

26.09.2023
Ct. no.654
Item no.183
sn

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)**

**FMA 741 of 2023
(CAN 3 of 2023)**

**United India Insurance Co. Ltd.
Vs.
Priyaranjan Singha & Ors.**

Ms. Sucharita Paul
...for the appellant-insurance company

Ms. Sima Ghosh
Ms. Sabina Khatun
..for the respondents-claimants

This appeal is preferred against the judgment and award dated 22nd June, 2022 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, Fast Track, 1st Court, Suri, Birbhum in MAC case no.162 of 2016 granting compensation of Rs.39,46,336/- 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 6th February, 2016 at 6-00 a.m. while the victim was proceeding towards Suri Police Line riding on her scooty for attending her duties through Suri-Bolpur road and when she reached in front of Suri Police Line gate the offending vehicle bearing registration no. JH-01T/8967 dashed the victim from behind, as a result of which the victim sustained grievous injuries on her person. Immediately, the victim was

shifted to Suri Sadar Hospital where she expired on the same day at 08-10 a.m. On account of sudden demise of the victim, the claimants being the husband and parents of the deceased filed application for compensation of Rs. 40,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined **3 witnesses** and produced documents, which have been marked as **Exhibits 1 to 11** respectively.

The appellant-insurance Company did not adduce any evidence.

By order dated 31st August, 2023, service of notice of appeal upon the respondent nos. 5 & 6, owners of the offending vehicle have been dispensed with since they did not contest the claim application.

Upon considering the materials on record and evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.39,46,336/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the appellant-insurance company has preferred the present appeal.

Ms. Sucharita Paul, learned advocate for the appellant-insurance company submits that there was delay in lodging the FIR which indicates of non-involvement of the offending vehicle. She further submits that the offending vehicle did not have the valid national route permit. Furthermore, on the relevant date of accident, the victim was driving on her scooty, however, during the course of investigation, no paper of the scooty was seized meaning thereby that the victim was not carrying the valid documents to drive her scooty on a public road and thereby the victim was guilty of contributory negligence in the said accident. She further submits that the final report of the Doctor regarding cause of death has been kept pending for want of chemical examination report. In the light of her aforesaid submissions, she prays for setting aside of the impugned judgment and award of the learned Tribunal.

In reply to the aforesaid contentions raised on behalf of the appellant-insurance company, Ms. Sima Ghosh, learned advocate for the respondents-claimants submits that there is nominal delay of 4(four) days in lodging the FIR. Further delay *per se* does not make the claim application of the claimants doubtful in the absence of contrary evidence. Furthermore, she submits that no evidence has been

led to establish that on the relevant date the offending vehicle did not have the valid route permit. So far as the contributory negligence is concerned, she submits that there are no such pleading or evidence led by the insurance company to establish such ground. In the aforesaid backdrop, she submits that the award passed by the learned Tribunal should be affirmed.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the offending vehicle was involved in the accident. *Secondly*, whether the offending vehicle had valid national route permit and *Lastly*, whether the victim was guilty of contributory negligence in the said accident.

With regard to the first issue of non-involvement of the offending vehicle, it is found that the involvement of the vehicle has been challenged solely on the ground of delay in lodging the FIR. It is true that the accident took place on 6th February, 2016 and the FIR has been lodged after four days, i.e 10th February, 2016. Be that as it may, there is no such evidence of fabrication or concoction or engineering of the FIR. Thus, delay *per se* in lodging FIR does not lead to the fact of non-involvement of the vehicle. It is relevant to note that during the course of investigation, the offending vehicle has

been seized and upon completion of investigation charge sheet has been submitted against the driver of the offending vehicle. In view of the above, the ground of non-involvement of the vehicle raised by the insurance company fall short of merit.

With regard to the second issue as to whether the offending vehicle had valid national route permit, it is found from the written statement of the insurance company that no such ground has been pleaded of absence of valid national route permit of the offending vehicle. That apart, no evidence has been led from the side of the insurance company to establish such fact. Thus, the ground that on the relevant date the offending vehicle did not have valid national route permit does not hold good.

With regard to the last issue of contributory negligence of the victim, it is found that no such case has been made out of contributory negligence of the victim in the written statement filed by the insurance company. The insurance company has also not led any evidence to that effect. Ms. Paul, learned advocate for the appellant-insurance company has strenuously argued that since paper relating to the scooty was not seized, hence, the victim was driving the scooty without valid papers and thereby contributed to the accident by her own negligence. Be that as it may, only non-seizure of papers of

scooty does not lead to the fact that the victim was guilty of contributory negligence in the absence of cogent evidence of negligence of the victim. Therefore, the ground of contributory negligence as raised by the insurance company also fails.

Ms. Paul, learned advocate for insurance company has indicated that the cause of death has not been properly established since the final opinion of the doctor was kept pending for receipt of chemical examination report. It is true upon perusal of the post mortem report (**Exhibit-6**) that final opinion has been kept pending by the medical officer due to want of chemical examination report. Be that as it may, the primary opinion of cause of death of the victim as made by the medical officer is due to the injuries, which is ante mortem in nature. Thus, primarily, it is seen that the victim died due to injuries noted in the post mortem report. Therefore, the arguments advanced on behalf of the appellant-insurance company does not stand reason.

Accordingly, the appeal fails.

It is found that the insurance company has deposited a sum of Rs.55,12,628/- vide O.D. challan no.118 dated 17th April, 2023 in terms of the order of this Court dated 5th April, 2023 and an amount of Rs.25,000/- towards statutory deposit vide O.D. Challan no.2366 dated 7th November, 2022. Both the

aforesaid deposits together with accrued interest be released in favour of the claimants.

The learned Registrar General, High Court, Calcutta, shall release the compensation amount together with accrued interest in favour of the respondent nos. 1, 2 & 3 in the proportion, as directed by the learned Tribunal, upon satisfaction of their identity.

The respondent nos. 1, 2 & 3 are directed to deposit deficit court fees.

With the aforesaid observation, the appeal stands disposed of. The impugned judgment and award of the learned Tribunal is affirmed. No order as to costs.

All the connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

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

(Bivas Pattanayak, J.)