21.07.2023
Ct. 654
D/L 15
ab/sn

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICTION
APPELLATE SIDE

FMA 110 of 2022

The Oriental Insurance Co. Ltd.
-Vs-
Rita Sowmondal & Ors.

Mr. Sanjoy Paul
... for the appellant-insurance company

Mr. Ali Imam Shah,
Mr. F. R. Hazari
... for the respondent nos. 1 & 2-claimants

This appeal is preferred against the judgment and award dated 24th August, 2020 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 2nd Court, Durgapur in MAC Case No. 245 of 2017 granting compensation of Rs. 1,08,75,760/- 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 27th October, 2017 at about 5.30 p.m. while the victim was proceeding towards Indian Oil Bottling Plant from his house riding on a motorcycle bearing registration no. WB-40E/3178 at that time, the offending vehicle bearing registration no. WB-38X/0097 (Maruti Omni) in a rash and negligent manner dashed the motorcycle of the victim near DPL Toll Plaza, as a result of which the victim fell down from the motorcycle and was seriously injured. Immediately, the victim was shifted to Mission Hospital, Durgapur where be succumbed to his injuries and died. On account of sudden demise of the victim, the claimants being the widow, mother and son filed application for compensation of Rs. 1,57,54,114/- together with interest 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 **14 (Series).**

The appellant-insurance company adduced the evidence of one witness and produced documents, which have been marked as **Exhibits-A** to **C** respectively.

By order dated 8th June, 2023, service of notice of appeal upon the respondent no. 4, owner of the offending vehicle has been dispensed with.

In the original claim application, Nirmala Sowmandal, mother of the deceased victim, was made a party-claimant. However, during the pendency of the claim application, Nirmala Sowmandal expired and the claim application was accordingly amended by expunging her name therefrom. In the present appeal, the insurance company has arraigned the mother of the victim namely, Nirmala Sowmandal as respondent no. 3. However, subsequently on being detected that her name has been expunged before the learned Tribunal, the insurance company has filed an application being CAN 2 of 2023 for expunging the name of the respondent no. 3, Nirmala Sowmandal, mother of the victim from the cause title of the memorandum of appeal.

In view of above, the name of the respondent no. 3, Nirmala Sowmandal be expunged from the memorandum of appeal.

Department concerned is directed to make necessary corrections in the cause title of the memorandum of appeal as aforesaid.

CAN 2 of 2023, accordingly, stands disposed of.

Upon considering the materials on record and the evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs. 1,08,75,760/- 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, the insurance company has preferred the present appeal.

Mr. Sanjoy Paul, learned advocate for the appellant-insurance company submits that there is delay of almost one month in lodging the FIR and such delay has not been properly explained which raises a serious doubt with regard to involvement of the offending vehicle. Although the accident was known to the owner of the vehicle but no such FIR came into existence soon thereafter. He further submits that the evidence of the eyewitness is not trustworthy since neither he lodged complaint nor accompanied the victim to hospital and he is also not cited as charge-sheeted witness. Thus, there is precisely no cogent evidence of involvement of the offending vehicle in the said accident.

He further submits that the learned Tribunal erred in determining the income of the deceased. Referring to the pay slips of the victim (**Exhibit-13 series**), he indicates that the income of the victim is fluctuating on each month and thus, the actual income has not been depicted in the pay slip and, therefore, the income of the victim appearing in the pay slips cannot be taken into account. In the light of the aforesaid submissions, he prays for setting aside the impugned judgment and award.

In reply to the contentions raised on behalf of the appellant-insurance company, Mr. Ali Imam Shah, learned advocate for respondent nos. 1 & 2-claimants submits that oral and documentary evidence adduced by the claimants clearly establishes the fact of involvement of the offending vehicle. The defence witness, who is the registered owner of the vehicle, also supports the involvement of the offending vehicle on the relevant date of accident. Thus, the claimants could establish by cogent evidence of involvement of the offending vehicle. So far as the income is concerned, he indicates that the learned Tribunal has determined the income on the basis of income disclosed in Form 16 issued by the employer of the deceased for the assessment year 2017-18, prior to the death of the victim and thus, such determination does not call for interference. In above premises, he submits that the award of 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 and *secondly*, whether the learned Tribunal erred in determining the income of the deceased victim.

With regard to the first issue, it is found that the insurance company has raised the plea that on the relevant date of accident, the offending vehicle was not involved in the alleged accident. For examining the aforesaid aspect, let me look to the materials on record in this regard. The claimants in order to establish the involvement of the vehicle adduced the evidence of one eyewitness, P.W. 2, Saikat Roy and produced documents namely, FIR (**Exhibit-1**), charge-sheet

(**Exhibit-2**) and seizure lists (**Exhibits 3** & **4**). P.W. 2, Saikat Roy, who deposed as an eyewitness to the occurrence, stated of involvement of the offending vehicle in the said accident. In cross-examination, the witness deposed that his house is situated at a distance of 300/350 mts. away from the place of occurrence and on the relevant date, he was standing near the DPL Toll Plaza along with his friends. There is no evidence to improbabilise the presence of the witness near the scene of accident. The involvement of the vehicle as stated by the eyewitness is corroborated by filing of the charge-sheet and seizure of the offending vehicle. The insurance company has adduced the evidence of the registered owner of the vehicle, Ali Hossain Mollah as D.W. 1, who also deposed of involvement of the vehicle. Mr. Paul, learned advocate for the appellant-insurance company tried to impress upon the Court that the evidence of eyewitness is to be discarded since he did not lodge complaint or accompanied the victim to the hospital and is also not a charge-sheeted witness. Though such argument has been pressed into service on behalf of the insurance company but in the absence of any contrary evidence, the aforesaid aspect cannot nullify or dislodge the evidence of the eyewitness, which is otherwise acceptable or reliable. It is true that there is delay of almost one month in lodging of the FIR. Upon perusal of the written complaint (**Exhibit-1**), it is found that the same has been lodged by the son of the deceased. The complainant has given explanation of such delay to be on account of treatment of his father and performance of last rites of the deceased. There is no indication of fabrication or concoction or exaggeration. The Hon'ble Supreme Court in ***Ravi versus Badrinarayan & Ors.*** 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 observations 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 delay in lodging the FIR *per se* cannot be a ground for dismissal of the claim case. However, it is found that such delay has been duly explained in the FIR. Accordingly, the arguments advanced on behalf of the insurance company in this regard fall short of merits.

For the aforesaid reasons, it is found that the involvement of the vehicle in the said accident on the relevant date of incident has been established by the claimants.

With regard to the issue relating to determination of the income of the victim, it is found that the learned Tribunal has determined the income of the victim on the basis of Form-16 pertaining to assessment year 2017-2018 issued by the employer of the victim, namely, Indian Oil Corporation Limited prior to the death of the victim. The learned Tribunal has taken into account the salary received by the victim pertaining to period from 01-04-2016 to 31-03-2017 of Rs.19,68,111/- and deducted the tax on employment of Rs.2,400/- and tax payable of Rs.3,99,658/- and calculated the actual income on the basis of the aforesaid figures amounting to Rs.15,66,053/- per annum. Such determination of income by the learned Tribunal is correct and does not call for interference.

No other matters have been pressed into service in this appeal.

In the light of the aforesaid discussions, the appeal stands dismissed. The impugned judgment and award of the learned Tribunal is affirmed. No order as to costs.

It is found that in terms of the order of this Court dated 4th August, 2021, the insurance company has deposited a sum of Rs.1,32,30,160/- vide challan no. 579 dated 10.09.2021 and has also deposited the statutory amount of Rs.25,000/- vide challan no. 3243 dated 08.01.2021 before the registry of this Court.

The respondent nos. 1 & 2 (claimants) are directed to deposit *ad-valorem* Court fees on the compensation amount, if not already paid.

The learned Registrar General, High Court, Calcutta shall release the aforesaid amounts with accrued interest in favour of the respondent nos. 1 & 2 (claimants) after making payment of Rs.40,000/- in favour of the respondent no.1-widow of deceased, towards spousal consortium and thereafter shall release 70% of the remaining amount in favour of the respondent no.1 and 30% in favour of the respondent no.2.

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**.)