IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

PRESENT: - THE HON'BLE JUSTICE SUBHENDU SAMANTA

FMA 1070 of 2015

Sri Nilratan Biswas & Ors.
versus
National Insurance Co. Ltd. & Anr.

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

For the Respondent : Ms. Sucharita Paul

Hearing on : 22.01.2024

Judgment on : 24 .01.2024

Subhendu Samanta, J.:-

1. The instant appeal has been preferred against the judgment and order dated 10th September, 2014 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Tamluk Purba Medinipur in MAC Case No. 112/177 of 2010/2009.

2. The brief facts of the case is that the present appellants/claimants have preferred an application before the learned tribunal under Section 166 of the M.V. Act for getting compensation on the ground that one of their older brother, namely, Prakash Biswas was died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the Insurance Company. The claim case was contested by the

insurance Company before the learned tribunal by filling written statement.

3. After hearing the parties and after receiving the evidences the learned tribunal has dismissed the claim case. Being aggrieved by and dissatisfied with the said order of dismissal the present appeal have been preferred by the claimants.

4. Learned advocate for the appellant submits that the impugned award passed by the learned tribunal is solely erroneous. The learned tribunal has erroneously held that the claim tribunal has no jurisdiction to determine the instant case as the alleged accident happened not within the jurisdiction of that claim tribunal. He further argued that the claim tribunal has jurisdiction to entertain the claim case filed by the claimants when the deceased was residing within the jurisdiction of that tribunal. So, the observation of the learned tribunal is erroneous. He further argued that the learned tribunal has dismissed the case solely on the ground that the claimants have failed to prove any cogent document to show that they are the brothers of the deceased. He argued that the present appellants are the full brother of the victim. The issue regarding relationship between the victim and the present appellants has never been raised before the learned tribunal by the Insurance Company. No issues have been framed in that respect but the learned tribunal has acted erroneous by holding the present appellants have no *locus standi* to file the claim case. He further argued that the claimants are entitled to get

the compensation under Section 166 of the M.V. Act as they are covered under the decisions of Hon'ble Supreme Court passed in:

- ***i)*** ***National Insurance Company Limited Versus Birender and Ors.***
- ***ii)*** ***Sri Debanshu Guha Roy & Anr Versus The national Insurance Company Ltd & Ors*** *reported in* ***(2008) ACJ 2014.***
- ***iii)*** ***Mrs. Hafizun Begum Vs. Md. Ikram Heque And Ors*** *reported in* ***III (2007) ACJ 591 (S.C).***
- ***iv)*** ***Manjuri Bera Vs. Oriental Insurance Company Ltd****. reported in* ***II (2007) ACC 365 (S.C.).***
- ***v)*** ***Mantoo Sarkar Vs. Oriental Insurance Co. Ltd. & Ors.*** *reported in* ***(2009) ACJ 564.***
- ***vi)*** ***Sukumar Jana @ Narayan Jana Vs. The New India Assurance Co. Ltd. & Anr.*** *reported in* ***(2018) ACJ 1493, and***
- ***vii)*** ***Malati Sardar Vs. National Insurance Company Ltd.*** *reported in* ***(2016) ACJ 542***

5. The learned advocate appearing on behalf of the Insurance Company raised strong objection and submits that the relationship between the victim and the present appellants have never been proved before the learned tribunal. Admittedly, the victim was in a residence of Panskura P.S. which is under the jurisdiction of this tribunal. The present appellants are residing at the jurisdiction of Nadia P.S. So, the learned tribunal has correctly raised doubt regarding the relationship between the victim and the appellants. The said plea was raised by the Insurance Company from the inception. They have specifically pleaded by raising the grounds in

paragraphs 16 and 17 of the written statement filed by the Insurance Company. The Insurance Company further argued that the observation of the learned tribunal is very much correct there are several false cases where fraud has been adopted for obtaining the compensation in a fake case of accident. No document of income as well as the residence present victim has been filed before the learned tribunal which can show the relationship between the parties with the victim; so the instant appeal has got no merit.

6. Heard the learned advocates perused the materials on record; also perused the observation of the learned tribunal. It appears that the learned tribunal has disbelieved the relationship between the appellants and the victim. The learned advocate for the appellants has cited several judgments of Hon'ble Supreme Court as well as the Hon'ble Division Bench of this Court to prove the dependency. The brothers being the dependent upon the income of the deceased, are entitled to get the compensation under Section 166 of the M.V. Act.

7. It is true that the relationship between the victim and the present appellants have been raised by the Insurance Company by filling written statement. The claimants/appellants have not filed any documents or evidences to prove that they are full brother of the deceased. The evidence goes to show that the victim was a permanent residence at village Tilandapur P.S. Panskura, District Purba Medinipur but the present appellants are the residence of Chakda, District Nadia. The present appellants also did not file any

document to convince their relationship with the victim. In the present days advancement of technology the appellants must have some documents either ration card, voter identity card or voter list to show that the appellants are full brother of the deceased. However, it appears that the appellants being the brother, if at all proved that they are the brothers, may have entitled to get the compensation by virtue of the observation of Hon'ble Supreme Court and Hon'ble Division Bench of this Court but they have failed before the learned tribunal to prove the same. However, I think it necessary that the claims, appellants may not be denied by this fashion but they may be awarded an opportunity to prove their relationship with the appellants by cogent evidence.

8. Accordingly, the instant appeal is dismissed.

9. The case be remanded back to the tribunal for decision afresh.

10. The impugned order passed by the learned tribunal be affirmed subject to the decision afresh to be taken by the learned tribunal on production of evidence by the parties.

11. The learned tribunal shall proceed with this case again from the stage of evidence keeping the evidence of parties on record intact. Learned tribunal also shall allow the Insurance Company to adduce any evidence with their desire and shall dispose of the same within six weeks from the date of communication.

12. The learned tribunal shall disposed of the instant case within six months from the date of communication of this order.

13. The instant **FMA 1070 of 2015** is disposed of with the above observation.

14. Let a copy of this order alongwith LCR be sent down to the learned tribunal immediately for compliance.

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

16. Interim orders, if any, stand vacated.

17. Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)