

01.05.2024
SL No.10 & 15
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

**F.M.A.T. (MV) 378 of 2022
With
FMA 1115 of 2022**

**Subhendu @ Shubhendu Banerjee
Vs.
National Insurance Co. Ltd. & Ors.**

Mr. Ali Imam Shah
.....for the appellant/claimant.

Mr. Deb Narayan Roy
.....for the respondent/Insurance Co.

Both the appeals have preferred against the judgment and award dated 31st day of May, 2022, passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Durgapur, Paschim Bardhaman, in respect of two claim cases wherein the present appellant filed claim application under Section 163-A of M.V. Act due to the sad demise of his parents in a road traffic accident happened at Chennai.

The brief facts of the case is that on 25.10.2011 at about 3.00 PM the parents of the present appellant, namely, Shyamali @ Shyamoli Banerjee and Sambhunath @ Shambhunath Banerjee with other co-passengers were travelling from Pondichery to Chennai through East Coast Road by a Tavera Car bearing No. TN-01-AD-781. When the Car reached near Vepancherry on East coast Road one Pondichery bound P.R.T.C. bus bearing No. PY-01-AB-9889 running in a rash and

negligent manner towards Pondichery from Chennai side dashed the Car as a result the mother and father of the present appellant sustained severe multiple injuries and died on the spot. On the basis of such accident E.5 Koovathur P.S. No. 308/2011 under Section 279/337/304(A) of the IPC was started.

The claim case was contested by the Insurance Company by filing written statement.

After hearing the parties the learned Tribunal has dismissed the claim cases.

Being aggrieved by and dissatisfied with the said order of dismissal the instant two appeals have been preferred.

Learned advocate for the appellant submits that the instant application is filed under Section 163-A of M.V. Act. The death of the parents of the appellant in the said accident has been sufficiently proved through the FIR as well as P.M. report and death certificate issued by Tamil Nadu Government. He further submits that the learned Tribunal has failed to appreciate the facts and circumstances of this case and has incorrectly opined that the evidences laid before the Tribunal at Suri Court in a separate claim case cannot be allowed to be proved in this case. He further argued that the involvement of the vehicular accident has been sufficiently proved. So, at this juncture, the claimant is entitled

to get fixed compensation amounting to Rs.5,00,000/- by virtue of Notification dated 22nd May, 2018 also by virtue of decision of Hon'ble Apex Court in ***New India Assurance Co. Ltd. Versus Urmila Halder.***

Mr. Roy learned advocate appearing on behalf of the Insurance Company submits that the learned Tribunal has committed no error. The learned Tribunal has justifiably come to an opinion that the evidences and the documents proved in a MAC Case No.168/169 of 2012 before the Motor Accident Claims Tribunal, Suri cannot be proved in this case. He further submits that the learned Tribunal has correctly raised doubt regarding the fact that the eye witness of the said accident, namely, Dilip Sankar Chakraborty who deposed before the Suri Court has not stated anything regarding the present victim in the said car. He further argued that the learned Tribunal has correctly opined that no eye witnesses have been examined in this case. So, the appeal is liable to be dismissed.

Mr. Roy further argued that the claimant has only adduced himself and file some documents. Those documents are not sufficiently proved the case under Section 163-A of M.V. Act. So, he prayed for dismissal of the instant appeal.

Heard the learned advocates perused the impugned judgment along with papers placed in the paper book. It appears that the Police Case which was initiated on the basis of the said accident is E.5 Koovathur P.S. FIR No. 308 of 2011 dated 25.10.2011. The FIR discloses that by such accident one lady and three gents were died on spot and other passengers also sustained severe injuries. The certified copy of P.M. report was filed wherein the Police Case No. was written as 308 of 2011 of Koovathur P.S. The burial ground reports of death of the victims disclose the place of death as E.C.R., Vepancherry and the cause of death was mentioned as RTA. The original death certificate was issued from the Government of Tamil Nadu wherein the place of death again written as Vepancherry, E.C.R. Date of death was mentioned as 25.10.2011.

The learned Tribunal has opined that the evidence of earlier Tribunal in a claim case is not squarely proved in this case which is barred under Section 33 of the Evidence Act. Section 33 of the Evidence Act read as follows:-

“33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.-Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a

later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided---

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.-A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section”.

It has been specifically codified in the Indian Evidence Act that the relevancy of certain evidence of a proceeding when relevant in subsequent proceeding. It is the only guideline that the evidences are relevant and proved if the witness cannot be found on his death. Nothing has been placed before the learned Tribunal that the witnesses who deposed before the learned Tribunal

at Suri Court were dead or not found. Thus, he not believed the evidences at all.

It appears to me that Section 33 has some proviso; the 3rd proviso mentioned that when the question of issue were substantially same in the 1st as in the 2nd proceedings the evidences of 1st providing is relevant. In this case, it appears that the question of issue were substantially same. Moreover, the opposite party No. 2 before the learned Tribunal was same as to the Tribunal of Suri Court.

However, I find no justification to disbelieve the fact that the victims of the two cases were died in a road traffic accident and were involved in the alleged accident dated 25.10.2011. No other evidences were placed before this Court to disbelieve the fact. Moreover, it was not placed before the learned Tribunal that while the death certificate was mentioned the cause of death of the victims in a road traffic accident, how other inferences can be drawn.

Mr. Roy submits that the victims may have died in a separate road traffic accident, but such evidence was not produced by the Insurance Company either before the learned Tribunal or before this Court. Accordingly, I find no justification in such argument.

Considering the same, it appears to me that the learned Tribunal has erroneously disbelieved the case of the claimant and dismissed the same. In a case under Section 163-A of M.V. Act, the claimants are required to prove that the death was caused in a vehicular accident. The claimants of this case have sufficiently proved the same before the learned Tribunal. Thus, the order of dismissal passed by the learned Tribunal is hereby set aside.

By virtue of decision of Hon'ble Apex Court in ***New India Assurance Co. Ltd. Versus Urmila Halder*** and under the amendment Notification dated 22nd May, 2018 of Schedule under Section 163-A of M.V. Act, in this case, the fixed compensation of Rs.5,00,000/- has to be awarded.

Accordingly, the Insurance Company is directed to pay the appellant and respondent No. 3 the amount of compensation of Rs.5,00,000/- equally together with @ 6% interest from the date of filing of the claim application in respect of two claim cases.

I clarified that in the two appeals the Insurance Company is directed to make payment of Rs.5,00,000/- each in favour of the son and daughter of the victim i.e. appellant and respondent No. 3 equally.

The Insurance Company is further directed to comply the order through the office of the learned

Registrar General, High Court, Calcutta within six weeks. On such deposit the appellant and respondent No. 3 are at liberty to receive the same from the office of the learned Registrar General, High Court, Calcutta on regular norms of identification and certification.

The payment of compensation is subject to the ascertainment of payment of deficit Court Fees, if any.

The office of the learned Tribunal shall act upon the certified copy of this order to receive the deficit Court Fees, if any.

LCR be sent down at once.

Accordingly, the applications being No. **FMAT (MV) 378 of 2022 and FMA 1115 of 2022** are disposed of.

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

Interim orders, if any, stand vacated.

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

(Subhendu Samanta, J.)