side from bus stand riding on his bicycle at that time the offending vehicle dashed him from behind. In cross-examination, P.W.2 stated that the accident took place at 1:35 A.M. on the relevant date. On that date, there was a function at Moumachhi Club on the western side of the place of occurrence. He further deposed that his house is situated on the eastern side of place of occurrence. Thus, it is found that his evidence with regard to the accident and involvement of the vehicle has remained unchallenged in cross-examination. Further the presence of this witness near the place of occurrence cannot be disbelieved in the absence of any attending circumstances improbabilising his presence thereat. It is a fact that P.W.2 in his evidence-in-chief deposed that after the accident some people and passers-by assembled near the spot and a mobile police van came to the spot of accident and they shifted the victim to the Suri Sadar Hospital from the place of occurrence.

Mr. Rajesh Singh, learned Advocate for the appellant-Insurance Company strenuously argued that since the police van shifted the victim to the hospital who was also in police service and the police records have not been produced by the claimants, the delay of 23 days in lodging the F.I.R. is fatal so far as the claim of the claimants is concerned. Though the claimants have not adduced any evidence of the police authorities of the mobile van or produced any general diary but the oral evidence of P.W.2 stating involvement of the vehicle which has remained unchallenged in cross-examination cannot be ignored in the absence of any other evidence being adduced from the side of Insurance Company to challenge the evidence of the eye-witness. Moreover, F.I.R. **(Exhibit 1)**, charge-sheet **(Exhibit 2)** and seizure list **(Exhibit 3)** show involvement of the vehicle.

The Insurance Company filed application before the learned Tribunal on 15th June, 2016 praying for leave to contest the claim case on merits, which was granted by the learned Tribunal.

When leave was granted permitting an insurance company to contest proceedings on behalf of the insured-owner of the vehicle on all merits, it was incumbent upon the insurance company to summon the owner or the driver of the vehicle to appear as witness for disputing the allegation of involvement of the offending vehicle. The owner of the offending vehicle was the best person to prove non-involvement of the offending vehicle by producing either garage register or movement register of the vehicle to indicate the movement of the offending vehicle at the relevant time. Similarly, the driver could have been a necessary witness to throw light as to whether the offending vehicle was really involved in the said accident or not. The appellant-insurance company did not take any steps to adduce the evidence of the owner or the driver of the offending vehicle to establish its plea of non-involvement of the offending vehicle. Rather from the order No.13 dated 07.12.2016, it is found that the learned Advocate for the Insurance Company declined to adduce evidence. Failure to adopt such course the court is left with no other alternative than to accept the allegations of the claimants of involvement of the offending vehicle.

This court in the case of ***The New India Assurance Co. Ltd. Versus Mita Samanta & ors.*** reported in ***(2010) 1 WBLR (Cal) 137*** observed as follows.

> *"Therefore, the insurance company in spite of taking leave under section 170 of the Act having failed to summon the owner or the driver of the vehicle to disprove the allegation of the claimants of the involvement of the vehicle concerned or the rash and negligent driving, the court is left with no other alternative but to accept the allegation of the claimants unless there is either admission of the claimants or their witness about non-involvement of the vehicle or about contributory negligence of the victim in the accident or there exists other evidence of unimpeachable nature given by uninterested witness showing falsity of the allegation of the claimants. In this case, there is no such admission or evidence of that nature. In this case, driver has been chargesheeted and thus, there is no reason why the insurance company in spite of taking leave under Section 170 of the Act should not summon the said driver to give evidence for disclosing the truth. We are unable to presume collusion between the driver and the claimants when the driver has been indicted in the criminal proceedings. It will be a travesty of justice in the facts of the present case to disbelieve the eyewitness of the claimants when the owner and the driver are neither appearing nor are they even summoned by the insurance company even after taking leave under Section 170 of the Act to face cross examination at the instance of the claimants"*

Bearing in mind the aforesaid observation of this Hon'ble court, as the appellant-insurance company in spite of taking leave to contest on all merits and take all available defences has failed to adduce the evidence of owner or the driver of the offending vehicle to establish its defence of non-involvement of the vehicle, hence it will be a travesty of justice to disbelieve the eyewitness namely PW2 examined on behalf of the claimants in this regard.

That apart, the Insurance Company has also failed to adduce evidence pertaining to police records to probabilise non-involvement of the vehicle. In view of the above discussion the argument advanced on behalf of the appellant-insurance company of non-involvement of the offending vehicle in the said accident does not hold good.

Mr. Rajesh Singh, learned Advocate for the appellant-Insurance Company has also indicated that the delay of 23 days in lodging the F.I.R. is fatal to the claims of the claimants in the facts and circumstances of the case. From the written complaint, it is found that the complainant has stated that due to sudden demise of her husband and mental agony, there has been delay in lodging the F.I.R.

In ***Ravi Versus Badrinarayan & Ors.*** reported in ***A.I.R. 2011 S.C. 1226***, the Hon'ble Supreme Court observed as follows:-

> *"20. It is well settled that the delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect the common man to first rush to the*

> *Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the Courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If Courts finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR the claim case cannot be dismissed merely on that ground."*

Bearing in mind the aforesaid observation of the Hon'ble Supreme Court and as in the present case at hand, there is no indication of fabrication or concoction or engineering of the FIR hence the delay in lodging the FIR *per se* cannot be a ground for dismissal of the claim case. Further such delay has been duly explained in the FIR. Thus, since the delay has been explained and there are no other attending circumstances, the delay of 23 days in lodging the F.I.R. cannot be fatal to claim of the claimants. Accordingly, the argument of the appellant-Insurance Company in this regard falls short of merit.

In view of the above discussion, it is found that claimants have been able to establish the involvement of the offending vehicle in the said accident by cogent evidence.

With regard to second issue it is found that the learned Tribunal granted compensation of Rs.1,25,000/- under general damages. However, in view of decision of the Hon'ble Supreme Court in *Pranay Sethi's case (supra)* the claimants are entitled to general damages of Rs.70,000/- under the conventional heads loss of estate, loss of consortium and funeral expenses.

With regard to last issue regarding the rate of interest on the compensation amount it is found that the learned Tribunal has granted interest at the rate of 9% per annum. However, bearing in mind the prevalent banking rate of interest the compensation amount shall carry interest @ 6% per annum.

The other factors have not been challenged in this appeal.

Accordingly, the compensation is assessed as follows:

Calculation of Compensation

Monthly income		Rs.22,000/-
Add: Future prospect @ 50% of income of victim		Rs.11,000/-
		Rs.33,000/
Annual Income (Rs.33,000X12)		Rs.3,96,000
Less : Personal expenses (1/3rd)		Rs.1,32,000/-
		Rs.2,64,000/-
Multiplier 16 (Rs.2,64,000/-X16)		Rs.42,24,000/-
Add : General damages		Rs.70,000/-
(i) loss of estate	Rs.15,000	
(ii) loss of consortium	Rs.40,000	

(iii) funeral expenses Rs.15,000

Total amount **Rs.42,94,000/-**

Thus, the total compensation amount comes to Rs.42,94,000/- which shall carry interest of 6% per annum from the date of filing of the claim application till payment.

It is found that the Insurance Company has already deposited the entire awarded sum together with interest in terms of the order of this Court dated 7th December, 2017 vide OD Chalan No. 2535 dated 19.12.2017. Further, the Insurance Company has also deposited the statutory amount of Rs.25,000/- vide OD Chalan No.233 dated 28.04.2017. Both the aforesaid deposits together with accrued interest be adjusted against the entire awarded sum and the interest thereon.

The appellant-Insurance Company is directed to deposit the balance amount, if any, by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

The respondents-claimants are directed to deposit *ad valorem* court fees on the amount of compensation assessed, if not already paid.

Upon deposit of the aforesaid balance amount, if any, and interest as indicated above the learned Registrar General of this Court shall release the said amount in favour of the claimants after making payment of

Rs.40,000/- in favour of respondent no.1, widow of the deceased, towards spousal consortium, in equal proportion upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

Upon satisfaction of the entire awarded amount, if any amount is left over that will be refunded to the Insurance Company.

The respondent no.1 being the mother and natural guardian of the minor respondent no.2 shall receive the share of the minor and shall keep the share of the minor in a fixed deposit scheme of any nationalised bank or post office till attainment of majority of said minor.

With the above observations, the instant appeal stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.

No order as to costs.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Let copy of this order along with lower court records be forwarded to the learned Tribunal for information.

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

(Bivas Pattanayak, J.)