

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

Present: -Hon'ble Mr. Justice Subhendu Samanta

F.M.A No. – 118 of 2024

With

IA No.: CAN/2/2023

Nandibala Roy & Ors.

Vs.

The Manager, M/s. Jayashree Tea & Industries Ltd.

**For the Appellant/
Claimants**

**: Mr. Jayanta Banerjee, Adv.,
Ms. Ruxmini Basu Ray, Adv.,
Mr. Asis Kr. Sasmal, Adv.,
Mr. Argha Bhattacharjee, Adv.**

For the Respondent

**: Ms. Sutapa Sanyal, Adv.
Mr. Debrup Bhattacharjee, Adv.
Mr. Pradip Kumar Tulsyan**

Reserved on

: 11.03.2024

Judgment on

: 21.03.2024

Subhendu Samanta, J.:-

1. Instant appeal has been preferred against the judgment and award dated 23rd day of March, 2018 passed by the learned Judge Motor Accident Claims Tribunal ADJ Fast Track 4th Court Jalpaiguri in a Motor Accident Claim Case No. 196 of 2012

2. The brief fact of the case is that the victim of this case namely, Haren Ray (deceased) on 28.03.2012 at about 8:00 am was standing near a tea stall at Panga Battala More, PS Kotwali, PS Karjipara, District Jalpaiguri at that time a trailer (commercial) bearing Registrtion No. WB-73/1972, driven by its driver in a very

high speed and rash and negligent manner dashed the deceased. By sudden the deceased sustained multiple bleeding injuries on his person the local people admitted him to the Sadar Hospital, but he succumbed to his injuries.

3. The legal heir of the deceased filed a claim case u/s 163A of MV Act before the Learned Tribunal for getting compensation. The owner of the offending vehicle did not turn up so the matter heard by ex-parte by the Learned Tribunal. The Learned Tribunal after hearing the petitioner and after receiving the evidences dismissed the claim case. Being aggrieved by and dissatisfied with the said order of dismissal the instant appeal has been preferred by the claimants.

4. It appears that though the owner did not contest the matter before the Learned Tribunal but appeared before this appellate court and represented by Mrs. Satarupa Sanyal, Learned Advocate.

5. Mr. Jayanta Banerjee Learned Advocate, appearing on behalf of the claimant submits that the Learned Tribunal has erroneously dismissed the case without going through the materials on record. He submits that the claim case was only dismissed on the ground that the present appellant has failed to prove or adduce any single documents to show that they are the legal representatives of the deceased Haren Ray. Mr. Banerjee submits that the relationship of the present claimant/appellant has been specifically mentioned in Paragraph 19 and 20 of the claim application. The claimant No. 1 is the widow of the deceased, claimant No. 2 is the married daughter and claimant No. 3 is the son of the deceased. There are no contradictory evidences to disbelieve the relationship of the present

appellant/ claimants before the Learned Tribunal. The Learned Tribunal has pick up the point which is not in the issue. The Learned Tribunal has erroneously dismissed the claim case on the same frivolous ground. Mr. Banerjee further submits that the appellant have filed one application being CAN 2 of 2023 for production of additional evidence in Appellate Court under order 41 Rule 27 of the Code of Civil Procedure. Mr. Banerjee further argued that the copy of Aadhar Cards of the appellants have been appended along with this CAN application, wherefrom it would be revealed the appellant is the only legal heir of the deceased Haren Ray. Mr. Banerjee further argued that the claimants are entitled to get just and proper compensation of this case.

6. Mrs. Sanyal appearing on behalf of the owner of the offending vehicle submits that the entire claim case filed by the claimants is baseless and liable to be dismissed. She argued that the alleged accident was happened on 28.03.2012 but the FIR was lodged on 3rd April 2012. There is an inordinate delay in lodging the FIR. In the FIR there is no explanation of such delay. She further argued that the son of the deceased lodged the FIR contending inter alia that, his father was dashed by one pick-up-van bearing No. WB 731972. On the basis of such FIR one police case bearing case no. 279 of 2012 dated 03.04.2012 was started at Kotwali PS. The police investigated the case and submitted FRT of 30.11.2012. She submits that from the said investigation of the police it is revealed that the number of alleged vehicle as stated in the FIR, is not a pick- up- van but it is a trailer of Mrs. Jayshree Tea and Industries Limited. It is the opinion of the IO

that original offending vehicle could not be traced out and IO submitted FRT. Mrs. Sanyal further submits that the so called offending vehicle is a trailer. The trailer itself cannot move, because for its movement one engine is required. The trailer does not have any engine horse power thus the trailer cannot itself dashed the victim and responsible for the accident. She further submits that the engine which attached the trailer was driving by a person and the engine or a pick-up-van which carrying the said trailer is only responsible for the accident. If the accident so happened, that is only for the reason of driving by the driver of the said pick-up-van; but in that accident the trailer which have no engine cannot made responsible. Mr. Sanyal further argued the claimants have failed to prove that, which vehicle was actually responsible for the accident. Thus the owner of the trailer that is the present respondent is not responsible to pay the compensation. She further argued that the claimants have failed to prove the involvement of the trailer in the alleged accident. She pointed out that as the respondent is the owner of the trailer, which was falsely implanted by the claimants in this case. She prayed for dismissal of the claim case along with the instant appeal.

Heard the Learned Advocates. Perused the materials on record. Having heard the submission of the parties issued can be formulated herein—

“Whether the argument of the respondent can be considered to dismiss a claim case at the appellate stage.

7. It is true that the respondent did not appear before the Learned Tribunal or filed any written statement or pleading to

contradict the claim petition. No evidences were adduced on behalf of the respondent. The learned Tribunal heard the matter ex-parte. In deciding the claim case the Learned Tribunal has framed as many as 04 issues. In decided those 04 issues, the Learned Tribunal is of view that the application u/s 163A of Motor Vehicles Act filed by the claimants is bona fide and not without merit. In deciding the issue or liability of the respondent to pay the compensation the Learned Tribunal has held that the claimant did not file any convincing document to prove their relationship with the deceased thus, on the straightway, dismissed the claim case.

8. The respondent argued that the PW 1 is not the eye witness but she stated that she came to know about the accident from one of her neighbour namely, Bahadur Ray. It is the further argument of the respondent that the so called eye witness namely, Prafulla Kumar Ray has stated before the tribunal that he informed the accident to his family members. It is the argument of the respondent that there are discrepancies of the evidence of PW 1 and PW 2.

9. Basically the respondent i.e. the owner of the offending vehicle have no pleading and proof against the claim petition. The respondent only tried to argue about some discrepancies appearing in the evidence of claimants.

10. Section 169 of the Motor Vehicle Act 1988 has laid down the procedure and powers to claim tribunal is follows-

S. 169. Procedure and powers of Claims Tribunals.

(1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

11. From the above provisions it is clear that the claim tribunal shall act as the Civil Court for the purpose of taking evidence on oath and enforcing the attendance of witnesses and all compelling the discovery and production of the documents and material objects and for other purposes as may be prescribed and the claim tribunal shall be deemed to be a Civil Court.

12. From the above provision it is also clear that the value of pleadings of the claimant has not been denied by the respondent by filing written statement or by adducing any evidences. Thus legally the argument advanced by the respondent is not based upon any positive pleadings.

13. Let me consider whether the argument advanced by the Learned Advocate, appearing on behalf of the respondent is sufficeint to deny the claim. The claim is laid u/s 163A of MV Act. The case u/s 163A of MV Act only requires to prove that the deceased died due to

involvement of vehicular accident. Unlike cases u/s 166 of MV Act, the rash and negligent driving is not “*sine-quo-non*” in a case u/s 163A of MV Act. It is further settled law that the “*Tribunal has to take holistic view of the matter*”. *It was necessary to be borne in mind that strict proof of accident caused by a particular bus in a particular manner may not be possible to done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probabilities. The standard of prove beyond reasonable doubt could not have been applied*”

[Emphasis supplied in **Bimala Devi Vs. Himachal Road Transport Corporation.**]

14. It has been argued specifically before this court that the trailer do not have an engine or horse power so it could not run independently. Thus, the other vehicle was involved in the alleged accident. In carefully perusing the FIR it appears that the FIR was lodged by the son of the deceased who was not present at the time of accident. PW 2 is the eye witness who stated that the deceased was dashed by trailer Pick- up (single axel) being No. WB 73/1972 the investigation of the police also disclosed that the offending vehicle bearing No. WB 73/1972 is not a Pick-up van to a trailer.

15. It is obvious for all accident that, the eye witnesses can notice the accident, usually just after happening of the accident. When a vehicle hit a person and fled away, the attending witnesses only can see the back portion of the vehicle; and in this case the trailer was attached with an engine and the witness must have seen

the no. of the trailer when the engine attached with trailer fled away from the spot.

16. In a case u/s 163A the claimants are entitled to get the compensation on the principal of no fault liability. It is nobody's case that the deceased died otherwise than the road traffic accident. PM report suggests that Kotwali PS U.D Case No. 141 of 2012 was started due to the unnatural death of the deceased, the autopsy doctor is of opinion that the death was caused "due to haemorrhage and shock "due to the above mentioned injuries consistent with road traffic accident".

17. Thus it has been proved that deceased died due to the road traffic accident. The trailer was involved is the alleged accident according to the evidence of PW 2 as well as the evidence of the doctor certified the death due to vehicular accident. It is not necessary in this case to determine mere discrepancies appeared in the evidence of PW 1 and PW 2 does not itself exonerate the owner to deny his liability to pay the compensation. In this case I am of a view that the argument advanced by the respondent for the first time before the Appellate Court only about the discrepancies in the evidences does not itself appears to me. So, satisfactory to discard the evidentiary value of pleadings and proof of the claimants.

18. Thus I find no justification to entertain the argument of Mrs. Sanyal on behalf of the respondent. Thus the issue formulated in this appeal is answered in favour of the appellants.

19. In considering the application being CAN 2 of 2023 it appears to me that the Learned Tribunal has committed an error in

disbelieving the relationship of the appellants with the deceased. There is nothing on record to raise a doubt that the claimants are not the legal heirs of the deceased, rather the claim application has specifically stated the relationship of the claimants with the deceased (para 19,20). However, considering the facts and circumstances of this case the application being CAN 2 of 2023 is considered to be justified to accept. The additional evidences in the application be accepted to determine the merit of this instant appeal. Aadhar Card by the claimants/appellants filed as an annexure of CAN 2 of 2023 are taken and admitted to be the additional evidence in this appeal under the provisions of Order 41 Rule 27 of the Code of Civil Procedure. So after the above discussion it appears to me that the Learned Tribunal has acted illegally in dismissing the claim case. It has been sufficiently proved that the deceased died due to vehicular accident so the claimants are entitled to get the compensation according to the law.

20. By virtue of amendment of MV act dated May 22, 2018 in case of fatal accident when death has caused, fixed compensation of Rs. 5,00000/- is payable. Admittedly, this award was passed on 23rd March 2018, i.e. his prior to the amendment. Whether the amendment which is come into force on May 22, 2018 shall be applicable in the present case? The question was raised before the Hon'ble Division Bench in **Urmila Halder Vs. New India Assurance Company Limited and Ors** reported in **(2018) 6 WBLR (CAL) 329**.

The Hon'ble Division Bench has formulated the issue to decide the question as follows—

Whether, after the amendment brought about by the said notification, the new schedule would be applicable to pending claim applications under Section 163-A before the motor accident claim tribunals as well as the appeals arising out of awards delivered thereunder prior to May 22, 2018?

21. After the deciding the entire issue and after a long discussion the Hon'ble Division Bench is answered the Issue as follows—

117. Now, if such a claim application comes up before a Tribunal for consideration post May 22, 2018 where all the five conditions as in the preceding paragraph are fulfilled, proceeding by our reasoning it can award only a lump-sum amount of Rs. 5,00,000.00, which would obviously be lesser than what could have been determined under the old schedule. Considering the language in which subsection (1) of Section 163-A is couched, the Second Schedule as on date of the award invariably has to be looked into and a lesser sum, if required, would have to be determined as payable to the legal heirs of such a victim. It is, therefore, not correct to contend that since the new schedule intends to provide greater relief compared to the relief available under the old schedule, following the new schedule would be onerous for the insurance companies in all cases.

Conclusion

118. Therefore, the conclusion seems to be inescapable that while deciding pending claim applications/appeals post May 22, 2018, the new schedule ought to be applied by the tribunals/this Court for determining compensation payable to the legal heirs of an accident victim or to the victim himself regardless of whether the new schedule is beneficial to them or not. The issue framed in paragraph 12 is, accordingly, answered.

22. The Division Bench has opined that the substantive law is always prospective but the procedural law have its retrospective effect.

Against the said observation of Division Bench, the Insurance Company has preferred an appeal before the Hon'ble Apex Court wherein the Hon'ble Apex Court has affirmed the view of the Hon'ble Division Bench and dismissed the SLP filed by the Insurance Company. Thus the law of the land, so far as determined by the Hon'ble Apex Court that the claimants are entitled to received the fixed compensation of Rs. 5,00,000/- u/s 163A of MV Act in a case of fatal accident where death has been caused.

23. In following the observation of Hon'ble Apex Court in **Urmila Halder (supra)** in my view the claimants are entitled to get the compensation of Rs. 5,00,000/- in this case together with simple interest of 6% per annum from the date of filing of the claim application. The respondent i.e. the owner of the offending vehicle is directed to pay the compensation together with interest to the claimants through the office of the Learned Tribunal by issuing separate A/c payee cheques in the name of the claimants equally within 06 weeks from the date of passing of this order. Failing which the claimants are at liberty to execute the award according to the law. The payment of compensation is subject to the ascertainment of deficit court fee.

24. Learned Tribunal shall act upon the certified copy of this order to receive the deficit court fee if any.

25. The instant appeal **F.M.A No. – 118 of 2018** along with connected application are disposed of.

26. 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.)