

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 2123 of 2013
with
IA No. CAN 1 of 2016 (CAN 2632 of 2016)

Smt. Pushpa Das & Anr.
Vs.
National Insurance Company Ltd. & Anr.

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

Mr. Rajesh Singh
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and award dated 28th February, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Special Court, Burdwan, in connection with MAC Case No.45 of 2010/313 of 2009 whereby the learned Tribunal dismissed the claim petition on the ground that the Truck, bearing registration no.WB-41/8924, did not contribute any rash and negligent act for causing the alleged accident.

The claim petition was filed on account of death of one Bachan Das in an accident occurred on 17th June, 2009 at about 1.00 p.m. by the involvement of one Truck, bearing registration no.WB-41/8924, while the said Bachan Das, being a Khalasi of the truck, was making preparation to change the wheel of the truck which was burst near Nala More at the time of going through NH-2

towards Burdwan. At the relevant point of time, one Trailer, bearing registration no.PB-10-BY/6235, coming from Durgapur side with high speed, dashed against the said truck from back side. As a result, the victim sustained fatal injury and died.

The National Insurance Company Limited, insurer of the truck, contested the case by filing written statement denying all material allegations of the claim petition contending, inter alia, that offending trailer was not made party in this case and that is why the petitioners are not entitled to any compensation from the Insurance Company of the truck.

To prove the case, claimant no.1, Pushpa Das, being mother of the deceased, examined herself as PW-1 who corroborated the entire facts of the claim petition. In course of her evidence, a good number of documents were admitted in evidence, including certified copy of First Information Report, charge sheet, seizure list, post-mortem report, insurance policy and voter identity card etc.

Learned Tribunal did not consider the claim petition under Section 163A of the Motor Vehicles Act, 1988 as no fault on the part of the driver of the truck could be determined and accordingly the learned Tribunal hold that the liability cannot be fixed upon the owner and insurer of the vehicle as the trailer, bearing registration no.PB-10-BY/6235, was solely responsible for the accident.

I am sorry to subscribe to the view of the learned Tribunal with regard to the determination of liability for the accident at the time of dealing with the petition under Section 163A of the Motor Vehicles Act, 1988.

It is a case under Section 163A of the Motor Vehicles Act, 1988 where the learned Tribunal has to assess the 'no fault liability' in terms of rash and negligent driving. In this case, the truck, bearing registration no.WB-41/8924, was stationary at the time of accident and the deceased, being a Khalasi, along with the driver of the truck was making preparation for change of wheel which was burst at the time of moving towards Burdwan through NH-2.

Mr. Krishanu Banik, learned advocate, appearing on behalf of the appellants/claimants has relied on the cases of **Shivaji Dayanu Patil & Anr. v. Smt. Vatschala Uttam More** reported in **AIR 1991 SC 1769** and **Smt. Rita Devi & Ors. v. New India Assurance Co. Ltd.** reported in **AIR 2000 SC 1930**.

In **Shivaji Dayanu Patil** (supra), the Hon'ble Apex Court has elaborately discussed the word 'use' in the context of motor vehicle and it was observed that "the word 'use' has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle

having been rendered immobile on account of break-down or mechanical defect or accident.”

In opposition to that, Mr. Rajesh Singh, learned advocate, appearing on behalf of the respondent no.1/ Insurance Company has submitted that this is not a case of accident where only one vehicle was involved and in that case stationary vehicle cannot be held liable under Section 163A of the Motor Vehicles Act, 1988. Mr. Singh has further tried to make this Court understand that stationary vehicle was not at all liable in any way and the specific case of the claimants is that the accident took place due to rash and negligent driving of the trailer, bearing registration no.PB-10-BY/6235. From that point of view, according to Mr. Singh, the stationary vehicle in this case, i.e., truck, cannot be held liable for giving compensation.

On careful perusal of the entire evidence and documents thereon, I find that the accident took place by the involvement of two vehicles, one was stationary and the other was moving and it is also a trite law that the appellants/claimants can opt for compensation from any of the vehicles involved in the accident. The word ‘use’ interpreted by the Hon’ble Apex Court in **Shivaji Dayanu Patil** (supra) and **Smt. Rita Devi** (supra) can be applied in our case as well.

In the aforesaid view of the matter, I find that the appellants/claimants are entitled to compensation from

the insurer of the truck, bearing registration no.WB-41/8924, in terms of age and notional income of Rs.3,000/-, I determine the compensation as follows:-

Monthly Income	Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-
Less: 1/3 rd Deduction (personal expenses)	Rs. 12,000/-

	Rs. 24,000/-
Multiplier by 17 (as per Second Schedule)	x 17

	Rs.4,08,000/-
Add: General Damages (Rs.2,500/- for loss of estate + Rs.2,000/- for funeral expenses)	Rs. 4,500/-

Total Compensation	Rs.4,12,500/-

For the reasons, it is seen that the appellants/claimants are entitled to the total compensation to the tune of Rs.4,12,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 14th September, 2009, till the deposit of the amount.

Accordingly, the respondent no.1/National Insurance Company Limited is directed to deposit the compensation amount of Rs.4,12,500/- along with interest @ 6% per annum from the date of filing of the claim petition i.e., on 14th September, 2009, 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.

The appellant/claimant no.1 is entitled to withdraw the compensation amount with interest, subject

to payment of additional *ad valorem* court fees on the amount of Rs.62,500/- (Rs.4,12,500/- – Rs.3,50,000/-) before the learned Tribunal.

The learned Registrar General is requested to disburse the amount with interest to the appellant/claimant no.1, Smt. Pushpa Das, on proper identification and proof.

With the above observations, the appeal, being FMA 2123 of 2013, 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.)