

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 2124 of 2013

IA No: CAN 1 of 2017 (Old No. CAN 4380 of 2017)

CAN 2 of 2018 (Old No. CAN 2223 of 2018)

Smt. KALPANA RUIDAS & ORS.

Vs.

THE SHRIRAM INSURANCE COMPANY LTD. & ANR.

For the Appellants/ Claimants :Mr. Krishanu Banik, Advocate

For the Respondent no.1 :Mr. Rajesh Singh, Advocate
/Insurance Co.

Heard on : March 23, 2023

Judgment on : April 20, 2023

Bibhas Ranjan De, J.

1. On 23.03.2011 at about 4.30 p.m. one Budho Ruidas was proceeding through NH2 on foot after finishing his work as

grease mistri from Adarsha Hotel. One TATA 407 bearing WB-41D/7859 coming with high speed dashed said Budho Ruidas who succumbed to his injury on the spot. The accident took place due to rash and negligent driving.

- 2.** The legal heirs of Budho Ruidas filed an application under Section 166 of the Motor Vehicles Act, 1988 with a prayer for claim of Rs. 6,00,000/-. It is stated in the application that at the time of accident Budho Ruidas was a man of 42 years having income of Rs. 200/- per day as manual work of grease.
- 3.** Owner of the vehicle did not contest the application. Shriram General Insurance Company Limited (OP3) contested the application by filing a written objection denying all averments of the claim petition contending, inter alia, that alleged manner of accident has not been stated in the First Information Report which was lodged after 27 days of the accident.
- 4.** To prove the case claimants examined 3 (three) witnesses namely Kalpana Ruidas, wife of deceased as PW1, Swapan Ruidas as PW2 & Md. Mahasin Saiyad as PW3.
- 5.** One of the owners examined himself as OPW1 and Legal Officer of the Insurance Company was examined as OPW2.

6. PW1, wife of the deceased, corroborated entire averments of the claim petition. In her cross-examination she has stated that owners of the offending vehicle were her co-villagers. She never asked any compensation from them. She even did not tell them about the accident caused by their vehicle. She informed Panchayat regarding accident by the involvement of the offending vehicle. She denied the suggestion that the alleged vehicle was not involved in the accident.

7. PW2, Swapan Ruidas, identified himself as hotel boy of Master Hotel and on the alleged day Budho Ruidas was working as grease mistri at Adarsha Hotel by the side of NH2. While he was going on foot by the side of the road that TATA 407 bearing no. WB-41D /7859 dashed Budho Ruidas who succumbed to his injuries on the spot and he saw the accident. He lodged FIR at Galsi PS. In cross-examination he stated that owner of the vehicles were his co-villagers but he did not informed them about the accident caused by their vehicle. **After the accident the vehicle fled away.**

8. PW3, Md. Mahasin Saiyad, has also claimed himself to be an eye-witness to the accident alleged to have been taken place on 23.03.2011 at 4.30 p.m. near Adarsha Hotel by the side of NH2.

In cross-examination he has stated though he did not know the owners of the vehicle but he saw the vehicle for the first time on the date of accident. He did not take note of number of vehicle at any point of time he also did not inform the number of the vehicle to the police.

9. In cross examination PW3 has testified as follows:-

“ The offending vehicle did not run away from the spot even after the accident. I did not notice driver of the offending vehicle. There was no space to cross the road in between the driver at the place of occurrence and I reached at the P.O. by jumping over the driver.”

10. OPW1, Abdur Rahaman claimed himself to be the owner of the offending vehicle which caused the accident alleged in this case. He stated **accident took place on 19.04.2011**. The driver of the vehicle fled away with his vehicle after the accident. He informed the Galsi PS about the accident and fleeing away of the driver along with vehicle, after 2/3 days of the accident and police registered a case. His vehicle was seized after 2 (two) days of the accident. He did not inform the Insurance Company in writing about the accident though he sustained damage of

headlight, window screen and backside Dala. He denied all suggestions thrown to him in cross-examination on behalf of Insurance Company. In course of cross-examination on behalf of the claimants date of accident remained unchallenged.

- 11.** In course of evidence on behalf of the claimants certified copy of FIR, seizure lists, charge sheet, Insurance Certificate, PM report and Voter Identity Card were admitted and marked as exhibit 1 to 4.
- 12.** On behalf of the Insurance Company, one Sourav Ghosh, Legal Officer of the Shriram General Insurance Company Limited has been examined as OPW2. In course of his evidence he raised the issue of inordinate delay in lodging FIR. The accident was never informed to the Insurance Company by the owner and no damage case has been lodged before the Insurance Company.
- 13.** Learned Judge, 5th Motor Accident Claims Tribunal, Burdwan deliver judgement on 23.05.2013. After framing of issues learned Judge evaluated the evidence on record particularly the evidence of owner of the vehicle (OPW1) and that of PW3 who lodged the First Information Report to the police on 19.04. 2011. Leaned Judge also took note of the fact from the seizure

list (exhibit 1/1) that at the time of the seizure of the vehicle produced by OPW1, no damages was recorded in the seizure list. Learned Judge took note of the contradictory statement between two eye-witnesses (PW-2 & 3). Learned Tribunal also relied on the admission of owner of the vehicle, OPW1, who stated that accident took place on 19.04.2011 by the involvement of his vehicle. At the same time learned Judge relying on the Post Mortem Report that Budho Ruidas died in a motor accident which was reported to have been occurred on 23.03.2011. Relying on the admission of the owner of vehicle (OPW1) recorded his final opinion that though Budho Ruidas died in an accident on 23.03.2011 but that was not occurred by the involvement of the vehicle bearing no. WB-41D/7859 and consequently dismissed the claim petition.

14. Feeling aggrieved claimants preferred this appeal. In this appeal involvement of the alleged vehicle is in issue to be adjudicated.

15. Ld. Advocate, Mr. Krishannu Banik, appearing on behalf of the claimants has tried to evaluate the evidence on his own way. In support of his contention Mr. Banik relied on the following cases:-

“The New India Assurance Co. Ltd. Vs. Mita Samanta & Ors. Reported in 2010 ACJ 2212 & Ravi Vs. Badrinarayan and others reported in 2011 (1) T.A.C. 867 (S.C.)”

16. In opposition to that, Ld. Advocate, Mr. Rajesh Singh relying on the judgement passed by the learned Tribunal has pointed out serious contradiction among the two eye witnesses. Mr. Singh also raised the issue of delay of 25 days in lodging FIR. Mr. Sing has also pointed out the evidence of owner (PW4), who testified about the accident on 19.04.2011 by the involvement of his vehicle not any accident alleged to have been taken place on 23.03.2011. In support of his contention, Mr. Singh relied on a case of ***Anil and others Vs. New India Assurance Company and other*** reported in ***1(2018) ACC 341(SC).: AIR 2018 SC612.***

17. *Mita Samanta* (supra) dealt with the case where eye witnesses testified about the accident when truck in question struck the victim who was driving his motor cycle and in effect he collided with light post standing by the side of the road. Hon’ble High Court took note of the FIR having no reference to truck as the FIR maker was not the eye witness. In that case owner of the truck did not defend by adducing evidence.

18. *Badrinarayan* (supra) dealt with the issue of delay in FIR. In terms of chronology of incident embedded in the First Information Report, in the opinion of the Hon'ble Apex Court, where found that there was no delay in lodging FIR.

19. In *Anil and others* (supra) Hon'ble Apex Court came across the serious contradiction in the evidence adduced on behalf of the claimants and observed as follows:-

“4. On a careful analysis of the judgment of the High Court and the material on the record, we find no reason to take a view at variance with that of the High Court. The reasoning contained in the award of the Tribunal was perfunctory. The Tribunal failed to notice crucial aspects of the case which have a bearing on the question as to whether the death of Ram Kanwar was caused as a result of the accident caused by the tractor. Each of the circumstances relied upon by the High Court is germane to the ultimate conclusion that a false case was set up to support a claim for compensation. The appellants have not been able to displace the careful analysis

of the evidence by the High Court and the findings which have been arrived at.”

20. Now, I come to the case in hand. On careful scrutiny of the evidence of PW1 to OPW1, I noticed few mischiefs in the evidence on the following issues:-

A. PW1, wife of the deceased, has stated that the owners of the offending vehicle were co-villagers but she never disclosed the accident to the owners, rather she informed the accident to Panchayat. Unfortunately, none came to the Court from Panchayat to substantiate the evidence of PW1. It is not also explained by the PW1 as to the reason why she did not inform the owner of the vehicle caused accidental death of her husband. She further stated that Swapan Ruidas, (PW2) informed her about accidental death of her husband in front of Adarsha Hotel on GT Road. PW2 was also a co-villager of PW1.

B. Swapan Ruidas (PW2), claimed himself to be the eye-witness to the accident. He lodged FIR at Galsi PS on 19.04.2011. But, PW2 could not explain the

delay of 25 days in lodging FIR for the accident occurred on 23.03.2011. **He specifically stated that the vehicle fled away after the accident.** In spite of having knowledge of owners, co-villagers, of the offending vehicle he never informed them about the accident caused by their vehicle. It is not explained in his evidence what prevented him to inform his co-villagers who were the owners of the offending vehicle.

C. PW 3, also claimed himself to be an eye witness to the accident. In his evidence, PW3 testified that offending vehicle did not run away from the spot even after the accident. Therefore, there is serious contradiction among the two eye- witness regarding fleeing away of vehicle after the accident.

D. Sk. Abdur Rahaman (OPW1), **one of the owners of the vehicle has stated that accident took place on 19/04.2011.** He stated about relationship as co-villagers with the claimants. He stated that he did not maintain any garage register and driver fled away with his vehicle after the

accident. He informed Galsi PS after 2/3 days of accident and police registered a case. His vehicle was seized after 2 days of the accident. He further stated that he did not place any claim to the Insurance Company regarding damager of the vehicle in the accident.

E. Therefore, evidence of the owner (OPW1), did not corroborate the date of accident stated by other witnesses examined on behalf of the claimants. That apart, the fact of information to the police by the owner and registration of case by the police have not been substantiated by any document.

F. In the backdrop of the facts and circumstances, I am of the view, 25 days delay in filing First Information Report is **fatal**.

21. For the reasons discussed above, I find hardly any merit in this appeal. The appeal is accordingly dismissed there shall be no order as to costs.

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

23. Let the records of Tribunal along with copy of the judgement be transmitted back immediately.

24. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]