

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 1436 of 2015
with
CAN 1/2019 (Old CAN 6912/2019)

Kulsum Begam Molla and Ors.
Versus
Shriram General Insurance Co. Ltd. & Anr.

For the Appellants : Mr. Uday Sankar Chattopadhyay, Adv.
Ms. Trisha Rakshit, Adv.
Ms. Aishwarya Datta, Adv.
Ms. Ashadeep Karmakar, Adv.

For the Respondents/Ins. Co. : Mr. Rajesh Singh, Adv.

Heard on : 12.12.2023

Judgment on : 31.01.2024

Ajay Kumar Gupta, J:

1. This instant appeal has been filed by the appellants/claimants feeling aggrieved with the judgment and award dated 08.07.2014 passed by the Learned Judge, Motor Accident Claims Tribunal, 1st Court, Burdwan in Motor Accident Claim Case No. 23/11 thereby the learned Tribunal dismissed the claim application on contest against O.P. No. 2/Insurance Company and ex parte against O.P. No. 1/owner of the offending vehicle.

2. Brief facts are relevant for the purpose of disposal of the instant case as follows:

On 31.05.2011 at about 12 hours, when the deceased was returning home at his residence through NH2, near Pursa Majherpul the offending vehicle which was coming with high speed and rash and negligent manner, dashed the deceased. As a result, the deceased fell down and sustained severe bleeding injuries including head injury. He was immediately removed to Pursa Primary Health Care and from there to B.M.C.H. and subsequently in Seviour Clinic at Kolkata, where he expired on 01.06.2011. Over the said accident a Golsi P.S. Case No. 85/11 dated 05.06.2011 u/s 279/304A IPC was started against the driver of the offending vehicle. Deceased, at the time of accident, was aged about 29 years and he used to earn Rs. 6,000/-

per month as mason. Due to his sudden demise the appellants/claimants being wife, minor son and the parents of the deceased suffered severe financial crisis as well as mental pain and agony. Accordingly, they have filed the claim application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation amount of Rs. 9,00,000/- along with interest and other benefits.

Respondent No. 2/owner though appeared by filing Vakalatnama but subsequently did not contest the case. Respondent No. 1/Shriram General Co. Ltd. filed written statement denying the claim of the claimants. An application u/s 170 of the M.V. Act has been filed by Respondent No. 1 has been allowed by the Learned Tribunal. Learned Tribunal after scanning and appreciation of the evidence, both oral and documentary brought on record by the parties, decided the case in negative and finally dismissed the claim application on the ground that the claimants/appellants failed to prove that the driver of the offending vehicle- was responsible for such accident rather to say that involvement of the vehicle No. WB-41-7601 in the alleged accident is not proved though it the claim of the appellants/claimants that the offending vehicle was very much involved and due to rash and negligent manner of driving of the driver of the offending vehicle endangering human life and safely,

accident occurred and by oral and documentary evidence brought by the claimants on record proved the same. Hence, appellants constrain to file this memo of appeal praying for awarding compensation as prayed for.

3. Mr. Chattopadhyay, learned advocate appearing on behalf of the appellants/claimants strenuously submitted that the Learned Tribunal erred in holding that the offending vehicle was not involved in the alleged accident. Learned Tribunal further ignored the oral evidence of P.W. 2 and documentary evidence like FIR, Charge Sheet and P.M. Report. Eye witness (P.W.-2) and OPW I specifically narrated the number of vehicle and its involvement on the date of accident. It is true that the FIR was lodged by the P.W. 1, who subsequently, deposed before the Learned Tribunal that he heard the incident from the charge sheeted witnesses namely Sk. Kamaluddin, Sk. Taher Ali and Sk. Idrish though from the FIR it is appearing he was present at the spot and saw the accident but subsequently he stated the facts sincerely because actually he did not see the accident and he was also not present at the spot. He has not written complaint from his own hand writing but it was written by a scribe. He does not know the actual contents of the written complaint so he rightly deposed that he heard about the accident from others before the Learned

Tribunal is not cloud with suspicion. It is proved by the eye witness (PW 2) as well as witness (OPW 1) brought by the insurance company about the involvement of offending vehicle. Owner himself narrated that the accident occurred due to involvement of his vehicle. He further stated after 5-6 days of the accident he produced the vehicle before the police station. Police also seized the vehicle. Subsequently, Charge sheet has been submitted against the Driver of the offending vehicle No. WB 41A-7601, when it established a prima facie case against the driver of the offending vehicle for offences punishable under Sections 279/304 (A) of the Indian Penal Code after investigation. Victim suffered injuries in his person following Road Traffic Accident and same can be ascertained from the Post Mortem report as such there is no question of suspicion over the involvement of the offending vehicle. Furthermore, the insurance company fails to contradict or rebut the version of ocular eye witness (P.W. 2) despite adequate opportunity of cross-examination availed as such it must lead to the Learned Tribunal to an inference of tacit admission on their part. The Learned Tribunal has failed to appreciate the legal effect of vital cross-examination to the crucial witness. It is further submitted 5-6 days delay in lodging FIR does not vitiate the claim case because victim's family members were in shock due to sudden death of claimants' family member. To bolster his contentions, Ld.

Advocate referred judgments passed by the Hon'ble Supreme Court and this Hon'ble High Court as follows:

1. *Ravi vs Badrinarayan and others reported in (2011) 4 Supreme Court cases 693;*
2. *Anita Sharma and others Vs New India Assurance Company Limited and Another reported in (2021) 1 Supreme Court cases 171; and*
3. *Judgement passed by the Hon'ble High Court at Calcutta in The New India Assurance Co. Ltd vs Mita Samanta & ors reported in (2010) 1 WBLR (Cal) 137.*

He prays for setting aside the dismissal order and seeking awarding of reasonable compensation in favour of the appellants/claimants.

4. Per contra, Mr. Singh, learned Advocate appearing on behalf of the respondent no. 1/Ins. Co. vociferously argued and submitted that the Learned Tribunal rightly held that the alleged offending vehicle was not involved in the accident. FIR was lodged after 5-6 days of the accident after implanting the vehicle in connivance of the owner of the alleged offending vehicle. Delay in lodging FIR after 5-6 days creates a doubt about the involvement of the vehicle. In spite of death of victim on 01.06.2011, neither local residents nor owner or driver came forward to inform about the accident, which smells otherwise. Appellants/claimants did not come with clean hand.

Entire case is based on collusion and connivance of some co-villagers, Eye witness and owner of the vehicle. Learned Advocate posed a question to himself and submitted that why the owner or driver did not comply the provision laid down in the Motor vehicles Act, 1988. They violated Section 134 of the M.V. Act, 1988. They came after 5-6 days of the accident without any explanation as such eye witness or OPW.1 is not at all reliable. Learned Tribunal rightly discarded their evidence because the Ld. Tribunal fails to repose confidence as there are vital contradictions and inconsistency in their evidence touches the root of the case.

It is further submitted that actually alleged offending vehicle was not involved in the accident. It was subsequently, planted the vehicle only to get compensation from the insurance company with collusion and connivance of the owner of the vehicle, witnesses and driver. He pointed out the evidence of PW 1, who admitted that he did not see the accident during cross-examination though from FIR itself shows he lodged written complaint before the police station and same was written as per his instruction. Written complaint indicates he was present at the spot and he saw the number of the vehicle but he resiles his own statement during cross-examination. Furthermore, he stated in cross-examination that he heard about the accident from

Sk. Kamaluddin, Sk. Taher Ali and Sk. Idrish. Whereas Sk. Kamaluddin examined as P.W. 2 (eye witness) stated that he never stated anything to P.W. 1 though he knew P.W. 1 as co-villager. Furthermore, P.W. 2 narrated during cross-examination that police came to the spot on the same date of accident and he was interrogated on the other date but no reflection of lodging FIR either by any party or suo-moto by the police officer on the date of accident. The evidence of owner (OPW.1) is also not reliable as his evidence is also not consistent. He himself admits driver of his vehicle informed about the accident over telephone within ½ hour of the accident but he did not disclose about the accident to the police authority on the same date. He remains silent for 5 days and reason not explained. His vehicle was seized after 5/6 days of the accident.

It is further submitted that evidence brought on record by the claimants is based on brazenly false. Compensation should not be granted in such case as such Learned Tribunal rightly dismissed the claim application filed by the claimants as narration of the facts by the witnesses are not convincing and reliable. As such the instant appeal is also liable to be dismissed. Learned Advocate also relies judgments of the Hon'ble Supreme Court and this Hon'ble High Court as follows:

1. *Anil and ors. Vs New India Assurance Co. Ltd and Ors.*¹;
2. *Safiq Ahmad Vs. ICICI Lombard General Insurance Co. Ltd. and Ors.*²;
3. *Judgement passed by the Hon'ble High Court at Calcutta in National Insurance Company Limited Vs. Nirmalya Chakraborty & Anr. in case No. FMA 2078 of 2014.*

5. Having heard the rival submissions of both sides and on perusal of the record including Judgement and award passed by the Ld. Tribunal, several issues emerge before this Court for consideration as follows: -

1. Whether the alleged offending vehicle No. WB 41A-7601 was involved in the accident?
2. Whether respondent/insurance Company is liable to pay compensation to the appellants?
3. Whether the accident occurred due to rash and negligent driving of the driver of the offending vehicle?

¹ (2018) 2 SCC 482

² MANU/SCOR/44175/2021, 2021 (4) TAC 682, 2021 (2) TNMAC 798;

4. Whether the appellants are entitled to get any compensation from the insurance company and if so, what would be the actual compensation?

6. At the very outset, this Court is to deal with a vital issue whether the alleged offending vehicle No. WB 41A-7601 was involved in the accident or subsequently implanted to get compensation from the insurance company. If this issue decides in negative then other issues are not at all relevant to be decided.

7. The Appellants, in the instant case, adduced total 4 witnesses to prove the case of the accident, death of the victim and rash and negligent driving of the driver of the offending vehicle. Father of the victim, Atiar Rahman Molla examined as P.W. 1, Sk. Kamaluddin Rahaman, eye witness as P.W.2, Sk Taher Ali and Sk Hasibur Rahaman as P.W.3 and 4 to prove income of the victim. Whereas, owner of the offending vehicle, examined as OPW.1 and investigating officer of insurance company Sourav Ghosh as OPW.2 on the instance of Insurance company.

8. P.W. 1 deviated his statement during cross examination from the FIR. He stated he did not see the accident though in written

complaint he stated that he was present at the spot and he saw the number of the offending vehicle. It is further contended that the accident occurred due to rash and negligent driving of the driver of the offending vehicle. Ld. counsel for the appellants submitted that the written complaint was actually written by a scribe. P.W. 1 is unknown about the contents of the written complaint but this Court does not convince with the submission made by the Ld. Advocate for the appellants because P.W. 1 admits during cross examination that he lodged complaint before the police station and it was written as per his instruction.

9. P.W. 1 further stated during cross examination that he heard about the accident from Sk. Kamaluddin, Sk. Taher Ali and Sk. Idrish. Whereas Sk. Kamaluddin examined as P.W. 2 stated that he never stated anything to P.W. 1 though he knew P.W. 1 as co-villager. It is very surprise to know that being a co-villager he did not inform about the accident to the family member of the deceased or police though he claimed as eye witness. So, it creates another doubt about his veracity. Furthermore, P.W. 2 narrated during cross examination that police came to the spot on the same date of accident and he was interrogated on the other date but no FIR lodged by any person or made suo moto complaint by the police officer of the local police

station over the said accident. It is admitted facts that the victim died on 01.06.2011 and same is corroborated by post mortem report but neither co-villager nor police or local people lodged complaint on the date of accident or thereafter when the victim died. Written complaint was lodged on 05.06.2011 by father of the deceased i.e., after expiry of five days of the accident though he explained delay. In this regard, the Ld. Counsel for the appellants placed reliance of a judgment passed in **Ravi Vs. Badrinarayan and others reported in (2011) 4 Supreme Court Cases 693** to support his contention that it is not expected that a person would rush to police station after accident rather than the treatment of victim is prime consideration over the lodging FIR. It is true that claim application cannot be dismissed only on the score of delay in lodging complaint but if it is not explained sufficiently, when there is doubt about the involvement of the vehicle and not come with clean hand, the claim application would definitely fail. Written complaint was lodged after 5 days of the accident by the father of the deceased with number of the offending vehicle but P.W. 1 differ from his own statement before the learned Tribunal during cross-examination. P.W. 2 claimed himself as eye witness also failed to convince this Court about the involvement of the vehicle. His statement is also not convincing due to inconsistency. None of the witnesses stated the manner of accident in their evidence. In such

situation, judgments referred by the appellants are not at all applicable in the present case as the present case is totally based on different facts and circumstances.

10. It is proved by the post mortem report that the victim died on 01.06.2011 and he suffered injuries due to road traffic accident but appellants failed to prove the involvement of the vehicle in such accident with cogent evidence. OPW 1, owner of the offending vehicle brought on the instance of the insurance company. He deposed that in the year 2011 his vehicle was involved with an accident. He produced the vehicle at police station after the accident when the driver informed him over telephone within ½ hour after such accident. He further stated that he informed the insurance company about such accident but he could not produce any document before the learned Tribunal. Later volunteers, the same had been submitted before the police station. He further admits all article and documents were seized from him are mentioned in the seizure list. However, this Court does not find any letter of information to the insurance company made by him about the accident in the seizure list. It is also not explained why police seized his vehicle and documents relating to vehicle on 06.06.2011 though he produced the vehicle on the same date after getting information from the driver of the vehicle also

creates another suspicious circumstance about the involvement of the vehicle. The claim of the appellants is that the accident occurred in the NH2 but OPW. 1 stated that the accident occurred in NH 12 road while vehicle was going towards Barjara after de-loading the moram at Satgachia. OPW. 1 further narrated his vehicle was not damaged after the accident though seizure list in item No. 7 reflected one truck No. WB-41A/7601 was seized in damaged condition. All these contradictions and inconsistencies greatly affect the case of the appellants. P.W. 1, P.W. 2 and OPW. 1 are resident of same village and co-villagers but their evidence is not corroborated with each other about the accident or involvement of the vehicle as such this Court also does not repose confidence about the submission made by the Ld. Counsel appearing on behalf of the appellants regarding involvement of the alleged offending vehicles. There is every possibility of implantation of the vehicle later on by the co-villagers after 5/6 days of the accident when the original vehicle could not trace out. OPW 1 stated he will cite his driver as witness but other hand during cross examination on behalf of the petitioner, he narrated he is not aware about whereabouts of the said driver. All the above inconsistency in the evidence creates a serious doubt in the mind of this Court. Driver of the offending vehicle is the best witness of this case because he informed his owner about the accident. He

surrendered before the Court and subsequently he enlarged on bail but petitioner did not adduce evidence of driver. Keeping in mind the entire evidence adduced from the side of claimants and eye witness as discussed above, neither eye witness nor owner of the vehicle or driver informed about the accident to the police station on the date of accident. The foundation of the case based on written complaint lodged by the father of victim itself found weak and feeble. This Court finds substance in the submission made by the Ld. Advocate appearing on behalf of the Insurance Company relying on **Anil and Ors. case (Supra)**. In the said case, the Hon'ble Supreme Court held that the High Court has rightly held that a false case was set up to support a claim for compensation without proving the cause of death as a result of the accident caused by the Tractor. Similarly, the appellants herein failed to prove the involvement of the vehicle in question with reliable evidence.

11. Ld. advocate appearing on behalf of the Insurance Company also placed reliance on aforesaid judgment passed in **Safiq Ahmad's case (Supra)** and stress upon this Court that several false and fake claim petitions were/are filing by the parties in connivance with some unscrupulous persons only to get compensation from the Insurance Company and that should be nipped in the bud, otherwise it would

be sheer loss to the public money and such filing of the fake claim petitions is a very serious matter. It ultimately affects the credibility of the institution as a whole. It appears from the said judgment, a SIT was constituted by the High Court to look into the matter of filing of the fake claim petitions and with the specific purposes.

12. The appellants fail to prove with reliable evidence that the alleged offending vehicle no. WB-41A/7601 was involved in the alleged accident as such this issue decided in favour of the respondent no. 1/Insurance Company. There is no need to decide other issues as this issue itself sufficient to decide the case in hand. Appeal is devoid of merit. Accordingly, dismissal order passed by the Ld. Tribunal Judge requires no interference by this Court.

13. In the light of above discussions, the appeal being **FMA 1436 of 2015** stands dismissed without order as to costs. Consequently, **CAN 1/2019 (Old CAN 6912/2019)** is also, thus, disposed of.

14. The impugned judgment and award of the learned Tribunal dated 08.07.2014 passed in MAC Case No. 23/11 by Ld. Judge,

Motor Accident Claims Tribunal, 1st Court, Burdwan is hereby affirmed.

15. Interim order, if any, stands vacated

16. Let a copy of this Judgment along with Lower Court records be sent back to the learned Tribunal forthwith for information.

17. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

18. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)