IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 926 of 2023

National Insurance Company Limited
-Vs-
Smt. Gayatri Roy & Ors.

For the Appellants/ Insurance Company : Ms. Sucharita Paul

For the Respondents/ Claimant : Mr. Krishanu Banik

Heard and Judgment on : 07-05-2025

Ananya Bandyopadhyay, J.:-

1. The instant appeal was heard earlier and judgment was reserved. However, the matter was listed under the heading *"For Hearing"* for further clarification.

2. The learned advocates representing both the parties are present.

3. Three legal claimants filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Paschim Medinipur & Additional District and Sessions Judge, Fast Track 3rd Court, Sardar, Paschim Medinipur being MAC Case No. 524 of 2021 claiming an award of Rs. 65,00,000/- due to the death of the victim in a road traffic accident on 12/04/21 at about 11:00 pm.

4. The offending vehicle bearing Registration No. WB-67A/2466 rashly and negligently approaching at an excessive speed hit the victim who was walking on the road. Consequently, the victim was transferred to Midnapore Medical College & Hospital. In order to receive better treatment the victim was transferred to Peerless Hospital and research Centre. Subsequently, he expired on 13.04.2021.
5. On the basis of a written complain, Salbani PS Case No. 85/2021 was instituted on 19.04.2021 against the offending vehicle.
6. The owner of the offending did not contest and the case proceeded ex-parte against him.
7. The respondent, National Insurance Company Ltd. contested the aforesaid MAC case.
8. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences directed the insurance company to pay Rs 78,96,300/- with an interest payable at 6% per annum.
9. The Learned Advocate representing the Appellant submitted as follows:-
    a. On the relevant date and time of the accident, the alleged vehicle, being 'four wheeler' bearing No. WB-67A/2466, was not involved in the accident and in view of the aforesaid, its Insurance Company cannot be saddled with the liability of paying any compensation.
    b. The accident took place on 12.04.2021 and the First Information Report' concerning the said accident was lodged

on 19.04.2021, against the alleged offending 'four wheeler' bearing No. WB67A/2466, i.e. almost 7 days after the accident, meaning thereby that the vehicle in question was not involved in the accident and was subsequently implicated in the claim case only to gain an unlawful and illegal pecuniary advantage from its insurance company, being the appellant hereinabove.

c. The alleged offending Scorpio Car was seized on 28.06.2021, i.e. almost 2 months 16 days after the accident and therefore, when the whereabouts of the said vehicle was not available with the police authorities for such a long period, its involvement in the accident is very much in doubt.

d. The whereabouts and/or any detail of the alleged offending vehicle was not available with the police authorities for a considerable period of time and therefore, it was certain that the concerned vehicle was impleaded in the accident as an afterthought and was made with an ulterior motive for taking unlawful advantage from its insurer.

e. The alleged Eye-witness (PW2) to the said accident was a tutored witness as neither he took the victim to the hospital nor his name appeared in the list of witness in the charge sheet and therefore, holding that the alleged offending vehicle was involved in the accident on the basis of the evidence adduced by PW2, was erroneous and accordingly its insurer, being the Appellant Insurance Company hereinabove could not be saddled with the liability of paying compensation.

f. The accident concerned was a 'hit and run' case wherein admittedly the offending vehicle had fled after the accident but in order to take unlawful advantage of 'insurance coverage of another vehicle, the registration number of the concerned vehicle was planted as an afterthought.

g. The claimants along with the owner of the alleged vehicle as well as the 'investigating authorities' concerned had perpetuated a fraud upon the Court by alleging that the deceased had died due to an accident involving the alleged “your wheeler” in spite of being well aware of the fact that the said vehicle was never involved in the above accident.

h. The assessment of compensation should have been made by considering the last income tax return of the victim filed before his death and not on the basis of an arbitrary amount of Rs. 6,30,000/- per annum.

i. The Income Tax Return for the Assessment Year 2020-21, ie., Financial Year 2019-20, (last return filed before the death of the victim on 12.04.2021) was exhibited by the claimants and therefore, the award should have been assessed as per the income reflected in the said 'Income Tax Return' and not on the basis of an erroneous and arbitrary amount of Rs. 6,30,000/- per annum.

j. The deceased was allegedly running a 'transport business' and after his death admittedly the son of the victim, being the claimant no. 2, is running the said business and therefore, as the business was still going on, the claimants cannot be stated to have suffered any loss of dependency.

k. The claimants did not suffer any loss of dependency' and the widow of the victim while deposing as PW1, specifically admitted that the 'transport business' of the victim was being maintained by the son of the deceased and there were 8/9 vehicles presently and also 'managers, drivers & helpers for the said vehicles and therefore, as the said business was still running, the quantum of compensation should have been assessed by keeping in mind the fact that the said claimants did not suffer any financial loss at all.

l. An additional sum of Rs. 88,000/- (Rs. 44,000/- each) on the head of 'non-pecuniary damages (loss of parental consortium) to the claimants arbitrarily when the said amount should have been restricted to Rs. 44,000/-only.

m. A total sum of Rs. 1,65,000/- on the collective heads of general damages when a total amount of Rs. 77,000/- should have been granted on such head as per settled principals of law.

n. The learned advocate representing the respondent nos.1 to 3/claimants submits that the insurance Company being the appellant herein contested the case by filing its written statement denying all the material allegations as mentioned in the claim application. In the written statement, the opposite party/insurance company never raised any question nor any objection regarding the involvement of the offending vehicle and further the delay in lodging the FIR.

o. No one were examined by the appellant-insurance company no documents were filed by the said appellant-insurance company in order to rebut and to contradict the case/claim of the respondents/claimants.

p. The learned Advocate representing the respondent nos.1 to 3/claimants relied on the following decisions.

(i) Ravi Vs. Badrinarayan and others (AIR 2011 SC 1226), wherein it was observed that the delay in lodging FIR cannot be a ground to doubt the claimant's case

(ii) The New India Assurance Company Ltd. Vs. Mita Samanta and others. (2017 ACJ 2212)

Held: The insurance company inspite of taking leave under section 170 of Act having failed to summon the owner or the driver of the vehicle to disprove the allegation of the claimants of the involvement of the vehicle the Insurance Company had not discharged its duty to produce the driver or owner of the offending vehicle it can be inferred that the offending vehicle was involved on the date of accident.

(b). FMA 1064 of 2015 National Insurance Company Ltd. Vs. Pratima Barik and another (Calcutta High Court) [2018 ACJ 77 = 2017 (2) TAC 466 (Cal))

Held: The above principle laid down in the case of The New India Assurance Company Ltd. Vs. Mita Samanta and others. (2017 ACJ 2212) has to be followed.

q. Loss of Dependency

(a) 2008 (3) WBLR 851 (Cal) Sharmila Singh and others Vs. Sri Rabin Ghosh and anothers 41 to 65

(b) (2010)1 WBLR (Cal) 531 Madhumita Sarkar and others Vs. Oriental Insurance Company Ltd. and others 66 fot

(c) FMA 342 of 2020 Universal Sompo General Insurance Company Ltd. & another Vs. Bandana Devi and others.

10. Considered the rival submissions of the learned Advocates representing the respective parties.

11. The document marked as Exhibit 1/A being the complaint explained the delay to lodge the same, which is satisfactory in view of the death of a person in an accident. Moreover, under charge-sheet marked as Exhibit 2 mentioned the nature of the offending vehicle along with its credentials including the registration number, which, prima facie, established the informant of the offending vehicle in the occurrence of the accident on the death of the victim, the son of the victim was operating the business.

12. The learned Advocate representing the appellant/insurance company submitted that the claimants on account of the operation of the business were not subjected to loss of income and, therefore, were not entitled to any compensation with regard to the future prospect and managerial loss and the same was not acceptable.

13. Following the directions of the Hon'ble Supreme Court in the decisions cited above in Sarnam Singh v. Shriram General Insurance Co. Ltd (supra) and Divya v. National Insurance Co. Ltd (supra), the compensation awarded by the tribunal is modified to the following extent:-

Annual Income Add 25% Future Prospect		Rs.6,18,500/- Rs.1,54,625/-
Less 1/3rd for personal expenses		Rs. 7,73,125/- Rs.2,57,708/-
Add multiplier		Rs.5,15,417/- X 15
Add general damages		Rs.77,31,255/- + Rs. 84,000/-
Entitlement		Rs.78,15,255/-

14. The claimant is entitled to a sum of Rs.78,15,255/- along with 6% interest per annum to be paid from the date of filing of the application under Section 166 of the Motor Vehicles Act till the date of its realization.

15. It was further submitted by the Learned Advocate for the appellant/insurance company that the Appellant/Insurance Company to

have deposited a sum of Rs. 89,04,722/- =(Rs. 25,000 + Rs. 88,79,772/-) through two separate cheques as per challan filed by the Learned Advocate representing the appellant/insurance company.

16. The respondent Nos. 1 to 3/claimants are entitled to receive the balance amount of Rs. 78,15,255/- along with interest at the rate of 6% per annum from the date of filing of the claim application under Section 166 of the Motor Vehicles Act till the date of actual realization.

17. The office of the Registrar General, High Court, Calcutta shall encash the cheques and, thereafter, disburse the same to the present respondent Nos. 1 to 3 /claimants in equal share, as mentioned in the award passed by the Learned Motor Accident Claims Tribunal, Paschim Medinipur & Additional District and Sessions Judge, Fast Track 3rd Court, Sardar, Paschim Medinipur being MAC Case No. 524 of 2021 on proof of proper identification of the respondent Nos. 1 to 3/claimants subject to payment of ad valorem Courts fees and refund the amount, if any, through a cheque to the Learned Advocate representing the appellant/insurance company for the accounts of the insurance company.

18. The interest generated on the sum 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 aforesaid amount is to be disbursed in favour of the appellant/insurance company.

19. The instant appeal is disposed of accordingly.

20. The interim order if any stand vacated.

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

(Ananya Bandyopadhyay, J.)

S.R. (ARC)