

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 1618 of 2008

Binarani Ruidas and Others

Versus

The Oriental Insurance Company Limited and Another

For the Appellants : Mr. Kartick Kumar Bhattacharya, Adv.
Ms. Soumashree Dutta, Adv.
Ms. Papiya Naskar, Adv.

For the Respondent No. 1/Insurance Company

: Mr. Sanjay Paul, Adv.
Ms. Jaita Ghosh, Adv.

Heard on : 29.01.2024

Judgment on : 20.03.2024

Ajay Kumar Gupta, J:

1. This instant First Miscellaneous Appeal has been filed by the appellants/claimants against the judgment of dismissal of a Motor Accident Claim Case No. 134/299/2006 dated 29.11.2007 filed under Section 166 of the Motor Vehicles Act on account of the death of one Subhas Ch. Ruidas Alias Subhas Ruidas by the Court of Learned Additional District Judge, Fast Track Court, 1st Court, Burdwan.

2. The brief facts of this case are as under:

2a. On 05.10.2005 at about 9.20 pm when the victim was returning towards his home at Tatarpur and was moving on a bi-cycle towards east from west along the northern side of kancha flank of the G.T. Road. He was suddenly dashed by one Mini Truck bearing No. WB 41B/2371 from back side, which was coming in a rash and negligent manner and endangering to human life and safety through the G.T. Road. As a result, the victim sustained grievous injuries and he was removed to Memari Hospital. However, the victim died on his way to hospital. At the time of accident, he was 28 years old and he was a carpenter-cum-hoarding and glow-sign maker. He used to earn Rs. 7,000/- per month. Appellants/claimants being the legal heirs/representatives of the victim filed the claim case for compensation due to pecuniary and non-pecuniary

losses due to sudden death of sole bread earner of the family and they prayed for compensation to the tune of Rs. 10,20,000/- from the Oriental Insurance Company.

2b. The Opposite Party No. 1/owner of the offending vehicle contested the said case by filing written statement denying, *inter alia*, all the allegations and further contended that the driver was driving the vehicle with valid licence and the vehicle was also insured with the Opposite Party No. 2/Oriental Insurance Company Limited. It is further case of the Opposite Party No. 1/owner of the offending vehicle that the victim had contributed for such accident due to his own negligence and finally challenged the age, avocation and income as well as accident itself.

2c. Whereas, the Opposite Party No. 2/Oriental Insurance Company Limited also contested the case by filing a separate written statement thereby, *inter alia*, denied and disputed all the allegations made by the appellants/claimants and stated the vehicle was not involved in the said accident. The offending vehicle was later implanted with collusion and connivance of the appellants/claimants and the owner of the alleged offending vehicle and falsely filed this case for getting compensation from the Insurance Company and prayed for rejection of the same.

2d. After considering the pleadings of the parties and other materials collected during the trial, the Learned Judge finally dismissed the case on contest without order as to costs observing therein that the vehicle was

not at all involved in the said accident. In addition, the learned Court did not repose confidence on the evidence of eye witness examined P.W. 3. As such, the instant appeal has been filed by the appellants/claimants for its disposal and further prayed for compensation as prayed.

Submissions on behalf of the Appellants/Claimants:

3. Learned advocate appearing on behalf of the appellants/claimants submitted that the accident took place on 5th October, 2005 and on the same day FIR was lodged. It is true that there was no reflection in the FIR with regards to the number of the offending vehicle involved.

3a. It is further submitted that IO of the instant case has filed initially an FRT but a protest petition had been filed by the complainant before the learned Court below praying for further investigation as the FRT, filed by the IO, was mechanical and perfunctory and without proper investigation. The learned Court below allowed the said protest petition and further directed for reinvestigation of the case. During investigation, the newly appointed IO has seized the offending vehicle, examined the witnesses and finally submitted charge sheet against the driver of the offending vehicle No. WB 41B/2371.

3b. It is further submitted that the learned Tribunal cannot deny such facts that charge sheet has been submitted against the driver of the offending vehicle and when the charge sheet has been submitted. It is

prima facie established that the offending vehicle was involved in the said accident. However, the learned Court below did not consider the said facts and err in law that charge sheet is not reliable and it was wrongly held that the entire facts and circumstances raised by the insurance company has a strong case with regards to the involvement of the vehicle in question. The learned Tribunal further ignored that the Insurance Company miserably failed to prove the plea taken by the insurance company that there is connivance and collusions between the appellants/claimants and owner of the offending vehicle.

3c. Accordingly, the said dismissal order is liable to be set aside and compensation as prayed for by the appellants/claimants should be allowed otherwise the appellants/claimants suffer irreparable loss and injury and highly prejudice.

Submissions on behalf of the Respondent No. 1/Insurance Company:

4. Per contra, learned counsel appearing on behalf of the Respondent No. 1/Insurance Company vociferously argued and submitted that initially investigating officer submitted FRT when it was not found any sufficient materials or involvement of any vehicle but subsequently, the said case was directed to re-investigate by the learned CJM, Burdwan on the prayer of the de-facto complainant and finally the said case was ended in filing charge sheet against the accused driver of the present vehicle No. WB 41B

2371. The appellants/claimants have failed to convince the learned Tribunal regarding the involvement of the vehicle and there was no convincing evidence brought on record by the appellants/claimants to show that the vehicle was involved. During re-investigation of the case, the owner of the vehicle himself brought the vehicle before the police station and the driver of the offending vehicle surrendered and obtained bail. The same was owing to their connivance and collusion to support the appellants/claimants to get compensation from the insurance company. The eye witness also failed to convince the learned Court that the offending vehicle was involved in the said accident which raised serious doubt about the involvement of the vehicle. Accordingly, there is sufficient material which cannot be ruled out that there was collusion between the appellants/claimants and the owner of the offending vehicle. Accordingly, the learned Court rightly dismissed the claim application filed under Section 166 of the Motor Vehicles Act on account of death of Subhas Ch. Ruidas @ Subhas Ruidas. If the appellants/claimants fail to prove their case in positive, the question of granting compensation does not arise at all. Accordingly, the appeal is liable to be dismissed.

Discussions, Analysis and conclusion by this Court:

5. Having heard the rival submissions of the parties and considering the arguments raised by the parties, a moot question arises before this Court as under:

- (i) Whether offending vehicle No. WB 41B/2371 was involved in the alleged accident or not?

The entire case is based on this issue. If this issue decided in favour of the appellants/claimants then only question arises for allowing compensation subject to fulfilment of other issues otherwise the appeal automatically fails.

6. So far as the aforesaid issue is concerned, it is very relevant to go through the evidence of appellants/claimants to come to conclusion that the vehicle was involved or not. In the instant case, the appellants/claimants examined Chaitali Ruidas as P.W. 1, Sk. Lutfar Rahaman alias Khokon Sk. as P.W. 2 and Swapan Kr. Ghosh as eye witness of the said accident examined as P.W. 3.

7. It reveals from the evidence of P.W. 3 that he had seen the said accident which was occurred on 05.10.2005 at about 9.20 pm near Tatarpur more at northern side of kancha flank of the G.T. Road under

Memari Police Station. He deposed that at the time of accident, the victim was moving by riding on a bi-cycle towards east from west along the northern side of kancha flank of the G.T. Road. When he reached near Tatarpur, one Mini Truck bearing No. WB 41B/2371 was proceeding towards the same direction with a very rash and negligent manner. The Driver lost its control due to such rash and negligent driving of the driver of the offending vehicle and suddenly dashed the victim with full force from his back side as a result the said accident was taken place and the victim sustained grievous injuries with severe bleeding all over his person. The bi-cycle was badly damaged. He further stated that the said accident was due to the sole fault of driver of the offending vehicle. 10 to 12 days after the accident, he informed the entire matter of accident and registration number of offending vehicle to Smt. Chaitali Ruidas/wife of victim and also to Panchayat member Sk. Lutfar Rahaman. It is further submitted that he also informed the said fact to the police of Memari Police Station during interrogation.

However, during cross-examination, he admitted that police did not come to the spot after the accident. He cannot say when the police came to the spot. He stated he cannot say when police examined him. Later voluntarily said it was after six months of the accident. The cross-examination on behalf of the owner of the offending vehicle has been

adopted by the Insurance Company. Nothing against the case of appellants/claimants transpired during cross-examination.

8. P.W. 2, Sk. Lutfar Rahaman stated in his evidence that he did not see the accident but he rushed to the place of occurrence with some others near Tatarpur when he heard hue and cry and found Subhas Ruidas was severe bleeding injuries with a broken bi-cycle and he also heard absconding vehicle responsible for the said accident. With the help of some local people, the victim was removed to Memari Rural Hospital for treatment but he died on the way due to injuries suffered in the said road traffic accident. Thereafter, he went to the home of the deceased and informed the matter of accident to his wife and lodged an FIR before the Memari Police Station.

9. P.W. 2 further stated that he came to know about the number of vehicle and the manner of accident from Md. Kabir and Swapan Kr. Ghosh (P.W.3) after 10 to 12 days of the accident. He stated the number of the vehicle was WB 41B/2371 and he also stated the manner of accident as similar as P.W. 3. He further stated he reported the entire matter before the Officer-in-Charge of the Memari Police Station and the name of the person from whom he got information about the number of the offending vehicle. But without properly investigating the case, the police merely,

mechanically and by table work submitted final report. Against that final report, he had filed a protest petition praying for re-investigation and the learned Court below was pleased to allow his prayer and directed for re-investigate of the case.

During cross-examination by OP/owner of the offending vehicle, he stated he reached to the spot 4 to 5 minutes after the accident. He further stated that the vehicle was not seized on the very date of accident. Vehicle was seized six months after the accident. But he cannot say the date and time of seizure. He also cannot say the name of owner or driver of the offending vehicle. He further stated he cannot say where the owner of the vehicle resides. Those facts are not supposed to know by the P.W. 2. During cross-examination he admitted he is co-villager and he is a panchayat member of Uttar Tatarpur and he resides in the same village where the victim was resided. Finally, he stated during cross-examination that he came to know regarding manner of accident and involvement of the vehicle no. WB 41B/2371 from Md. Kabir and Swapan Ghosh (P.W.3). Cross-examination examined by OP No. 1/owner of the offending vehicle has been adopted by the insurance company. No contradiction found from his evidence.

10. Upon carefully perusal of evidence, it is clear that P.W.2 corroborated the version of P.W. 3 regarding the number and involvement

of the vehicle. It is further admitted facts that earlier the investigating officer has filed FRT with regard to the FIR vide Memari Police Station Case No. 215/2005 dated 05.10.2005 registered under Sections 279/304A/427 of the IPC. But the said FRT was challenged by the de-facto complainant i.e. P.W. 2 being a Panchayat Member as he had lodged the FIR on 05.10.2005. He filed a protest petition before the learned CJM and after hearing the parties, the learned CJM has allowed his prayer and directed for re-investigate the case and further directed to re-investigate the case by any other police officer except the previous one. Subsequently, after investigation, charge sheet was submitted against the driver of the offending vehicle, namely, Tapan alias Tapa Roy, son of Sree Subal Roy under Sections 279/304A/427 of the IPC vide charge sheet no. 102/2006 dated 31st May, 2006.

11. During investigation, the IO of the case examined the eye witnesses and recorded their statements under Section 161 of the CrPC. He also seized the offending vehicle bearing No. WB 41B/2371 and its all connected papers after preparing seizure list. The said vehicle was produced by Sree Amit Kr. Shaw, owner of the offending vehicle before police station. Driving licence of the driver was also seized and the same was valid up to 22/10/2006. The PM report also exhibited by the appellants/claimants, wherefrom it appears Subhas Ch. Ruidas alias

Subhas Ruidas died due to the effect of injuries ante mortem in nature. History, as mentioned in the PM Report, is that the victim was knocked down by an unknown lorry on 05.10.2005 at 21.20 hrs. From the PM Report it is further proved that the victim died due to the injuries suffered in motor traffic accident on 05.10.2005. Be that as it may, number of the offending vehicle was disclosed by eye witness i.e. P.W.3. Insurance company fails to rebut his deposition.

12. P.W. 1, the wife of the deceased victim stated in her evidence that her husband died due to the motor vehicle accident which was occurred on 18th day of Aswin on 1412 BC corresponding to 5th day of October, 2005 at about 9.20 pm near Tatarpur more at northern side of kancha flank of the G.T. Road under Memari Police Station. She further stated that she was got information about the accident from Panchayat Member Sk. Lutfar Rahaman and some days after she also received information from Md. Kabir and Swapan Kr. Ghosh, who were eye witnesses of the motor vehicle accident about the manner of accident and number of the offending vehicle.

13. The entire evidence of P.Ws. 1, 2 and 3 and their cross-examinations, it reveals the insurance company has adopted the cross-examinations of OP No. 1/owner of the offending vehicle. From the cross-

examination, it appears the eye witness P.W. 3 stated the manner of accident as well as number of the vehicle. P.W. 1 as well as P.W. 2 corroborated the evidence of eyewitness P.W. 3. Apart from that, charge sheet, PM report, seizure list also supported the case of the appellants/claimants. No contra evidence transpires from the side of Insurance Company. Insurance company also fails to rebut their contentions. Only question raised by the Insurance Company that at the time of first FIR, no number of vehicles was mentioned. No other eye witness i.e. Md. Kabir was examined in the instant case by the appellants/claimants. There is no any hard and fast rule to examine all the witnesses. Even a single witness is sufficient if the case is proved in positive without any contradiction or rebuttal. It is true that subsequently after allowing application for re-investigation, filed by the de-facto complainant by the learned CJM, a charge sheet was filed against the driver of the offending vehicle. In the said charge sheet, the number of the vehicle was very much indicated. The manner of accident and rash and negligence has been proved by the appellants/claimants by adducing oral and documentary evidence. Question of serious doubt as raised by the learned Tribunal does not appear from the entire evidence as above. Without any proof by the insurance company, how Court can raise a serious doubt about the involvement of the vehicle. The number of the offending vehicle was revealed after six months does not, ipso facto, raise

doubt about its involvement. Furthermore, there is no any evidence brought on record from the side of insurance company either oral or documentary to discard the evidence of P.Ws. 1, 2 and 3. Only non-mentioning the vehicle number in the FIR cannot create doubt about the involvement of the vehicle. Lutfar Rahaman, a Panchayat Member had lodged the said complaint on the same date of accident indicating the entire manner of accident caused by Lorry. He was not the eye witness but he was a post occurrence witness. He reached at the spot after hearing hue and cry since he is residing in the same village where the victim was residing. It further appears from the entire record, initially a final report was submitted as FRT by the IO but subsequently, learned CJM, not satisfied with the said FRT, allowed the prayer for re-investigation by another police officer and after investigation by another officer, filed a charge sheet against the driver of the offending vehicle.

14. Under the above oral and documentary evidence brought on record by the parties, there is a clear case that offending vehicle bearing no. WB 41B/2371 was involved in the said accident. There is no any doubt about the involvement of the offending vehicle. Furthermore, the question raised by the insurance company that the offending vehicle was subsequently implanted with collusion and connivance between the appellants/claimants and the owner of the offending vehicle was not

proved by any cogent or reliable evidence. Furthermore, the insurance company failed to rebut the case of the appellants/claimants. Insurance Company further fails to adduce any evidence from the side of insurance company. In addition, driver or owner of the offending vehicle also not raised any question about the accident and involvement of the offending vehicle.

15. Under such circumstances, this Court finds the appellants/claimants have proved the case in positive that the offending vehicle no. WB 41B/2371 was involved in the said accident which was occurred on 05.10.2005 at about 9.20 pm near Tatarpur more at northern side of kancha flank of the G.T. Road under Memari Police Station.

16. In the light of above observations, the issue is decided in favour of the appellants/claimants. If the issue is decided in positive, the appellants/claimants are entitled to get compensation from the insurance company as the offending vehicle had valid insurance policy on the date of accident. The Driver of the offending vehicle was driving rash and negligent driving of the offending vehicle endangering human life and safety and finally caused accident. The victim died due to such accident. The age of the victim was proved by the appellants/claimants that the victim was 28 years old by producing the secondary educational certificate

of the victim Subhas Ch. Ruidas @ Subhas Ruidas. His date of birth was recorded as 10th January, 1977. It comes to 28 years old on the date of accident. He falls in the age group of 26 to 30 years and for that actual multiplier would be 17. With regards to income, the claimants did not produce any supporting document to prove his actual income. Appellants/claimants neither produced any trade licence regarding his business of carpenter. In such a situation, his income may be taken as Rs. 3,000/- per month as per the judgment in **Laxmi Devi & Others vs. Mohammad Tabbar & Another**¹. In this judgment the Hon'ble Supreme Court has held even an unskilled labour can earn Rs. 100/- per day which comes to Rs. 3,000/- per month. Accordingly, victim actual income may be considered as Rs. 3,000/- per month.

17. Keeping in mind of the above observations and judgment of the Hon'ble Apex Court, the calculation of compensation would be assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 3,000/-
Total Annual Income	Rs. 36,000/-

¹ 2008 (2) T.A.C. 394 (SC)

Rs. 3,000/- X 12	
Add 40% Future Prospect	Rs. 14,400/-
Total income	Rs. 50,400/-
1/3 rd Deduction for personal living expenses	Rs. 16,800/-
Total Income after deduction	Rs. 33,600/-
Multiplier 17 (Rs. 33,600/- X 17)	Rs. 5,71,200/-
Add General Damages	Rs. 70,000/-
Total Compensation	Rs. 6,41,200/-
Less awarded amount received under Section 140 of the M.V. Act	Rs. 50,000/-
Total Compensation receivable	Rs. 5,91,200/-

18. Thus, the appellants/claimants are entitled to get enhanced compensation amount to the tune of Rs. 5,91,200/= (Rs. Five Lakhs Ninety-One Thousand and Two Hundred Only) which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. on and from 28.06.2006 till final payment.

19. It is informed that the appellants/claimants have already received the compensation amount of Rs. 50,000/- in an application filed under Section 140 of the Motor Vehicles Act, 1988 under no fault liability as such interest would be calculated on the aforesaid awarded sum @ 6% per annum from the date of filing the claim application i.e. 28.06.2006 till payment, if not already paid.

20. The Respondent No. 1/Insurance Company is directed to deposit the enhanced compensation amount i.e. Rs. 5,91,200/= (Rs. Five Lakhs Ninety-One Thousand and Two Hundred Only) together with the interest as indicated above by way of cheque before the Office of Learned Registrar General, High Court, Calcutta within a period of four weeks from date.

21. Learned Registrar General, High Court, Calcutta, upon deposit of the enhanced compensation amount together with interest on the awarded compensation amount as indicated above, shall release the amount in favour of the appellants/claimants in equal share to the appellants/claimants, upon proper identification and subject to verification of the payment of ad valorem Court fees on the total amount, if not already paid.

22. The impugned judgment of dismissal of MACC Case No. 134/299/2006 dated 29.11.2007 filed under Section 166 of the Motor Vehicles Act, 1988 passed by the Learned Additional District Judge, Fast Track Court, 1st Court, Burdwan is hereby set aside and modified to the above extent.

23. With the above observations, the instant appeal being **FMA 1618 of 2008** is, thus, allowed without order as to costs. Connected applications, if any, are also, thus, disposed of.

24. Let a copy of this Judgment along with Lower Court Records, if any, be sent back to the learned Court below forthwith for information.

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

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

(Ajay Kumar Gupta, J)