

(2017) 06 SIK CK 0003

SIKKIM HIGH COURT

Case No: 02 of 2017

Smt. Rajiya Begum,
W/o Late Md.
Mustaque @ Md.
VsThe Branch
Manager, United India
Insurance Company
Limited,

APPELLANT

Vs

RESPONDENT

Date of Decision: June 19, 2017

Acts Referred:

- Indian Penal Code, 1860, Section 279, Section 304A - Rash driving or riding on a public way - Causing death by negligence
- Motor Vehicles Act, 1988, Section 170, Section 170, Section 163A, Section 163A, Section 163A(2), Section 163A(2), Section 163A(1), Section 163A(1) - Impleading insurer in certain cases - Special provisions as to payment of compensation on structured formula basis - Special provisions as to payment of compensation on structured formula basis - Special provisions as to payment of compensation on structured formula basis

Hon'ble Judges: Meenakshi Madan Rai

Bench: Single Bench

Advocate: Ajay Rath, Pramt Chhetri, Dinesh Chauhan, Ashok Pradhan

Final Decision: Dismissed

Judgement

1. The Learned Motor Accidents Claims Tribunal, East Sikkim at Gangtok (for short "Learned Claims Tribunal"), vide its Judgment in MACT Case No.03 of 2016, dated 23.12.2016, dismissed the Claim Petition of the Appellants/Claimants, seeking compensation from the Respondents for a sum of Rs.8,38,300/- (Rupees eight lakhs,

thirty-eight thousand and three hundred) only, on account of the death of one Mustaque, husband of Appellant No.1 and father of Appellant No.2. Aggrieved by the impugned Judgment, this Appeal assails the finding therein.

2. The Respondent No.1 was the Opposite Party No.1 and the Respondent No.2, the Opposite Party No.2, before the learned Tribunal.

3. In Appeal, the main thrust of the argument of Learned Counsel for the Appellant is that the Learned Claims Tribunal while reaching a finding that the Appellants were not entitled to the compensation so claimed, relied on the Autopsy Report of the victim (Exhibit-7). As per the Learned Claims Tribunal as the victim's body had been recovered from the Mahananda Canal at Phulbari, West Bengal on 22.7.2015 and the Doctor who conducted the Autopsy had opined vide Exhibit-7 that the cause of death was due to the effects of strangulation by ligature, ante mortem and homicidal in nature, it was established that the death of the deceased was not due to a motor accident, but homicidal strangulation. It was also urged that the Learned Claims Tribunal had pointed out that there was discrepancy with regard to Exhibit-12, the Authorisation Letter issued to the driver. That, in fact the vehicle belonged to the Respondent No.2, however, the Authorisation Letter that was filed before the Learned Claims Tribunal pertained to another vehicle, but it is undisputed that the deceased was the employee of Respondent No.2. It was canvassed before this Court that the strict rules of evidence do not apply to a Claim Petition under the Motor Vehicles Act, 1988 (for short "the Act"). To reinforce this submission, strength was drawn from the decision in *Bimla Devi and Others vs. Himachal Road Transport Corporation and Others*, (2009) 13 SCC 530 . That, it is indubitable that the driver was driving the vehicle Mahindra Bolero Pickup, bearing Registration No. SK-01-D-0274 which was duly insured with Respondent No.1 herein. Although the Police have concluded that the death of the deceased was due to strangulation, undeniably the proximate cause of the death was due to the fact that he was travelling in the vehicle. To buttress his submissions, reliance was placed on *Rita Devi (Smt) and Others vs. New India Assurance Co. Ltd. and Another*, (2000) 5 SCC 113 . On the ratiocination of *Rita Devi*, (2000) 5 SCC 113, the compensation ought to have been granted to the Claimants, hence, the Judgment of the Learned Claims Tribunal be set aside and compensation calculated at Rs.8,38,300/- (Rupees eight lakhs, thirty-eight thousand and three hundred) only, be granted to the Claimants/Appellants.

4. Per contra, it was argued by Learned Counsel for the Respondent No.1 that neither the body of the deceased nor the vehicle in the alleged accident were recovered from the alleged place of occurrence (for short "P.O."). The body was recovered in Phulbari, West Bengal, and the parts of the vehicle allegedly found at the P.O. were not seized vide a Seizure Memo. The next doubt raised was that no vegetables, allegedly a load of which was carried in the vehicle, were recovered at

the P.O. leading to an inevitable conclusion that no accident had in fact occurred and the death was purely homicidal. Thus, there was no error or perversity in the Judgment of the Learned Claims Tribunal which warranted no interference.

5. Learned Counsel for the Respondent No.2, submitted that the Authorisation Letter filed was indeed a wrong copy but the error is not material for the purposes of the case. The vehicle in accident was insured and the deceased a licensed driver was employed by him, therefore, the liability for compensation cannot be foisted on him.

6. I have heard the rival contentions of Learned Counsel at length. I have also carefully perused the pleadings, documents on record and the impugned Judgment.

7. In order to appreciate the matter, it would be essential to briefly visit the facts of the Appellants' case.

8. On 21.7.2015, the deceased Late Mustaque, husband of the Appellant No.1 and father of Appellant No.2, driver of the Bolero Pick-Up vehicle, bearing No.SK-01-D-0274 was driving the aforesaid vehicle from Siliguri (West Bengal) to Singtam (East Sikkim) with miscellaneous goods and vegetables. The vehicle was insured with the Respondent No.1 and belonged to Respondent No.2. Enroute the vehicle went off the road at "Bhotey Bhir" under the jurisdiction of Rangpo Check-Post (West Bengal), pursuant to which the vehicle and the deceased went missing. The Respondent No.2 lodged a Missing Report at the said Check-Post on 21.07.2015, which was duly registered as G.D. Entry No.204/15. On the next day, the body of the deceased was recovered from the Mahananda Canal, Phulbari, West Bengal. Upon such recovery the Phansidewa Police Station, West Bengal registered U.D. (Unnatural Death) Case No. 48 of 2015 and forwarded the body to North Bengal Medical College. Information of recovery of the body and its location in the North Bengal Medical College was transmitted to the Kalimpong Police Station. On 25.7.2015, the father of the deceased identified the body as that of his son. Likewise the Appellant No.1 identified the body as that of her husband. Subsequently, on 4.8.2015, the Respondent No.2, lodged an FIR at Kalimpong Police Station, which was duly registered as Kalimpong Police Station Case dated 04/08/2015, FIR No.263/2015, U/s.279/304=A" of the Indian Penal Code, 1860.

9. On account of the said death, the Appellant No.1, for herself and on behalf of the minor Appellant No.2, filed a Petition for compensation under Section 163A of Act, seeking compensation of an amount of Rs.8,38,300/- (Rupees eight lakhs, thirty-eight thousand and three hundred) only, with interest. The Respondents in their averments before the Learned Claims Tribunal had put forth the same submissions as made in this Court.

10. On the basis of the pleadings of the parties, the Learned Claims Tribunal settled a single Issue for adjudication, i.e.,

"1. Whether the Claimants are entitled to the compensation claimed? If so who is liable to compensate them?"

11. The Appellant No.1 examined herself as witness for herself and Appellant No.2. The Respondent No.1/Insurance Company did not examine any witness, while the Respondent No.2/Sheikh Nassim/Owner of the vehicle examined himself as his sole witness. On consideration of the evidence on record, the Learned Claims Tribunal pronounced the impugned Judgment, inter alia, declining the compensation, on the ground, that the Appellants had failed to establish that the deceased had died due to a motor accident as Exhibit-7 proved that the death was due to homicidal strangulation.

12. Now, the question that would arise for determination before this Court is, Whether the cause of the victim's death having been opined as homicidal would disentitle the Appellants from being granted compensation under Section 163A of the Act?

13. Firstly, we may walk through the relevant provision of Law, Sub-Sections (1) and (2) of Section 163A of the Act provides as follows;

"163A. Special provisions as to payment of compensation on structured formula basis.-(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of laws, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death of permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3)"

14. Sub-Sections (1) and (2) of Section 163A of the Act extracted hereinabove indicate that a victim or his heirs are entitled to Claim either from the owner or the Insurance Company, compensation for death or permanent disablement suffered due to accident, arising out of the use of the motor vehicle. The Law does not envisage proof of a wrongful act or negligence or default of any one. It merely requires use of a motor vehicle, leading to the death of the victim. On this count, it would be beneficial to refer to the decision of Rita Devi². In the said case, D was the driver of an autorickshaw, owned by another person. The autorickshaw was registered as a public carrier vehicle for hire by the passengers. It was insured with the respondent. On 22.3.1995, some unknown persons hired the autorickshaw, but subsequently stole it and killed the driver. The legal representatives of the deceased driver filed Claim Petition under Section 163A of the Act claiming damages for the death of deceased caused during the course of his employment from the owner of the said autorickshaw as the death was caused in an accident arising out of the use of the motor vehicle. The Learned Claims Tribunal allowed the Claim against the owner of the autorickshaw and also fastened legal and statutory liability on the insurer. The Insurer, Respondent, preferred an Appeal before the High Court which allowed the Appeal on the ground that the case was one of murder and not that of accident. The legal representatives of the deceased, in Appeal, contended that the murder of deceased squarely fell within the words "death due to accident arising out of the use of motor vehicle" found in Section 163A(1) of the Act. That, in the absence of a definition of the word "accident" in Motor Vehicles Act which is beneficial legislation a liberal interpretation should be given so as to achieve the object of the act. It was further contended that the Appeal filed by the insurer was not maintainable, no leave having been obtained from the Tribunal as required under Section 170 of the Act. Per contra, the Respondent Insurer contended that the meaning ascribed to the word accident in the Workmen's Compensation Act by judicial pronouncements could not be applied to the word accident in the Motor Vehicles Act because the objects of the two Acts were different. That, the death of the driver of the autorickshaw was caused by felonious acts of certain unknown persons and not by an accident arising out of the use of the vehicle and that the Insurer's Appeal to the High Court was maintainable. Rejecting the Respondent's contentions and allowing the Appeal the hon^{ble} Supreme Court held, inter alia, as follows;

"14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the autorickshaw, was dutybound to have accepted the demand of fare-paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the autorickshaw and in the course of achieving the said object of stealing the autorickshaw, they had to eliminate the driver of the autorickshaw then it cannot but be said that the death so caused to the driver of the

autorickshaw was an accidental murder. The stealing of the autorickshaw was the object of the felony and the murder that was caused in the process of stealing the autorickshaw is only incidental to the act of stealing of the autorickshaw. Therefore, it has to be said that on the facts and circumstances of this case, the death of the deceased (Dashrath Singh) was caused accidentally in the process of committing theft of the autorickshaw.

.....

18. In the instant case, as we have noticed that facts, we have no situation in coming to the conclusion that the murder of the deceased (Dasarath Singh) was due to an accident arising out of the use of motor vehicle. Therefore, the trial court rightly came to the conclusion that the court was wrong in coming to the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle."

15. The facts of the case at hand appear to be identical to the facts in Rita Devi². Admittedly, the deceased had a valid Driving Licence and was the driver of the vehicle in accident, which was duly insured with the Respondent No.1 and owned by Respondent No.2. He was driving from Siliguri towards Sikkim when the vehicle went off the road. No evidence was furnished to the contrary by either of the Respondents. Thus, being the driver of the vehicle, although the vehicle was not recovered, there is a preponderance of probability that he was driving the vehicle at the relevant time. His body, however, was recovered in Mahananda Canal in Phulbari with a ligature mark on his neck. It is not necessary to delve into the details as to what caused the ligature. Suffice it to say that assuming his death was homicidal it cannot be disputed that the proximate cause of his death was the use of a motor vehicle. As observed in Rita Devi², in the case at hand also the murder was incidental to the predominant object of stealing arising out of the use of the vehicle by the driver. The evidence of Respondent No.2 supports this assumption as he has deposed that he came to learn from the Investigating Officer of the Kalimpong Police Station that the victim was murdered by one Subba of Kakarvitta in order to rob the vehicle.

16. Hence, in the facts and circumstances as evident from the aforesaid discussions and in keeping with the decision in Rita Devi², I am of the considered opinion that the Learned Claims Tribunal arrived at an erroneous finding by declining to grant the compensation and the Claimants are entitled to compensation as calculated hereinbelow which is found to be just.

17. With regard to the Exhibit-12, the Authorisation Letter, bearing vehicle

No.SK-01-D1602 instead of SK-01-D-0274, no serious arguments were forwarded by the Respondent No.1 and it is admitted by Respondent No.2 that when the vehicle met with an accident, the relevant documents were also swept away in the vehicle. At the time of filing of documents before the Learned Claims Tribunal, Exhibit-12 was erroneously inserted, but was admitted in evidence. It may be stated here that a plethora of judicial pronouncements have settled the position that when a document is admitted in evidence at the stage of trial and not objected therein, no objection can be raised at the Appellate stage. This lends a quietus to the said issue. The other documents of the vehicle are found to be in order and are not disputed.

18. Hence, in conclusion, it is found that according to Exhibit-10, the date of birth of the deceased is 1.1.1989, making him 26 years old at the time of his accident. As per the evidence of the owner, Respondent No.2, it is admitted that the deceased was engaged by him for a monthly salary of Rs.3,325/- (Rupees three thousand, three hundred and twenty-five) only. Hence, the compensation is calculated as follows;

Monthly income of the deceased	Rs. 3,325.00
Annual Income of the deceased (Rs.3,325/- x 12 months)	Rs. 39,900.00
Multiplier of "18" has been adopted in terms of the Second Schedule to the Motor Vehicles Act, 1988.	Rs.7,18,200.00
Less 1/3rd of Rs.7,18,200/- [deducted from the said amount in consideration of the instances which the victim would have incurred towards maintenance, had he been alive]	Rs.2,39,400.00
Net yearly income	Rs.4,78,800.00
Add Funeral Expenses	Rs. 2,000.00
Add Loss of consortium	Rs. 5,000.00
Add Loss of estate	Rs. 2,500.00
Total	Rs.4,88,300.00

(Rupees four lakhs, eighty-eight thousand and three hundred) only.

19. The Respondent No.1 is directed to pay the awarded amount to the Appellants No.1 and 2 within one month from today with interest @ 10% per annum, failing which he shall pay simple interest @ 12% per annum from the date of filing of the Claim Petition till realisation.

20. The awarded amount of compensation shall be divided amongst the Appellants No.1 and 2, as follows;

(i) 50% of the total award to the Appellant No.1.

(ii) 50% of the total award to the Appellant No.2. Of the said 50%, one-half shall be kept in a Fixed Deposit in a Nationalised Bank until she attains the age of majority. The remaining one-half shall be expended towards her education and upkeep.

21. Appeal allowed.

22. Judgment of the Learned Claims Tribunal is set aside.

23. Copy of this Judgment be sent to the Learned Claims Tribunal for information.

24. Records of the Learned Claims Tribunal be transmitted forthwith.