

04.09.2023
Ct. no.654
Sl. Nos.11&12
KB/SN

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**F.M.A. 1050 of 2022
with
IA No. CAN 1 of 2017
(Old No. CAN 6612 of 2017)
with
IA No. CAN 2 of 2017
(Old No. CAN 6624 of 2017)
Shriram General Insurance Co. Ltd.
Vs.
Basanti Roy and others
with
COT 42 of 2020
with
IA No. CAN 1 of 2021
Amal Chandra Roy
Vs.
Shriram General Insurance & Another**

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

Mr. Subhankar Mondal
..for the respondents-claimants

This appeal is preferred against the judgment and award dated 23rd December, 2016 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, 5th Court, Burdwan in M.A.C. Case No. 10 of 2014 granting compensation of Rs.6,73,110/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 13.11.2012 at about 9 A.M. while the victim was returning home on his motor cycle from Simlagarh Kalibari through G. T. Road and when he reached near Jougram More

suddenly the offending vehicle bearing registration no. WB 42S 6957 (Chevrolet Beat) dashed the victim from behind, as a result of the said accident the victim sustained severe bleeding injuries. Immediately he was shifted to Memari P.H.C. wherefrom he was taken to Burdwan Medical College and Hospital but as his condition deteriorated he was referred to S.S.K.M. Hospital, Kolkata where he succumbed to his injuries and died on 16.11.2012. On account of sudden demise of the victim the claimants, being the parents filed the application for compensation of Rs.6,80,700/- 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 6** respectively.

The appellant-insurance company also adduced evidence of one witness and produced documents which have been marked as **Exhibits A & B** respectively.

Since the owner of the offending vehicle did not contest the claim application, hence, service of notice of appeal upon respondent no.3-owner of the offending vehicle stands dispensed with.

During the pendency of this appeal mother of the deceased Basanti Roy (respondent no.1) died and

her name has been expunged from the Memorandum of Appeal by order dated 25.07.2022.

Upon considering the materials on record and evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs.6,73,110/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act.

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 Cross Objection being no. COT 42 of 2020.

Both the appeal and the cross objection is taken up together for consideration and disposal.

Mr. Rajesh Singh, learned advocate for the appellant-insurance company submits that the insurance company in the present appeal has precisely challenged the involvement of the offending vehicle. As per the claim case, the accident has taken place on 13th November, 2012 and the FIR is registered on 15th September, 2013, thereby resulting in delay of more than 300 days. The inordinate delay has not been explained during the proceeding before the learned Tribunal. Since the date of accident till

the FIR came into existence, there is no reflection of the alleged offending vehicle in any of the documents. Although, the post-mortem report shows that the victim sustained injuries in a road traffic accident but the same does not disclose the involvement of the alleged offending vehicle. The eyewitness to the occurrence PW-2, Debjyoti Champati, deposed in his cross-examination that he disclosed the registration number of the vehicle to the relative of the victim. The mother of victim has admitted that PW-2 informed her of the accident on 13th November 2012, i.e., the date of the occurrence, however, in spite of getting such information, the FIR has been lodged after an inordinate delay of 300 days, disclosing involvement of the alleged vehicle, which is very much doubtful. In the light of his aforesaid submissions, he prays for setting aside the judgment and award of the learned Tribunal and dismissing the claim application of the claimants.

With regard to the quantum of compensation, he submits that the interest on the compensation amount of 8% per annum should be scaled down bearing in mind the prevailing rate of banking interest.

In reply to the contentions raised by the insurance company, Mr. Subhankar Mondal, learned advocate for the respondents-claimants submits that the documents in the form of FIR, Charge-sheet and

Seizure list clearly indicate the involvement of the offending vehicle. The aforesaid documents of the investigating agency have not been challenged by the insurance company. Referring to the decision of this Court passed in ***New India Assurance Company Limited versus Mita Samanta*** reported in **2010 (3) CHN (Cal) 411**, he submits that the insurance company which raises specific plea of non-involvement of the offending vehicle is duty-bound to proof the same by adducing the evidence of the owner and the driver of the offending vehicle. Since the owner and driver of the offending vehicle has not been examined by the insurance company, the claim of the claimants of involvement of the offending vehicle is to be accepted. Further, he submits that as the police authorities refused to accept the complaint relating to accident, the father of the victim was constrained to file application under Section 156(3) of the Code of Criminal Procedure for sending the same to the local police station for investigation and, thus, the delay is due to non-registering of FIR by the police authorities, for which the claimants cannot be held liable for such delay. Moreover the law is well settled that delay in lodging of the FIR *per se* would not make the claim case doubtful. To buttress his contentions, he relies on the decisions of this Court in ***Bajaj Allianz General Insurance Company Limited versus Anjali Mondal and Anr. (F.M.A.T***

201 of 2018) and in ***The National Insurance Co. Ltd. versus Amita Nayek & Ors. (F.M.A. 353 of 2019)***. Further PW2, eyewitness to the occurrence, has categorically stated of involvement of the vehicle which has remained unchallenged in cross-examination. Thus, the claimants have succeeded in establishing the involvement of the offending vehicle. So far as the quantum is concerned, he submits that the claimants are entitled to future prospect of 40% of the annual income of the victim and general damages of Rs.30,000/- and the multiplier should be 18 instead of 17 adopted by the learned Tribunal.

Having heard the learned advocates for the respective parties, following issues have for consideration:

Firstly, whether the offending vehicle was involved in the accident.

Secondly, whether the claimants are entitled to an amount equivalent to 40% of annual income of the deceased towards future prospect.

Thirdly, whether the claimants are entitled to general damages of Rs. 30,000/- under the conventional heads.

Lastly, whether the interest on compensation of 8% per annum should be scaled down.

With regard to the first issue relating to challenge to the involvement of the vehicle, it is

found that the insurance company has raised the plea of non-involvement of the offending vehicle.

The claimants in order to establish their case of involvement of offending vehicle has examined one Debjyoti Champati (PW-2) who claimed himself to the eyewitness to the occurrence and also filed documents, namely, formal FIR (**Exhibit-1**), Charge-sheet (**Exhibit 1/1**) and seizure list (**Exhibit 1/3**). Admittedly, from the above documents, it is found that the accident has taken place on 13th November, 2012 and the FIR has been registered on 15th September, 2013. Thus, there is delay of more than 300 days in lodging the FIR. The involvement of the offending vehicle has precisely been challenged on the ground of delay in lodging FIR.

Mr. Singh, learned advocate for the appellant-insurance company strenuously argued referring to the evidence of PW2, eye-witness to the incident, that in spite of the vehicle number been disclosed to the relative of the victim, the FIR has been lodged after 300 days of the occurrence which raises a doubt in the involvement of the vehicle.

PW-2, in his affidavit-in-chief has stated the involvement of the vehicle and that he saw the accident on the relevant date of occurrence. The witness in his cross-examination deposed that he disclosed the vehicle number to the relative of the victim. PW-1, Basanti Roy, mother of the victim, has

admitted in the cross-examination that the information of the accident was given to her by PW-2 on the date of occurrence, i.e. 13th November, 2012. Thus, from the aforesaid materials, it is quite clear that the family members of the victim were aware of the accident and the involvement of the offending vehicle on the date of accident. Now it is to be examined whether such delay in lodging FIR *per se* makes the case of the claimant doubtful.

During the course of hearing, Mr. Mondal, learned advocate for the respondents-claimants submitted that since the police authorities refused to accept the FIR, there was delay of 300 days. However, there are no such materials in support of such contentions. Be that as it may, there is no case of concoction or fabrication or engineering could be shown in the FIR excepting it being delayed.

The Hon'ble Supreme Court in its decision passed in ***Ravi versus Badrinarayan*** reported in **(2011) 4 SCC 693** 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. This Court in the decisions passed in *Anjali Mandal (supra)* and in *Amita Nayek (supra)* also relied on the aforesaid observation of Hon’ble Supreme Court made in *Ravi (supra)*.

The appellant-insurance company filed application for leave to avail all defences under the provisions of Section 170 of the Motor Vehicles Act, 1988. When Section 170 of the Act permitted an insurance company to contest proceedings on behalf of the insured-owner of the vehicle, 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 noninvolvement of the offending vehicle. 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. 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 *Mita Samanta (supra)* 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 charge-sheeted 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.”

Keeping in mind the aforesaid observation of this Hon’ble Court, I am of the view that as the appellant-insurance company in spite of taking leave under Section 170 of the Act 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, it will be a travesty of justice to disbelieve the eyewitness namely PW2 examined on behalf of the claimants in this regard. Needless to mention that the insurance company also did not produce the evidence of the investigating agency to disprove the claim of the claimants regarding the involvement of the offending vehicle. The FIR (**Exhibit 1**), charge sheet (**Exhibit 1/1**) and seizure list (**Exhibit 1/3**) clearly shows involvement of the offending vehicle in the said accident. 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.

The post mortem report **(Exhibit-3)** reveals that on 13th November, 2012 at 4-02 p.m. the deceased admitted in S.S.K.M. Hospital, Kolkata, with history of road traffic accident and he expired on 16th November, 2012. The contentions of the claimants that the victim died out of road traffic accident is supported by the fact enumerated in the post mortem report. The post mortem has been conducted in reference to the Bhawanipur Police Station inquest no. 1808 dated 17th November, 2012. Neither of the parties has taken any endeavor to produce inquest report before the learned Tribunal. Be that as it may, the charge sheet shows that an unnatural death case was started in relation to road traffic accidental death of the victim and the investigating agency has taken into account the inquest report. It is relevant to note that although the insurance company made suggestion to the PW-2, of implanting of the vehicle in connivance of eyewitness and the police personnel, however, no witness has been examined to establish such fact of implantation of the vehicle.

Mr. Singh, learned advocate for the appellant-insurance company referring to Section 134 of the Motor Vehicles Act, has tried to impress upon the Court that since the owner or the driver did not

inform of the accident, hence, the claim of the claimants is doubtful. The Act does not lay down any presumption of law that upon violation of the provisions of Section 134 of the Motor Vehicles Act, the same would raise adverse presumption making the claim case doubtful.

Now the issue relating to quantum is taken up for consideration.

With regard to entitlement of future prospect, it is found that since the victim at the time of accident was 23 years and was on fixed salary, hence the respondent no. 2 is entitled to an amount equivalent to 40% of the annual income of the deceased towards future prospect.

So far as the multiplier is concerned, since at the time of accident the victim was 23 years of age, following the principles of ***Sarla Verma and Others versus Delhi Transport Corporation and Another*** reported in ***2009 (6) SCC 121***, the multiplier should be 18.

With regard to the general damages is concerned, it is found that the learned Tribunal has granted Rs.4,500/- towards general damages. However, bearing in mind, the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680***, the respondent no. 2 is

entitled to Rs.15,000/- each under the heads of loss of estate and funeral expenses.

Mr. Singh, learned advocate for the appellant-insurance company has indicated that the interest on the compensation amount requires to be scaled down. It is found that the learned Tribunal has granted interest @ 8% per annum on the compensation amount. However, bearing in mind the prevailing banking rate of interest the compensation shall carry interest @ 6% per annum from the date of filing of the claim application.

Other factors have not been challenged in this appeal.

Bearing in mind the aforesaid factors, calculation of compensation is made hereunder.

Calculation of Compensation

Monthly income	Rs.6,555/-
Annual income (Rs.6,555/- x 12)	Rs.78,660/-
Add: 40% of the annual income towards future prospect	Rs.31,464/-
	Rs.1,10,124/-
Less: 50% towards personal and living expenses	Rs.55,062/-
Multiplier 18 (Rs.55,062/- x 18)	Rs.9,91,116/-
Add: General damages Loss of estate: Rs.15,000/- Funeral expenses:Rs.15,000/-	Rs.30,000/-
Total compensation	Rs.10,21,116/-

The respondent no. 2-claimant is entitled to compensation of Rs. 10,21,116/- together with interest @ 6% per annum from the date of filing of the claim application till payment.

Mr. Singh, learned advocate for the appellant-insurance company files photocopy of the challan no. being no. OD Challan No. 1382 dated 4th September, 2017 which is taken on record. It is found that the insurance company has deposited a sum of Rs.8,35,050/- vide OD Challan No. 1382 dated 4th September, 2017. The insurance company has also made statutory deposit of Rs.25,000/- vide OD Challan No. 861 dated 4th July, 2017. Both the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount and interest thereon.

The appellant-insurance company is directed to deposit the balance amount of compensation, if any, by way of a cheque before the learned Registrar General, High Court, Calcutta.

Respondents-claimants are directed to deposit balance court fees on the compensation assessed, if not already paid.

Learned Registrar General, High Court, Calcutta shall release the amount of compensation and the interest as indicated above in favour of the respondent no.2-claimant upon satisfaction of his identity and payment of balance court fees, if not already paid.

Upon full satisfaction of the award, if any amount is left over, the same shall be refunded to the appellant- insurance company.

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

Let a copy of this order along with lower court records be forwarded to learned Tribunal forthwith in accordance with rules.

All connected applications, if any, are also disposed of.

Interim order, if any, stands vacated.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)