In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1449 of 2024

Bajaj Allianz General Insurance Co. Ltd.
vs.
Jaga Samanta & Anr.

Mr. Soumalya Ganguli ... for the appellant/insurance company.

Mr. Jayanta Mondal
Mr. Sayantan Rakshit ... for the respondent No.1/claimant.

Heard & Judgment on : January 24, 2025.

Ananya Bandyopadhyay, J:-

1. The learned advocates representing the appellant/insurance company as well as respondent No.1/claimant are present.
2. The instant appeal has been filed against the judgment and order dated 20th June, 2024 passed by the learned Judge, Motor Accident Claims Tribunal, cum learned Additional District & Sessions Judge, Fast Track 2nd Court, Diamond Harbour, South 24 Parganas in MAC Case No. 46 of 2019.
3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimant due to the death of the victim in an accident which occurred on 19.10.2018 at 3.15 a.m. near Pailan on Diamond Harbour Road under the jurisdiction of Bishnupur Police Station. On the relevant time the victim along with two of his friends i.e. Gopal Chowpal @ Rahul Chowpal and Biki Gayen assembled beside the Diamond Harbour Road at Pailan 14 No. in front of the factory named as Green Ply. The offending vehicle being a motor cycle bearing Registration No. WB-22A/1816 approached from Amtala side towards Kolkata at an exceeding speed, rashly and negligently, hit the victim from behind which resulted in his fall sustaining severe injury who succumbed to the same on the same day at Bangur Hospital.

4. The Learned advocate representing the appellant/insurance company submitted that the driver of the offending vehicle was not the owner of the vehicle as per the policy issued by the appellant/insurance company. The driver of the offending vehicle failed to produce any document to authenticate the authority to have obtained from the owner of the vehicle to drive the same. It was further submitted that the driving licence was issued in the name of the owner. The Investigating Officer being the D.W.1 in his deposition stated to have seized the offending vehicle from the custody of one Imran Mondal who claimed himself to be owner of the same. It was further submitted that the victim had been a bachelor and the Learned Tribunal erroneously granted a sum of Rs. 40,000/- towards loss of consortium which should not have been granted.
5. The Learned Advocate representing the respondent No.1/claimant controverted the submission of the Learned Advocate representing the appellant/insurance company stating that the documents on record evinced the fact that the offending vehicle belonged to the owner under valid certificate of the registration as well as insurance policy. Therefore, the appellant/insurance company was liable to pay the compensation awarded. However, the Learned Advocate representing the respondent No.1/claimant acceded to the submission of the Learned Advocate representing the appellant/insurance company that the sum of Rs. 40,000/- granted as consortium in favour of the claimant should not have been granted since the victim had been a bachelor at the time of the accident.
6. Heard the submission of the Learned Advocates representing both the parties.
7. Anomalies writ large in the statements of the Investigating Officer who deposed before the Court as D.W.1 regarding the seizure of the offending vehicle as well as the ownership of the same. D.W.1 deposed to have seized the offending vehicle from the accused persons under a seizure list which did not reveal the signature of the said accused person. The D.W.1 further did not cite the name of the said accused person. Subsequently, during the course of the recording of evidence D.W.1 further stated to have taken custody of the

offending vehicle from one Imram Mondal who presented himself to be the owner of the offending vehicle contrary to the documents with regard to the certificate of registration as well as the insurance policy which mentioned the name of the owner as Asadul Islam Halder. D.W.1 further stated that he did not seize any documents relating to the owner of the offending vehicle. Moreover, according to him, the P.C./I.P.C as well as inquest report did not mention the injuries sustained by the victim through a road traffic accident. However, in the charge-sheet submitted by the said D.W.1 being the Investigating Officer pertaining to the criminal case registered under Section 279/338/304A of the Indian Penal Code mentioned there were sufficient materials to corroborate the fact of occurrence of the accident on the relevant date and time. The nature of injuries depicted in the inquest report and the post mortem report are similar in nature. The post mortem report mentioned the nature of injuries sustained by the victim to be resultant of an accident as pointed out by the police. Said Imran Mondal who was referred to be the owner of the offending vehicle by the I.O. who had been cited as witness in the charge-sheet but was not cited as witness in the instant case. The Learned Tribunal did not consider the aspect of genuine ownership in view of the deposition of the Investigating Officer. There should have been an endeavor on the part of the Learned Tribunal to initiate steps to unravel the ambiguities conspicuous in the deposition of D.W.1. The appellant/insurance company did not agitate this issue through the written statement. However, during the argument learned advocate appearing for the appellant/insurance company had submitted that the "*I.O. of the case seized the offending vehicle on being before a person not being the owner of the vehicle. It is also pointed out that the seizure list does not appear signature of the driver*".

8. The Learned Tribunal relied on the testimony of the witnesses and disregarded filing of the complaint considering the observations of the decisions mentioned in the impugned judgment and order. It was stated " *the claim of compensation before the Motor Accident Claim Tribunal under Section 166 of the M.V. Act, is neither a suit nor an adversarial lis in the traditional*

sense and therefore the rules of Evidence Act is not strictly applicable in these cases and that the said Act being a beneficial legislature, the rule of natural justice, equity and good conscience will be applicable while dealing with the claim of the compensation of the Tribunal".

9. The cognizable essence of compensation granted under the M.V. Act is beneficial in nature. However, there cannot be any scope of instituting a malicious proceeding in the garb of granting benefit to the victims by extracting and extorting money from the concerned insurance company in the absence of relevant evidence and convincing documents in case of any dichotomy, anomaly or ambiguity uncontroverted in the records. It is the duty of the concerned Tribunal to take steps to address such issues in delivering justice impartially since the insurance company is a litigant shall not be a medium to be unduly extorted on false pretext.

10. Since the appellant/insurance company did not vividly agitate this issue before the Learned Tribunal through written statement though the cross-examination reveals distortions or deviations in the statements of D.W.1, this Court for ends of justice grants liberty to recover the compensation amount from the actual owner of the vehicle after adducing proper evidence on proof of the ownership of the vehicle. This Court is not inclined to interfere with the income of the deceased victim as well as other components apart from the deduction of Rs. 40,000/- towards loss of consortium which had been erroneously granted since the victim was a bachelor on the date of his death.

11. The impugned award of Rs. 10,52,800 /- is modified as follows:

Monthly Income	Rs. 6500/-
Annual Income	Rs. 78,000/-
Future Prospect to be added(40%)	Rs. 31,200/-
	Rs. 1,09,200/-
Less ½ Personal Expenses	Rs. 54,600/-
	Rs. 54,600/

Multiplier to be "18"	Rs. 54,600/-
Conventional Head Loss of Estate 15,000/- Funeral Exp. 15,000/-	x 18
	Rs. 9,82,800/-
Rs. 30,000/- Add : 20 % 6,000/-	Rs. 36,000/-
Rs. 36,000/-	Rs. 10,18,800/-
Entitlement	Rs. 10,18,800/-

12. It was further submitted by the Learned Advocate for the appellant/insurance company that the Appellant/Insurance Company had deposited the entire awarded amount along with an interest of 6 % per annum from the date of filing of the claim application as per the challan filed by the Learned advocate for the Appellant/Insurance company.
13. The respondent No.1/claimant is entitled to receive the balance amount of Rs. 10,18,800/- along with interest at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.
14. The office of the Registrar General, High Court, Calcutta shall encash the cheque and thereafter disburse the same to the present respondent No.1/claimant as mentioned in the award passed by the learned Judge, Motor Accident Claims Tribunal, cum learned Additional District & Sessions Judge, Fast Track 2nd Court, Diamond Harbour, South 24 Parganas in M.A.C. Case No. 46 of 2019 on proof of proper identification of the respondent No.1/claimant subject to payment of ad valorem Courts fees and refund the differential amount through a cheque to the learned advocate representing the appellant/insurance company for the accounts of the insurance company.
15. The interest generated on the sum of money deposited by the appellant/insurance company at the office of the Learned Registrar General, High Court at Calcutta which has already been deposited in the nationalized bank by the office of the Learned Registrar General, High Court at Calcutta is to be apportioned and the sum of interest accrued on the amount is to be disbursed in favour of the appellant/insurance company.
16. The instant appeal is disposed of accordingly.
17. The interim order if any stand vacated.

18. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

c.m. Ar. Ct.

(Ananya Bandyopadhyay, J.)