

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 2292 of 2013

(FMAT 874 of 2013)

with

CAN 1 of 2024

Sushil Tafadar (deceased) & Ors.

Vs.

The National Insurance Company Ltd. & Anr.

**For the Appellants/
Claimants** : Mr. Biswarup Biswas.

**For the Respondent No.1/
Insurance Company** : Mr. Saibalendu Bhowmik.

**For the Respondent No.2/
Owner** : None.

Hearing concluded on : 08.11.2024

Judgment on : 13.11.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred being aggrieved by and dissatisfied with the judgment and award dated 10th day of April, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, and the Additional District Judge, 4th Court Nadia at Krishnagar Nadia (hereinafter called learned Tribunal Judge) in MAC Case No. 93 of 2007, **under Section 163A of the M.V. Act.**

2. FACTS :-

“.....On 11.01.2007 at about 19.30-20.00 hours the victim, a vegetable seller was going from Krishnagar to Paninala by rickshaw and the offending vehicle No. WB26T/3995 was (Sumo Victa) coming in the same direction along the Krishnagar Karimpur, S.Das road when it lost control and dashed the rickshaw from behind and fled from the spot. The accident occurred near Bhandarkhola Gram Panchayat office. As a result of the accident the victim fell down from the rickshaw on the road and received injuries specially on her head. The local people came to the spot and sent her to Shaktinagar hospital from where she was sent to Medical College and Hospital considering her serious condition. She succumbed to her injuries on 14.01.2007 at Medical College and Hospital, Kolkata. The petitioner did not file any other application for compensation u/s 140 and u/s 166 but wished to file the application u/s 163A of M.V. Act only. The petitioners thus prayed for a compensation of Rs. 4,28,000/- for the premature death of Monibala Tafadar under section 163A of the M.V. Act.....”

3. The O.P. insurer (National Insurance Company Ltd.) being the insurer of the vehicle as mentioned in the claim petition contested the claim case by filing a written objection denying all the materials allegations made in the claim petition and contending that the petition is not maintainable

in its present form, the petitioner has no cause of action to file the application against them, claim petition being bad for defect of parties and being barred by the principles of estoppel, waiver and acquiescence and limitation. It was contended that the claim petition is barred by the law of limitation and the amount of compensation claimed is excessive, exaggerated and without any mathematical calculation. It was denied that the vehicle no. WB-26T/3995 was responsible for the accident and this O.P. was not liable to pay compensation unless the actual offending vehicle along with its insurance policy is traced out and verified. It was contended that in the FIR lodged by Alope Tafadar, the number of the offending vehicle is WB-26T/3995 (Sumo Victa) whereas the vehicle seized by the police was WB-52E/2689. It is also denied that the victim was 34 years of age or she earned Rs. 3000/- per month from her business of vegetables. So the O.P. has prayed for rejection of the claim petition with costs.

4. It appears that the owner of the offending vehicle, Monojit Swarnakar of Village Balarampur, P.O. Karuigachhi, P.S. Tehatta District Nadia opted not to contest the claim case. So, it was heard ex parte against him.
5. **On completion of hearing of the case, the learned Tribunal dismissed the case on the following findings:-**

“.....MAC Case No. 93 of 2007

Dated: 10th April, 2013

.....Considering the contentions of the Learned Advocates of both sides, evidences on record as well as facts and circumstances of the case, I find that the number of the offending vehicle for which the accident and death of the victim was caused is not very clear as the number of the vehicle mentioned in the claim

petition, FIR and charge sheet are different. Hence, I am of the considered view that the claim of the claimants cannot be recovered from the owner of the vehicle no. WB-26T/3995 or the insurer of the vehicle no. WB-26T/3995 being National Insurance Company. I also find that the owner of the vehicle no. WB-26T/3995 did not appear before this Court and depose and claimed the responsibility of the accident. Hence, I am of the view that the documents filed in this case do not conclusively prove that the vehicle no. WB-26T/3995 (Tata Sumo Victa) of Monijit Swarnakar was responsible for the accident. On the contrary, Ext. 1 being the charge sheet indicates that one orange coloured Tata Sumo bearing no. WB-52E/2689 was behind the accident. I also find that the owner of the vehicle no. WB-52E/2689 or its insurer has not been made a party to this case so no compensation can be awarded against them by this Tribunal. Hence, the instant Motor Accident Claims case is devoid of merit and liable to be dismissed.

Sd/-
Motor Accident Claims Tribunal &
Addl. District Judge,
4th Court, Nadia
Krishnagar.....”

- 6. Being aggrieved the Appellants/Claimants has preferred the present appeal on the ground as follows :**

That the learned tribunal erroneously dismissed the claim of the appellant in spite of there being sufficient evidence on record in respect of claimants.

- 7. Considering the materials on record including the evidence before the learned tribunal and the judgment under appeal, the following is evident:-**

- a) *The accident in the present case which occurred on 11-1-2007 in which the victim of the present case died has been proved.*

- b) *Kotwali P.S. Case in the district of Nadia was registered as case No. 14 of 2007 under Section 279 / 304A of the Indian Penal Code.*
 - c) *It was the case of the prosecution before the learned tribunal that the vehicle number registered in the FIR and claim application before the learned Tribunal was given as WB -26T/3995.*
 - d) *It appears from the copy of the FIR, that the unknown suspected accused is noted as a driver of the WB 26T-3995. The said number has been noted also in the copy of the written complaint.*
 - e) *Subsequently when the **charge sheet was submitted, it has been submitted against one orange coloured Tata Sumo bearing No. WB-52E/2689 and not the vehicle mentioned in the FIR.***
 - f) *It appears from the copy of the claim application before the learned tribunal that **the opposite party no. 1 before the learned tribunal is the owner of the vehicle no. WB-26T-3995 and opposite party No. 2 is the insurance company with which the said vehicle WB-26T-3995 was insured.***
 - g) *It, thus, appears that the claimants did not implicate the charge sheeted vehicle no. WB-52E/2689 or its owner or the insurance company with which it was insured, as opposite parties before the tribunal.*
8. ***It was the duty of the Tribunal to ensure that the owner and the insurance company of the charge sheeted vehicle WB-52E/2689 were added as parties in the present case as they were necessary parties.***

9. *The learned Tribunal on the findings that the FIR named vehicle had not been charge sheeted dismissed the case.*
10. ***The charge sheet was before the Court*** and it was the duty of the tribunal to direct the claimants to implicate the charge sheeted vehicles owner and the insurance company with which the charge sheet vehicle was insured and then proceed in accordance with law.
11. Learned Counsel for the petitioner has relied upon a judgment of this court in FMA 1030 of 2011 dated 18.09.2024.
12. The said Judgment is not applicable to the facts of this case as in the said case, **the charge sheeted vehicle was held to be liable to pay compensation.**

“FMA 1030 of 2011

Dated: 18.09.2024

9. Considering the charge-sheet in the present case and the evidence of the witnesses on record, it appears that the Trial Court rightly held that the charge-sheeted vehicle bearing number WB23A 1855 is the offending vehicle and as the same was duly insured by the appellant/insurance company at the time of accident, the appellant is liable to pay the compensation in the present case.”

13. **In the present case the charge sheeted vehicle has not even been implicated in the claim application.**
14. Thus, this Court is not in a position to direct any compensation at this stage, because the charge sheeted vehicle owner and insurance company are required to be given an opportunity to adduce evidence before tribunal.

15. As such the present appeal is disposed of with the direction that the judgment and order under appeal dated 10th day of April, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, and the Additional District Judge, 4th Court Nadia at Krishnagar Nadia in MAC Case No. 93 of 2007 is hereby set aside.
16. **The matter is remanded back** to the learned tribunal with the direction to permit the claimants to make the owner of the charge sheeted vehicle and the insurance company with which the vehicle is insured, as **added opposite parties** in the claim application and then proceed with the claim case **afresh** in accordance with law.
17. The present claim case being a very old case, the learned tribunal is directed to dispose of the case finally on hearing both sides, in accordance with law preferably **within a period of three months** from the date of this order.
18. **The claim appeal being FMA 2292 of 2013/FMAT 874 of 2013 is thus disposed of.**
19. All connected applications, if any, stand disposed of.
20. Interim order, if any, stands vacated.
21. Copy of this Judgment be sent to the Learned Judge, Motor Accident Claims Tribunal, ADJ, 4th Court, Krishnagar, Nadia, along with the trial court records, if received at once.

- 22.** Urgent Xerox certified copies of this judgment, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)