

IN THE HIGH COURT AT CALCUTTA**Civil Appellate Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****F.M.A No. – 4736 of 2015****In the Matter of****Rahila Momim & Anr.****Vs.****Bajaj Allianz Insurance Co. Ltd. & Anr.****For the Appellant : Mr. Ali Imam Shah, Adv.****For the Respondent : Mr. Rajesh Singh Adv.****Heard on : 22.01.2024****Judgment on : 25.01.2024****Subhendu Samanta, J.**

1. The instant appeal has been preferred against the judgment and award dated 24th of March, 2015 passed by the Learned Judge Motor Accident Claims Tribunal 5th Court Burdwan, in MAC Case No. 42 of 2012.

2. The present appellant being the claimants have preferred an application u/s 163 A of Motor Vehicles Act before the Learned Tribunal for getting compensation on the ground that their predecessor was died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured new policy of the Insurance Company. The claim case was contested by the Insurance Company by filing written statement.

3. After hearing the parties and after receiving the evidences the Learned Tribunal has rejected the claim case.

4. Being aggrieved by and dissatisfied with the order of dismissal, of the present appeal has been preferred by the claimants. Learned Advocate for the appellant submits that the deceased was a Khalasi of a Bus bearing No. WB 41 B 3126. While he was in the same bus on 11.07.2021 he failed down from the bus due to high speed and negligent driving of the driver of the offending vehicle. After such accident the victim sustained severe injuries and he admitted to the hospital thereafter succumbed to his injuries. To substantiate the case the widow of the deceased deposed as PW 1. The driver of the offending bus as deposed as PW 2 other two witnesses stated that the deceased died in RTA. But the Learned Tribunal has not considered the evidences on record and is of opinion that the claimant could not proved the accident. He further argued the observation of the Learned Tribunal is erroneous. He argued that by virtue of several decisions of Hon'ble Supreme Court the strict prove of the accident is not required to be proved in a proceeding u/s 163A of MV Act. The rule of evidence to prove charge in criminal trial cannot be used while deciding the application u/s 166 of Motor Vehicles Act. **[Janabhai Vs M/s ICICI LOM BARD 2000 SAR (Civil) 865.]**

5. He also placed the decisions of Hon'ble Supreme Court in

1. Anita Sharma and Ors. Vs. New India Assurance Company Limited 2011 SAR (Civil),

2. Shibaji and Ors Vs. Divisional Manager, United India Insurance Company Ltd. 2018.

3. United India Insurance Company Limited Vs. Sunil**Kumar 2018 (1) TAC 3(SC)**

6. By showing those citations the Learned Advocate for the appellant submits that it is the object of Section 163 A of Motor Vehicles Act to grant compensation on the basis of structure formula, without any requirements of proof of negligence on the part of driver/ owner of vehicle involved. "To permit the insurer to raise defence of negligence would be bring proceeding u/s 163A of barred with proceeding u/s 166, which would defeat legislative intention".

7. On the above argument he submits the claimants are entitled to just and proper compensation and the impugned award passed by the Learned Tribunal is required to be set aside.

8. Learned Advocate for the Insurance Company submits that the vehicle was not at all involved in the accident. The fact of the case goes to show that the PW 2, who is stated to be the driver of the offending vehicle, was not authorised by the owner (OPW 1) to drive the vehicle. The owner of the offending vehicle has deposed before the Learned Tribunal as (OPW1) and the investigator of the Insurance Company as deposed as OPW 2. OPW 1 in his deposition specifically stated that he never authorised the PW 2 (Hiru Dey) to drive the vehicle.

9. He again argued that during the cross-examination of PW 2 he ascertained that after such accident police was informed and the owner of the vehicle was also informed; the offending bus was taken to the Police Station from the Tinkonia Bus Stand and the same day, it was seized. The submission of PW 2 cannot be believed on

the ground that the alleged accident was happened on 11.07.2012 but the FIR was lodged on 17.07.2012 by the widow of the deceased. The police paper i.e. the seizure list disclosed that the offending bus was seized by the police on 17.07.2012; so it is not correct to believe the statement of PW 2 to the effect that the bus was seized on the selfsame date of accident i.e. on 11.07.2012. He argued from the several complain cases filed collusively. Wherein after the accident the wrong vehicle was shown to be involved in collusion with the complainant and the police personnel. In this case the Learned Tribunal is of correct opinion on the attending facts and circumstances that, the offending vehicle was falsely implanted in this case. In support of his contention Insurance Company has cited a decision of Hon'ble Supreme Court in **Deepal Girish Bhai Soni and Ors. Vs. United India Insurance Company Ltd. AIR 2004 SC 2157**

53. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby.

10. He also stated the Hon'ble Supreme Court in **Anil and Ors Vs. New India Assurance Company Limited AIR 2018 SC 618 and Kanai Manna Vs. India Insurance Company Limited and Ors. 2009 ACJ 544** wherein Hon'ble Apex Court is of view that a claim of compensation is not a bonanza. He also cited the decisions of Co-

ordinate Bench of this Court in **Kalpana Ruidas** as well as the **Shibdas Majhi**. Wherein the different Co-ordinate Benches of this Court has dismissed the claim case on the ground that claimant had set up a false vehicle to get compensation.

11. He finally argued that in this case it has been proved before the Learned Tribunal that the offending vehicle was not at all involved in the alleged accident but after such long days delay the said vehicle was implanted for getting compensation.

12. Heard the Learned Advocate

13. Perused the materials on record and also perused observation of the Learned Tribunal.

14. Basically the Learned Tribunal has moved on the basis of the evidence of OPW 1/ owner of the offending vehicle who stated that the PW 2 Hiru Dey was not the authorised by him to drive the vehicle. On the other hand PW 2, the said Hiru Dey, deposed that he was driving the vehicle more than 20 years. The owner of the offending vehicle also disputed the fact that he did not maintain garage register or waybill as stated by the PW 2.

15. Surprisingly, on perusing the evidence of OPW 1 it appears that he admitted that he is the owner of the offending vehicle and at the time of alleged accident Hiru Dey was his driver and the deceased was the Khalasi of his vehicle. Though he admitted that he did not gave any letter of authorisation to Hiru Dey but he admitted that his vehicle was seized after two days of the accident. The OPW 1 was declared hostile by the Insurance Company during his cross examination by the Insurance Company, he denied the suggestion of

Insurance Company that *“not a fact that Hiru Dey was never driver of my vehicle or Safiur Momin was never Khalasi of my vehicle”*

16. In perusing the entire police paper it appears that the alleged accident happened on 11.07.2012 the widow of the deceased lodged a written complaint on 17.11.2012 i.e. after 07 days of accident. Prior to the accident the deceased was admitted to the hospital so he succumbed to his injuries on 13.07.2012 the widow received the Post Mortem report on 14.07.2012 and lodged FIR on 17.07.2012 the offending vehicle was seized on 17.07.12. on the production of OPW-1. The OPW 1 never raised an objection regarding false involvement of the vehicle in the alleged accident. The Post Mortem Report as well as UD case reflected the death of the deceased due to involvement in the RTA.

17. According to the provisions of Section 163A of MV Act the claimant is required to be proved the deceased dies in a RTA and they are entitled to compensation under the principle of “no family liability”. It is to be looked into whether the deceased died due to involvement of vehicular accident.

18. In this case it has been sufficiently proved that the deceased died in a RTA and by virtue of evidence of the driver (PW 2) and the owner (OPW 1) of the offending vehicle as well as the police papers that the offending vehicle bearing No. WB 41 B 3126. was involved in the accident. The delay of 07 days in lodging the FIR not appears to me unjustified.

19. Considering all aspect the observation of the Learned Tribunal appears to me erroneous. The claimants are entitled to get just and

proper compensation according to the Second Schedule of Section 163 A of MV Act.

20. Considering the facts and circumstances of this case the income of the deceased is calculated Rs. 3000/- per month.

21. The amount of compensation :-

The monthly income of Rs. 3000/- yearly income $3000 \times 12 = 36000/-$. $1/3$ is deducted towards the personal expenses of the deceased had he been alive, thus after such deduction yearly dependency comes to Rs. 24,000/- . Considering the age of the deceased within age group of 35 to 40 years, the applicable multiplier is 16. After applying the multiplier, the award come to Rs 3,84,000/-. The claims are also entitled to get general damages of Rs. 9,5,00/- according to the second schedule of Section 163A of MV Act; after adding heads the award come to Rs. 3,93,500/-. The award shall carry interest amounting to Rs. 6% per annum from the date of the filing claim application i.e. from 26.11.2012.

22. The Insurance Company is directed to pay the compensation together with the interest as stated above through the office of the Learned Registrar General, High Court Calcutta within 06 weeks from this date; on such deposit the Office of the Learned Registrar General, High Court Calcutta shall disburse the amounts in the name of the claimant vide two equal account payee cheques according to the prevalent rules.

23. FMA 4736 of 2015 along with CAN applications if pending are disposed of. LCR be sent down immediately.

24. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)