

13.03.2025
(D/L-21)
Ct.-655
(Nandita)

F.M.A. 1845 of 2014

Surjema Bewa & Anr.

-Vs-

New India Assurance Company

Mr. Saidur Rahaman

.... For the appellants/claimants

Mrs. Sucharita Paul

.... For the respondent/insurance company

(Dictated in open Court)

1. The instance appeal is preferred at the behest of the appellants challenging the impugned judgment and award dated 03.06.2013 passed by the Learned Judge, Motor Accident Claims Tribunal, 5th Court at Beharampore, Murshidabad in MACC No. 356 of 2009.
2. By passing the impugned judgment and award, the claim application filed by the claimants/appellants was dismissed by the learned Tribunal. Being aggrieved and dissatisfied with the said impugned judgement the present appeal is preferred at the behest of the appellants.
3. The application for compensation was filed by the claimants before the Tribunal on the death of the victim. It was stated that on the fateful date i.e. on 3.06.2002 in the morning when the victim was going towards the old Bus Stand, Lalgola then the offending two wheelers bearing No. WB-58B/9600 knocked down the victim from behind and as a resultant effect the victim sustained several

injuries on his person. Thereafter, he was immediately taken to Krishnapur Rural Hospital and then he was referred to Berhampore General Hospital where he succumbed to injuries.

4. It is further stated by the appellants that on the date of death the victim was aged about thirty-five years and was a daily labourer. He used to earn Rs.18,000/- per annum. To substantiate their claims two witnesses were examined by the appellant/claimant out of which P.W.2 was claimed to be the witness to the incident.
5. Owner and the offending vehicle entered appearance before the Tribunal and contested the claim application by filing their respective written statements.
6. It is stated by the owner of the vehicle that the entire contentions as made in the application by the appellant is based on false and fabricated stories and he denied the accident and the involvement of the vehicle. Since no accident had occurred, no FIR had been lodged by the concerned police station.
7. Respondent Insurance Company also echoed the same voice of the owner of the vehicle and said that no accident was occurred and the case vehicle never dashed the victim. The driver of the offending vehicle had no valid licence at the time of alleged incident.
8. It is the case of the appellant/claimant that over the death of the victim one UD case being no. 277of 2002 dated 6.6.2002 was registered.

Although no case has been started by the concerned police station regarding accident but it is not fatal in claim cases. Case vehicle was covered under a valid insurance policy and the same has been admitted by the Insurance Company. Mr. Saidur Rahaman, learned Advocate for the appellant says that PW2 being the witness to the incident deposed that the case vehicle was involved in the accident and the victim died in the said accident. Attention of this court is drawn to the Post Mortem Report which would reveal that the doctor opined that the death was due to head injury from RTA.

9. Mrs. Suchitra Paul, learned Advocate for the Insurance Company says that as per provision of the Motor Vehicle Act filing of FIR, death certificate and certificate of insurance is mandatory in relation to a claim application and in absence of such document the case should be treated as non-maintainable. The appellants are trying to show one un-natural death to an accidental death by involving the two-wheeler bearing no. WB-58B/9600.

10. Learned Tribunal after scanning the entire evidences and documents exhibited in that case disbelieved the case of the Tribunal and ultimately rejected the prayer of the appellants/claimants for getting compensation. It appears that as no FIR was lodged with the concerned P.S. an application under Section 156(3) of the Criminal Procedure Code was taken out at the behest of the appellants

before the CJM Murshidabad which was rejected by the court but the said order has not been challenged before any Higher Forum. It is pertinent to mention here that the claim was made under Section 163A of the Motor Vehicles Act, 1988. The purpose of legislation for introducing Section 163A of the Motor Vehicles Act, 1988 was as a beneficial piece of legislation. Any claim made under the Section 163A of the Motor Vehicles Act, 1988 exempts the claimant from proving the negligence on the part of the offending vehicle. So, in an application under Section 163A of the M.V. Act the claimants have to prove the involvement of the vehicle in the accident and the death occurred in that accident.

11. PW2 who is relation to Pw1 by para courtesy was cited on behalf of the appellant as a witness to the incident but his evidence is not at all trustworthy. He failed to say about his presence on the spot at the time of accident and did not say what he was doing there. PW1 said that she did not know what was written in her affidavit in chief.

12. The attention of this Court is drawn to the post mortem report filed in connection with this case where in the most of the columns are lying vacant and the cause of death was indicated as "death due to head injury from RTI". Although the autopsy surgeon had no direct knowledge about the cause of head injury of the victim, he erroneously opined that the victim died due to head injury sustained by him in a road traffic

accident which he cannot say under the law. Head injury might occur for many reasons. No step was taken to call the surgeon who conducted the post mortem as witness in this case. The owner of the offending vehicle strongly denied about such incident and the involvement of the vehicle in the said accident. The respondent/insurer company also echoed the same voice by stating that the case vehicle was not involved in the said accident.

13. It has already been stated that in the foregoing paragraphs that immediately after the accident no case was started by the concerned police station. The accident was allegedly happened near Lalgola Bus Stand at 9:00 which must be crowded at that time but astonishingly nobody reported the accident to the concerned police station. An application was taken out by the appellant before the CJM over the incident under Section 156(3) of the Code of Criminal Procedure but the said application filed by the appellant was rejected by the Magistrate. The appellants did not challenge the said order of rejection passed by the Magistrate before any Higher Forum.

14. No cogent document has been filed by the claimants to show about the involvement of the vehicle in the alleged accident. The claimants failed to satisfy that the alleged accident was real and was not the result of any collusion and fabrication of an accident. Before passing any order, the Tribunal should be satisfied that the death was due to the accident caused by the said

vehicle. So, the involvement of the vehicle in the accident and the death caused by the said vehicle on the fateful date of the accident is doubtful. No convincing and cogent evidence was brought into the record by which it can be said that the victim died due to an accident arising out of the case vehicle.

15. Accordingly, I find that the learned Tribunal came to the correct conclusion in dismissing the claim application filed by the appellants/claimants. There is no illegality and/or infirmity in the said impugned judgment and award. There is nothing to interfere with the said judgment. Accordingly, the instant appeal is liable to be dismissed.

16. FMA 1845 of 2014 is hereby dismissed.

17. There will be no order as to costs.

18. Consequently, the other application filed in connection with this appeal, if any, is also dismissed.

19. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)