

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 837 of 2005

Sasanka Das
Vs.
United India Insurance Company Ltd. & Ors.

Mr. Krishanu Banik
... For the appellants/claimants

Mr. M.P. Chakrabarty
Ms. Swrnali Biswas
Ms. Ratnadipa Karmakar
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and award dated on 20th May, 2005 passed by the learned Judge, Motor Accident Claims Tribunal & Additional District Judge, Contai, in connection with MAC Case No.108 of 2000 whereby the learned Judge dismissed the claim petition.

The claim petition under Section 163A of the Motor Vehicles Act, 1988 was filed by one Sasanka Das for sustaining injury in a motor accident occurred on 20th August, 2000 at about 3.00 p.m. at Contai-Midnapore Road by the involvement of one Bus, bearing registration no.WB-31/0433. According to the claimant/injured, on that day he was travelling in the bus as passenger and the said bus capsized due to rash and negligent driving. At the time of accident, he was aged about 34 years having income of Rs.4,000/- per month. After the accident, Contain Police Station Case No.185 of 2000 dated 21st

August, 2000 under Sections 279/338/427 of the Indian Penal Code was started. That is why the claimant/injured filed the claim petition with a prayer for compensation to the tune of Rs.1,00,000/-.

Owner of the vehicle did not contest the claim petition but the United India Insurance Company Limited contested the case by filing written statement denying all material averments in the claim petition contending, inter alia, that the claimant, being not a passenger of the bus, is not entitled to any compensation, as prayed for.

To prove the case, claimant examined as many as two witnesses, namely, claimant himself as PW-1 and one Prafulla Kumar Jana was examined as PW-2. In course of their evidence, certified copy of the First Information Report, charge sheet, seizure list and discharge certificate were filed and marked as Exhibit 1 to 4.

After analysing the evidence on record, the learned Tribunal came to its finding that the claimant could not prove that he was a valid passenger of the bus and also evidence of PW-2 cannot be taken into account who was not a passenger of the bus and he could not produce the bus ticket. However, the learned Tribunal did not believe the evidence of either PW-1 or PW-2 with regard to the injury sustained by the claimant and accordingly dismissed the claim petition.

Mr. Krishanu Banik, learned advocate, on behalf of the appellant/claimant has submitted that the evidence of

PW-1 together with the discharge certificate (Ext.-4) proved the factum of accidental injury sustained by the appellant /claimant and he was treated in the Contai S.D. Hospital. Though no disability certificate has been filed in this case but Mr. Banik has relied on a case of **North-West Karnataka State Road Transport Corporation v. Mallikarjun Sanganabasappa Shettar & Anr.** reported in **2002 ACJ 215** wherein the Hon'ble Apex Court granted compensation to the tune of Rs.1,00,000/- in absence of any disability certificate.

Mr. M.P. Chakrabarty, learned advocate, on behalf of the respondent no.1/Insurance Company has submitted that no disability certificate has been filed in this case so compensation cannot be computed towards pecuniary loss.

From the FIR, charge sheet and seizure list (Exts. 1 to 3), it appears that on 20th August, 2000 accident took place by the involvement of one bus, bearing registration no.WB-31/0433, and the accident happened due to rash and negligent driving of the bus which capsized ultimately and passengers sustained injury.

We should keep in our mind that in a case of motor accident, appreciation of evidence cannot be considered as evidence in civil and criminal cases in terms of principle of beyond reasonable doubt or preponderance of probability.

In our case, PW-1 has stated that he being a passenger sustained injury on the alleged date of accident and PW-2 has also stated in his evidence that passengers of that bus sustained injuries and Sasanka Das, i.e., the claimant of this case, was one of the passengers of the said bus and he also sustained injuries. At the relevant point of time, PW-2 was sitting in a shop which was also damaged by that accident.

Such evidence of PW-1 and PW-2 has been further substantiated by a certificate issued by the Superintendent, Contain S.D. Hospital, Midnapore, wherefrom it is seen that he was admitted in the hospital on 20th August, 2000 with the history of R.T.A. on 20th August, 2000 at about 15 hours and he sustained multiple injuries and fracture over knee joint (right) and he was discharged on risk bond on 22nd August, 2000.

It is true that the relevant doctor was not examined in this case but overall evidence adduced on behalf of the appellant/claimant together with the documents, I find no reason to disbelieve the injury sustained by the appellant/claimant in the accident happened on 20th August, 2000 by the involvement of a bus, bearing registration no.WB-31/0433.

In spite of that, I am unable to hold any disability on the person of the appellant/claimant in absence of any document to that effect but considering the injury sustained by him, I find it justified to award a

compensation of Rs.50,000/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 19th September, 2000, till the deposit of the amount.

Accordingly, the respondent no.1/United India Insurance Company Limited is directed to deposit the compensation amount of Rs.50,000/- along with interest @ 6% per annum from the date of filing of the claim petition i.e., on 19th September, 2000, till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

In the result, the judgment passed by the learned Tribunal in MAC Case No.108 of 2000 stands set aside.

The appellant/claimant is entitled to withdraw the compensation amount with interest.

The learned Registrar General is requested to disburse the amount with interest to the appellant/claimant on proper identification and proof.

With the above observations, the appeal, being FMA 837 of 2005 is disposed of.

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

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

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

(Bibhas Ranjan De, J.)