

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present :

The Hon'ble Justice Shampa Dutt (Paul)

FMA 700 of 2014

Rupa Begum Sk. & Ors.

Versus

National Insurance Company Ltd. & Anr.

For the Appellants : Mr. Uday Sankar Chattopadhyay,
Ms. Rajashree Tah,
Ms. Trisha Rakshit.

**For the Respondent/
Insurance Company** : Mr. Rajesh Singh.

Hearing concluded on : 26.06.2024

Judgment on : 10.07.2024

Shampa Dutt (Paul) , J.

1. The present appeal has been preferred against the Judgment/Order dated 29th June, 2013 passed by the learned Judge, M.A.C. Tribunal, 4th Court, Burdwan, in M.A.C. Case No.33/2011/161/2011, **under Section 166 of the M.V. Act.**

2. The facts:-

On 25/26.04.2011 on NH-II near Megha Rice Mill and the victim was murdered inside the vehicle No. WB-41/8188 by miscreants. The victim Inad Ali was the driver of vehicle No.WB-41/8188 who started his journey on 25.04.2011 in the forenoon with his truck with a view to load cement at Durgapur. The victim parked the vehicle in front of a hotel at Fagupur on NH-II and Khalasi of that vehicle took rest in a hotel and the victim stayed inside the cabin of the vehicle. The Khalasi of that vehicle noticed in the next morning that the vehicle was not there and he informed the fact over phone to the owner of the vehicle who found the vehicle in front of Megha Rice Mill and the dead body of the victim was found inside the cabin of the vehicle. The claimants being the legal heirs/representatives of the victim claimed compensation against the owner and the insurer of vehicle no.WB 41/8188 as the victim died in course of his employment.

The owner of the vehicle namely Sk. Jakiruddin did not contest the case in spite of service of notice upon him but the insurer of that vehicle National Insurance Co. Ltd. contested the case by filing written statement on 16.04.2012 contending that the claim case is not maintainable. The claimants have no cause of action to file the case and the case is bad for defect of parties. That the claimants have not complied the statutory

provisions of the Motor Vehicle Act and the Motor Vehicle Rules 329.

3. The claimants have examined two witnesses. Relevant documents being FIR, Seizure list, FRT, Insurance Policy, P.M. Report have been proved and marked as Exhibits.

4. **While disposing of the claim case, the learned tribunal held as follows:-**

“In the present case the claimants have claimed that Sk. Inad Ali was murdered inside the vehicle No.WB-41/8188 on NH-II near Megha Rice Mill but the claimants have failed to establish that the death of Inad Ali was due to rash and negligent driving of vehicle No.WB-41-8188. The Tribunal thinks that the claim case is not maintainable and the claimants have no cause of action to file the claim case. It is held that the death of Inad Ali inside the cabin of vehicle No.WB-41/8188 on 25.04.2011/26.04.2011 was not due to rash and negligent driving of vehicle No.WB-41/8188. These issues are thus disposed of against the claimants.”

5. Being aggrieved the present appeal has been preferred by the claimants.

6. From the materials on record, it is evident that the Post Mortem Report (Exhibit 2) shows the cause of death of the deceased as **“due to the effects of strangulation by ligature-ante mortem and homicidal in nature.”**

7. **The case ended in a FRT** as the investigating officer could not solve/prove the case.

8. **The claimants/appellants** have relied upon the following judgments in support of their claim.

i) **Rita Devi (SMT) and Ors. vs New India Assurance Co.**

Ltd. and Anr., (2000) 5 SCC 113, decided on April 27,

2000, the Supreme Court held:-

“10. The question, therefore is, can a murder be an accident in any given case? There is no doubt that “murder”, as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a “murder” which is not an accident and a “murder” which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the autorickshaw, was dutybound to have accepted the demand of fare-paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the autorickshaw and in the course of achieving the said object of stealing the autorickshaw, they had to eliminate the driver of the autorickshaw then it cannot but be said that the death so caused to the driver of the autorickshaw was an accidental murder. The stealing of the autorickshaw was the object of the felony and the murder that was caused in the said process of stealing the autorickshaw is only incidental to the act of stealing of the autorickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing theft of the autorickshaw.

18. *In the instant case, as we have noticed the facts, we have no hesitation in coming to the conclusion that the murder of the deceased (Dasarath Singh) was due to an accident arising out of the use of motor vehicle. Therefore, the trial court rightly came to the conclusion that the claimants were entitled for compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle."*

- ii) ***Oriental Insurance Company, Ltd., Chennai vs. D. Sakunthala and Ors., 2006 SCC OnLine Mad 227, decided on March 7, 2006,*** the Madras High Court held:-

"14. *From the above decisions, it is obvious that in the present case, the murder of the deceased amounts to an accident arising out of and in the course of his employment and so, the respondents 1 and 2 are entitled to receive the compensation under the Workmen's Compensation Act. From the above discussions, it emerges that—*

(1) Whether the cause of death (murder) amounted to an accident arising out of and in the course of his employment ?

(2) Whether the quantum of compensation payable to the dependants of the deceased is justified by the authority and in respect of awarding interest at the rate of 6% ?

17. *As per Section 3 of the Workmen's Compensation Act, undoubtedly the employer is liable to pay compensation in respect of personal injury or death caused to a workman by accident arising out of and in the course of his employment in accordance with the provisions of Chapter II. Section 4 provides how the amount of compensation is to be determined. As per sub- section (1) of Section 4-A, compensation under Section 4 shall be paid as soon as it falls due. It is not disputed that for arriving at a just compensation in case of permanent disablement and death, the factors that are provided under Schedule IV of the Workmen's Compensation Act have to be*

taken note of. The third respondent/owner of the car has stated that the deceased was in receipt of a salary of Rs. 1,500. When that is not disputed the findings of the authority, taking note of all these facts and in arriving the compensation is found to be reasonable and it would be proper to hold that the deceased would have earned Rs. 1,500 per month as a driver of the car. By applying the formula prescribed under Schedule IV, I conclude that the compensation awarded by the Authority is reasonable as per oral and documentary evidence and in the light of the above decisions referred to above.”

9. The Respondent/Insurance Company has relied upon the following judgment:-

a) ***Dipa Ganguly & Anr. vs New India Assurance Company***

Limited & Anr., 2009 SCC OnLine Cal 358, decided on

February 10, 2009, the Calcutta High Court held:-

“23. *In our opinion, the said decision rather supports the case of the appellants. In the case before us, the Tribunal by relying upon the contents of the FIR pointed out that the victim as a traffic sergeant having charged the driver of the taxi concerned under Section 184 of the Act for traffic-rule violation sometime earlier on the same day, the driver being enraged, knocked the victim down resulting in his death. If in the process of stealing of an autorickshaw a murder of the driver is committed, such death is held to be “arising out of use of the motor vehicle in public place”, on the said analogy, killing of a traffic sergeant by the driver of a motor vehicle being infuriated by the booking of the said very vehicle for violation of the traffic-rules earlier on the selfsame day, by running him over with the use of the said vehicle is on a better footing than the facts leading to murder in the case of Rita Devi. In this case, the taxi itself is the root of trouble and is also the tool used for killing the victim while in the case of Rita Devi (supra), the auto-rickshaw was the object of felony but not the instrument used in killing the driver.”*

10. In the present case, the deceased was found dead in a vehicle where he was sleeping. The vehicle with the body was found at a different place from the place, where it was, when the victim went to sleep.

11. The question of theft of or attempt to steal the vehicle does not arise as the vehicle with the body of the deceased was found at an isolated spot. No evidence could be gathered during investigation. Thus, leading to submission of FRT.

12. In the present case, the dominant intention of the Act of felony was to kill the deceased (murdered) and such a killing was not an accidental murder but is a murder simpliciter. *(Rita Devi (SMT) and Ors. vs New India Assurance Co. Ltd. and Anr., (supra))*. The murder of the deceased was not caused in furtherance of any other felonious act and as such, **the murder in this case was not an accidental murder, but just murder simpliciter.**

13. Thus, the claim in this case is not maintainable and the order of the tribunal being in accordance with law requires no interference by this court.

14. The appeal being FMA 700 of 2014 is dismissed and is accordingly disposed of.

15. All connected application, if any, stands disposed of.

16. Interim order, if any, stands vacated.

17. Copy of this judgment be sent to the learned Tribunal.

18. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)