

01.02.2023
SL No.18
Court No. 654
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

F.M.A. 1215 of 2022

1A No. CAN 2 of 2023

National Insurance Co. Ltd.

Vs.

Smt. Anima Jana & Ors.

Ms. Sucharita Paul
...for the appellant-Insurance Co.

Mr. Amit Ranjan Roy
...for the respondents-claimants.

This appeal is preferred against the judgement and award dated 12th June, 2018 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Purba Medinipur in M.A.C Case no. 136 of 2012 granting compensation of Rs.4,64,000/-together with interest under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 5 April 2012 at about 7 PM while the victim was returning home keeping left side of Balichak-Moyna Road from a Fair at Chandi Mandir at Natunpukur and when he reached near Charandaschak at that time the offending vehicle bearing Engine no.45S/7036778 and Chasis no. ME-145S071C2036881 dashed the victim from behind, as a result of which the victim sustained serious injuries all over his body and was immediately taken to Primary Health Centre where the attending doctor declared him dead. On account

of sudden demise of the victim, the claimants being the parents of the deceased-victim filed application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.8,50,000/-together with interest.

The claimants in order to establish their case examined two witnesses including the mother of the deceased and produced documents which has been marked **Exhibits 1 to 6** respectively.

The appellant-insurance company also adduced the evidence of one witness.

Upon considering the materials on record and the evidence adduced on behalf of the parties, the learned tribunal granted compensation of Rs.4,64,000/-alongwith interest under Section 166 of the Motor Vehicles Act, 1988 in favour of the claimants. It also granted liberty to insurance company to recover the awarded sum from Saheb Das (owner of the offending vehicle).

Being aggrieved by and dissatisfied with the impugned judgment and award, the insurance company as preferred the present appeal.

The respondents-claimants have also filed a cross-objection being no. COT 97 of 2022 which has not been listed. However, the aforesaid cross-objection is taken on day's list for disposal.

Both the appeal as well as the cross-objection is taken up for consideration.

Mrs Sucharita Paul, learned advocate for appellant-insurance company submits that there has been delay in lodging the first information report which raises doubt in the case of the claimants so far as the involvement of the vehicle is concerned. She further submits that the learned tribunal erred in granting compensation of Rs.1,00,000/-towards loss of love and affection and loss of estate of Rs.25,000/-whereas the general damages ought to have been granted following the decision of Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700***. Moreover, she submits that since the learned tribunal held that the driver of the offending motorcycle on the relevant date was not holding valid and effective driving license to drive such vehicle which is breach of condition of policy of insurance, hence the insurance company cannot be saddled with liability to pay compensation. In view of her aforesaid submissions, she prays modification of the impugned judgement and award.

Mr Amit Ranjan Roy, learned advocate for respondents-claimants submits that the learned tribunal should have considered the income of the deceased-victim at Rs.4000/- per month taking into account the profession and the prevailing price index during the relevant time of accident. He further submits that the claimants are also entitled

to an additional amount equalling to 40% of the annual income of the deceased towards future prospect. He, however, concedes to the submissions advanced on behalf of the insurance company that the general damages should be Rs.30,000/-in view of decision of Hon'ble Supreme Court in ***Pranay Sethi's case***. In the aforesaid backdrop he prays for enhancement of the compensation amount.

By order dated 5th January, 2023 service of notice of appeal upon respondent no.3-owner of the offending vehicle has been dispensed with since he did not contest the claim application.

Having heard the learned advocate for the respective parties, it is found that the insurance company has raised threefold grounds *firstly*, that due to delay in lodging of the first information report the claim case as well as involvement of the offending vehicle is questionable; *secondly*, since the driver offending vehicle did not have effective and valid license to drive such vehicle on the relevant date of accident, hence the insurance company has no liability to compensate and *lastly*, the entitlement of general damages is to be restricted to Rs.30,000/- under the conventional heads.

With regard to the first issue relating to delay in lodging of the written complaint and non-involvement of the vehicle, it is found that the information was lodged with the police station on 15

April 2012 in relation to the accident which took place on 5 April 2012. Thus, there has been a delay of almost 10 days. In the written complaint (**Exhibit 2**) the informant has given explanation that on account of sudden demise of his son he was in debilitating mental condition due to which there was delay in lodging the FIR. There is no indication of fabrication or concoction or exaggerations.

The Hon'ble Supreme Court in its decision passed in **Ravi versus Badrinarayan and Others** reported in **2011(1) T.A.C 867 (SC)** 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. Accordingly, the argument of learned advocate for appellant-insurance company in this regard falls short of merit. So far as involvement is concerned, it is found that the claimants in order to establish the involvement of the vehicle has examined PW2, Satyeswar Jana who is an eyewitness to the incident. In his deposition PW2 stated that he witnessed the accident. It is relevant to note that this witness in cross-examination stated that he saw the accident just 5/6 feet away from the place of accident, which probabalises his presence near the scene of occurrence. There is no materials forthcoming in the cross-examination to disbelieve evidence of PW2. Further the written complaint **(Exhibit 2)**, charge sheet **(Exhibit 3)** as well as seizure list **(Exhibit 4)** corroborates and supports the fact of involvement of the offending vehicle in the accident. Thus, it is found that the case of the claimants with regard to the involvement of the vehicle has been established by cogent evidence and the delay in lodging the written complaint does not

affect the claim case. Accordingly, the argument advanced on behalf of the appellant-insurance company does not hold good.

With regard to the second issue, it is argued that since the driver offending vehicle did not have effective and valid license to drive such vehicle on the relevant date of accident, hence the insurance company has no liability to compensate. It is found from the impugned judgment that the learned tribunal held that driver of the offending vehicle did have effective driving license to drive such vehicle and, on such score, directed the insurance company to pay the compensation with liberty to recover such amount from Saheb Das-owner of the offending vehicle. Such direction of the learned tribunal has been challenged by the insurance company on the ground that since the learned tribunal has found that the driver of the offending vehicle was not holding effective driving license to drive such vehicle, it cannot direct the insurance company to pay and recover. Now it is to be seen whether the learned tribunal was justified in passing such direction. At this stage it would be proficient to refer the decision of Hon'ble Supreme Court passed in ***National Insurance Co. Ltd versus Swaran Singh and Others*** reported in ***(2004) 3 SCC 297*** wherein it held that where on adjudication of the claim under the Act the tribunal arrives at a conclusion

that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149 (2) read with sub-section (7), the tribunal can direct that the insurer is liable to be re-imbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Thus, it goes without saying that the direction for pay and recovery passed by the learned tribunal does not call for interference in view of proposition laid down by Hon'ble Supreme Court as above.

With regard to the last issue raised by the insurance company pertaining to entitlement of general damages, it is found that the learned tribunal granted Rs.1,00,000/-towards loss of love and affection, Rs. 15,000/- towards funeral expenses and Rs.25,000/- towards loss of estate. Be that as it may, following the proposition laid down by the Hon'ble Supreme Court in ***Pranay Sethi's case (supra)*** the claimants being the parents are entitled only to general damages under the conventional heads of funeral expenses and loss of estate of Rs.15,000/- each. I find substance in the submissions of learned advocate for appellant-insurance company in this regard.

In the cross objection the respondents-claimants have raised the issue that they are entitled to an additional amount of 40% of the

annual income of the deceased towards future prospect and the income of the deceased should be taken at Rs.4,000/-per month.

Since as per the claim application the deceased used to work as a mason for setting marble and such fact has also been deposed by his mother PW1 and at the time of accident he was aged more than 17 years, hence following the observation of Hon'ble Supreme Court in ***Pranay Sethi's case (supra)*** the claimants are entitled to an additional amount equalling to 40% of the annual income of the deceased towards future prospect.

So far as the income of the deceased is concerned, the learned tribunal considered the income of the deceased at Rs.3,000/- per month. Since the accident has taken place in the year 2012, considering the prevailing price index and also bearing in mind catena of decisions of this Hon'ble court the income of the deceased should be considered at Rs.4,000/- per month.

The other findings and factors arrived at by the learned tribunal has not been challenged in the appeal.

The compensation is calculated as hereunder.

Calculation of compensation

Monthly Income.....	Rs.4,000/-
Annual Income.....(Rs.4,000/- X 12).....	Rs48,000/-

Add: Future Prospects @ 40% of total Income..	<u>Rs.19,200/-</u>
Annual loss of Income.....	Rs.67,200/-
Less: Deduction of 1/2 of the Annual Income	
(towards personal and living expenses).....	<u>Rs.33,600/-</u>
	Rs.33,600/-
Adopting multiplier 18 (Rs.33,600/- X 18)...	Rs.6,04,800/-
Add: General Damages.....	<u>Rs.30,000/-</u>
Total Compensation.....	Rs.6,34,800/-

The claimants are entitled to 6,34,800/- together with interest at the rate of 6% per annum from the date of filing of the claim application (i.e 30.4.2012) till deposit. It is found that the insurance company has deposited statutory amount of Rs. 25,000/- vide OD Challan no.777 dated 8.7.2019 and Rs.7,21,152 vide OD challan no. 1633 dated 25.8.2022. Both the aforesaid deposits along with accrued interest be adjusted against the entire awarded sum.

Appellant-insurance company is directed to deposit the balance amount, if any, together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

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

Upon deposit of the balance amount, if any, learned Registrar General, High Court, Calcutta

shall release the amount in favour of the claimants in equal proportions on satisfaction of their identity and on payment of *ad valorem* court fees, if not already paid.

With the aforesaid observation the appeal as well as the cross objection stands disposed of. The impugned judgement and award of the learned tribunal is modified to the extent. The order of learned tribunal granting liberty to the insurance company to recover the compensation amount from Saheb Das-owner of the offending vehicle is affirmed. No order as to cost.

All connected applications if any stands disposed of.

Interim order if any stands vacated.

Urgent photostat certified copy of the order if applied for the given to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)