

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 3684 of 2015

With

CAN 1 of 2015 (Old No.: CAN 9139 of 2015)

Malati Khanra & Another

Versus

National Insurance Company Limited and Others

For the Appellants : Mr. Krishanu Banik, Adv.
Mr. Tathagata Banik, Adv.

For the Respondent No. 1/National Insurance Company Limited
: Ms. Sucharita Paul, Adv.

Heard on : 21.03.2024

Judgment on : 25.06.2024

Ajay Kumar Gupta, J:

1. This instant First Miscellaneous Appeal has been filed by the appellants/claimants being aggrieved by and dissatisfied with the judgment and award dated 16th day of May, 2015 passed by the Learned Additional District & Sessions Judge, 1st Court, Tamluk, Purba Medinipur-Cum- Learned Judge, Motor Accident Claims Tribunal, thereby the learned Tribunal Judge dismissed the M.A.C. Case No. 196 of 2011 filed under Section 166 of the Motor Vehicles Act, 1988 on account of death of victim, namely, Buddhadeb Khanra on contest against the Respondent No. 1/National Insurance Company Limited and ex parte against the owners of the offending vehicle

2. The factual matrix giving rise to filing of this appeal is as under:

2a. The present appellants/claimants are the parents of deceased Buddhadeb Khanra. On 04.02.2011 at about 6:30 pm the victim Buddhadeb Khanra was coming from Tamluk side by riding a Motorcycle bearing no. WB – 30H/5462 through the Tamluk-Srirampur Road and stopped his motorcycle on the morrum portion of the said road near Pairachali petrol pump and was talking with his friend. All on a sudden, a motorcycle rider coming at a very high speed by riding his motorcycle

bearing no. WB – 30B/2580 from Nimtouri side and unexpectedly dashed the said victim and ran away towards Tamluk side by riding his motorcycle. As a result, the victim fell down beside the road. He received grievous bleeding injury on his head and all over the body and became senseless. The victim was initially removed to Purba Medinipur District Hospital at Tamluk and from there he was referred to NRS Medical College & Hospital at Kolkata. However, on account of his serious condition, he was admitted to the Calcutta Medical Research Institute at Kolkata. Where victim succumbed to the injuries on 11.02.2011. According to the appellants, the accident was caused due to rash and negligent driving on the part of the rider of the offending motorcycle bearing no. WB – 30B/2580 (Hero Honda Passion). The appellants had filed an application praying for compensation to the tune of Rs. 8,00,000/- together with interest from the date of filing the claim application together with litigation costs but the learned Tribunal dismissed the claim application without considering the case of the appellants. Hence, the instant appeal came up before this Bench for disposal.

Arguments and submissions on behalf of the Appellants/Claimants:

3. Learned advocates appearing on behalf of the appellants/claimants submitted that the learned Court below wrongly dismissed the said claim application on the ground of delay in lodging the FIR, doubt in

involvement and identity of the offending vehicle and finally disbelieved the eye witness though the appellants have proved the case in positive before the learned Tribunal by adducing sufficient oral and documentary evidence. Accident was taken place on 04.02.2011 at about 6:30 pm and victim succumbed to injuries on 11.02.2011. Thereafter, FIR was lodged on 14th February, 2011 by the father of the victim. In the said FIR, the number of the offending Motor cycle was specifically mentioned. After lodging the FIR, the rider of the motor cycle surrendered before the learned Court below on 24th March, 2011 and obtained bail. All the relevant documents of the offending vehicle were seized and finally the investigating officer submitted charge sheet on 30th March, 2011 after completion of investigation. The few days delay was caused in lodging FIR due to serious condition of the victim, who was removed to several hospitals for his treatment but he was finally succumbed to his injuries on 11.02.2011 in the Calcutta Medical Research Institute at Kolkata. Parents were busy in treatment of the victim as such they could not lodge an FIR in time. Eye witness has proved the date, time, place, mode and manner of accident. Finally, the learned advocates appearing on behalf of the appellants/claimants submitted that the Learned Tribunal did not consider FIR, seizure list and charge sheet as such Judgment and Award passed by the learned Tribunal may be set-aside. Copy of FIR, seizure list, P.M. report and charge sheet marked as Exhibits 1 to 4 respectively

corroborated the rash and negligent riding of the offending motor cycle by the rider. Due to such rash and negligent riding of motor cycle, an accident took place and the victim sustained grievous injuries on his head and all over the body and ultimately succumbed due to such injuries. P.M. report indicates the facts of injuries suffered by the victim.

Arguments and submissions on behalf of the Respondent No.

1/National Insurance Company Limited:

4. Per contra, learned Advocate appearing on behalf of the National Insurance Company Limited submitted that the Learned Tribunal has rightly dismissed the claim application because the appellants fail to prove the identity of the offending vehicle with cogent and reliable evidence. There is serious doubt about the involvement of the offending motor cycle. Actually, victim's Motor cycle was collided with another vehicle and accident took place. Victim was under influenced of intoxication at the time of accident. Appellants in collusion of the owners of the alleged motor cycle planted the same to get compensation and for that purpose an FIR was lodged after expiry of 10 days of the accident without explaining the delay. Moreover, the investigation completed by the Investigating Officer in perfunctory manner. Investigating officer did not investigate the case in proper manner as he did not seize the Motor cycle from the spot and filed charge sheet within 16 days of lodging an FIR only on the basis of table

work. She prays for dismissal of the appeal as the appellants are failed to prove the case in positive.

Discussions, Analysis and Conclusion by this Court:

5. Having heard the rival arguments of the parties and on perusal of the record, two vital questions emerge for consideration as under:

- i) *Whether delay in lodging FIR may fatal the claim case of compensation?*
- ii) *Whether the accident occurred due to rash and negligent riding of the motor cycle being registration no. WB 30B/2580 (Hero Honda Passion) by the rider or victim had any role in such accident?*

6. To prove the case of the appellants, examined five witnesses, namely, Malati Khanra, appellant No. 1, Subhas Maity, employer of the victim, Uttam Khanra, appellant No. 2, Aryadev Das, eye witness and Rathindranath Chakraborty, In-charge of medical record department of C.M.R.I. Hospital, Kolkata as P.W. Nos. 1 to 5 respectively. On the other side, Respondent No. 1/National Insurance Company has examined Dr. Sumendranath Dutta as OPW.1. The Insurance company also filed xerox certified to be the true copy of the admission -cum- consent form together

with case history form marked as Ext. 'A'. Whereas, the appellants produced several documents in support of their case. Copy of FIR, charge sheet, seizure list, P.M. report, insurance policy, voter ID card of the deceased, appellants Uttam Khanra and Malati Khanra, Authorisation letter and final medical bills. Those documents are being marked as Exhibits Nos. 1 to 10 respectively. Exhibit No. 10 marked with objection.

7. Eye witness i.e. P.W. 4 had specifically stated that on the date of accident he was gossiping with others near the place of accident. He had seen the accident from his own eyes. However, during cross-examination he accepted he did not take any steps for removing the victim to the hospital. The National Insurance Company unable to rebut his statement regarding the date, time, place, mode and manner of the accident and the number of the motorcycle, which was mentioned as WB – 30B/2580 in the FIR. He had stated the date, time, mode and manner of accident as well as place of accident in his affidavit-in-chief as same as mentioned in FIR. So, his evidence cannot be disbelieved only on the ground that FIR was lodged after few days' delay i.e. near about 10 days. Delay in lodging FIR should not be the ground for dismissing the claim application as the appellants could not lodge FIR in time due to busy in treatment of the victim as the victim was sustained serious injuries on his head and all over his body and he was fighting with his life in hospital. He was removed to several

hospitals for his better treatment but ultimately, he succumbed to his injuries. P.M. report corroborated the injuries sustained by the victim in an accident took place on 04.12.2011. Autopsy doctor opined death was due to effects of head injuries antemortem in nature.

8. It revealed from the charge sheet that the rider of the motor cycle being registration No. WB-30B/2580 surrendered before the Criminal Court and obtained bail. He produced the documents of the offending Motor cycle i.e. R/C Book, one life time tax token and driving license of the rider, which was valid up to 26.12.2015. In addition, motor cycle was also seized. Rider of the Motor cycle did not deny the involvement of the offending vehicle. It is true charge sheet has been submitted after 16 days of lodging an FIR but that is not the ground to disbelieve the investigation. It is settled law that charge sheet should be submitted in a criminal case within 60/90 days of information of the incident. In the present case the rider of motor cycle himself surrendered before the Criminal Court and obtained bail. Owners of the motor cycle initially filed their written statement but subsequently they did not prefer to contest the case. The number of the motor cycle involved in the accident has been mentioned in the FIR but the learned counsel appearing on behalf of the Insurance Company raised question about the involvement of the motor cycle being registration No. WB-30B/2580 without any strong base. As per her

version, the said motor cycle was subsequently planted in the instant case only to get compensation. In support, Insurance Company produced OPW 1, who stated in his evidence that the representative of the patient, S. Jana disclosed him that the victim was riding on a bike, which collided with another one, probably under the influence of some intoxicating substances. The patient was first brought to the local hospital and, therefrom, he was brought to CMRI at Kolkata. During cross examination, he admitted name of the father of the patient has not been written in the case history form. He further admitted name of the person, who narrated the incident, has not been incorporated. Thus, the Insurance Company fails to prove the contention that the victim had influence of intoxicated substances at the time of accident and he had played role for such accident with cogent and reliable evidence. Only on the basis of hypothesis, it cannot be said that the victim was influenced of intoxicated substances at the time of accident. Insurance company unable to prove that the accident occurred due to collision of two vehicles. Whereas, on the other side, the appellants have proved their case in positive by eye witness and documentary evidence. Furthermore, documents relied by the appellants also corroborated the rash and negligent riding of the motor cycle by the motorcyclist.

9. Now, the question arises with regards to the delay in lodging FIR by the appellants. It is not denied by the parties that the victim not sustained injuries in the accident and expired on 11.12.2011 in the CMRI, Kolkata. The parents of the victim were busy in treatment of the victim as he was seriously injured. In such circumstances, it is unexpected from the side of family members of the victim to lodge FIR immediately because treatment of the victim was the prime consideration to save him at that stage. Learned counsels appearing on behalf of the appellants submitted that few days' delay in lodging FIR, where victim was under treatment would not fatal the claim petition and should not result into dismissal of the claim petition.

To bolster his submissions, the learned counsel placed reliance of a judgment as under:

*i. **Ravi Versus Badrinarayan & Ors.***¹

10. Upon perusal of the said judgment, it reveals the Hon'ble Supreme Court held that the family member was more concerned to get the medical treatment of the son rather than lodging FIR. It is not possible on account of mental agony and stress to lodge FIR immediately. Here also family members were busy to get treatment of the victim. He was removed to

¹ 2010 ACJ 2212, 2010 (1) TAC 343

different hospitals due to his seriousness, he was admitted in CMRI, Kolkata for his better treatment but he succumbed due to injuries sustained in an accident. He was fighting for his life in the hospital for eight days and finally succumbed due to his injuries. Family members were attending for their son's treatment which is more important for them than lodging the FIR. Hence, there was delay in lodging an FIR and said delay in lodging FIR was expected and reasonable. In the said FIR, entire incident has been explained by the complainant. Number of vehicles involved in the accident was also mentioned in the FIR. P.W. 3 stated in his deposition that one Chandan Maity gave him the registration number of the offending vehicle. Though Chandan Maity has not been examined but P.W. 4 eye witness corroborated the facts of accident. He also mentioned the number of vehicle involved in the accident in his deposition. Insurance company fails to rebut his narration. Thus, it can be safely accepted that the appellants have proved their case in positive. There is no iota of doubt about the involvement of the offending Motor cycle being registration No. WB-30B/2580. P.W. 4 eye witness has been able to prove the case of the appellants without any reasonable doubt. In view of above discussion, this Court is of the opinion that the Learned Tribunal Judge has wrongly observed that in the instant case the claimants adopted fraudulent means to hoodwink the Court for obtaining a positive order. The learned Tribunal was wrongly compelled to presume

that FIR (Ext.1) was artistically drafted to favour the victim's family to fetch up compensation in a round about way. The aforesaid observation is totally based on surmises and conjectures. Accordingly, the same is liable to be set-aside.

11. The appellants have also proved the income of the victim. P.W. 1 stated that his son was 21+ years having sound health and good physique at the time of accident. He was an employee of "Radhakrishna Steel Furniture" at Khanchi, P.S Nandakumar, District Purba Medinipur. He was a steel furniture and Almirah maker and used to earn Rs. 5,000/= per month as his salary. P.W. 2, employer also deposed and corroborated the contention of the P.W. 1. Furthermore, he stated he used to pay him Rs. 5,000/= per month for his job. He further deposed that prior to the accident, the victim was an employee under him and had been working from April, 2009 till his accident. It further reveals from the evidence of P.W.s that the victim was unmarried.

12. Appellants have also proved the medical expenses. P.W. 5, In-charge of medical record department of CMRI Hospital, Kolkata, deposed that the victim was admitted and treated in the said hospital. He produced the medical bills amount to Rs. 81,914/= only (marked as Exhibit 10 with objection). It appears from the bill, total expenses incurred by the

appellants towards medical treatment was Rs. 81,914/= under different heads. It can be safely accepted since the victim was treated there extensively but finally succumbed due to injuries on 11.12.2011. It is not denied that the offending motor cycle was not insured on the date of accident. Insurance policy (marked as Exhibit 5) shows the Motor cycle was insured and valid on the date of accident.

13. In the light of above discussion, appeal is allowed. Appellants are entitled to get compensation on account of the death of victim, Buddhadeb Khanra.

14. 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. 5,000/-
Total Annual Income Rs. 5,000 X 12	Rs. 60,000/-
Add 40% Future Prospect	Rs. 24,000/-

Total income	Rs. 84,000/-
1/2 nd Deduction for personal living expenses as the victim was unmarried	Rs. 42,000/-
Multiplier 18 (Rs. 42,000/- X 18)	Rs. 7,56,000/-
Add General Damages	Rs. 36,000/-
Add Medical Expenses	Rs. 81,914/-
Total Compensation	Rs. 8,73,914/-
Total Compensation Receivable	Rs. 8,73,914/-

15. Thus, the appellants/claimants are entitled to get a compensation amount to the tune of Rs. 8,73,914/= (Rs. Eight Lakhs Seventy-Three Thousand Nine Hundred and Fourteen) only which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. on and from 27.07.2011 till final payment.

16. The Respondent No. 1/National Insurance Company Limited is directed to deposit the compensation amount i.e. Rs. 8,73,914/= (Rs. Eight Lakhs Seventy-Three Thousand Nine Hundred and Fourteen) 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 six weeks from date.

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

18. The impugned judgment and award dated 16th day of May, 2015 passed by the Learned Additional District & Sessions Judge, 1st Court, Tamluk, Purba Medinipur -Cum- Learned Judge, Motor Accident Claims Tribunal in M.A.C. Case No. 196 of 2011 is hereby set aside.

19. With the above observations, the instant appeal being **FMA 3684 of 2015** is, thus, allowed without order as to costs. Consequently, **CAN 1 of 2015 (Old CAN 9139 of 2015)** is, also thus, disposed of.

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

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

22. 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.)