(2009) 11 CAL CK 0002

Calcutta High Court

Case No: F.M.A. No. 754 of 2008 with C.A.N. 5267 of 2008

Kabita Halder and Others		APPELLANT
	Vs	
The New India Assurance Co. Ltd. and Another		RESPONDENT

Date of Decision: Nov. 30, 2009

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166
- Penal Code, 1860 (IPC) - Section 279, 304A, 338

Citation: 114 CWN 271 : (2011) 7 RCR(Civil) 1436

Hon'ble Judges: Bhaskar Bhattacharya, Acting C.J.; Prasenjit Mandal, J

Bench: Division Bench

Advocate: Amit Ranjan, for the Appellant; Saibalendu Bhowmick, for the Respondent

Judgement

Bhaskar Bhattacharya, A.C.J.

1. This appeal is at the instance of the claimants in a proceeding u/s 166 of the Motor Vehicles Act and is directed against an award dated 9th November, 2006 passed by the learned Judge, Motor Accident Claims Tribunal and Eleventh Court of Additional District Judge, Alipore, in M.A.C. Case No.67 of 2006 thereby dismissing the claim-application on the simple ground that there was a wrong statement made in paragraph 23 of the claim-application and such wrong statement had not been rectified by way of amendment. According to the appellants, on 17th January, 2002 the victim, namely, one Sripati Haider, the predecessor-in-interest of the appellants, died of an accident. He was travelling in a bus which due to rash and negligent driving overturned resulting in his death. According to the claimants, Sripati Haider was aged 45 years and used to earn Rs.4,000/ - a month by selling vegetables. The widow of the victim who was a co-passenger of her husband in the said bus at the time of accident appeared as P.W. 1

and proved the incident. The statement of P.W. I was also corroborated by P.W. 2. It appears that F.I.R. was marked as Exbt.1 which revealed that a case under Sections 279 / 338 / 304A of the Indian Penal Code was filed against the driver of the offending vehicle. Exbt.2 was the seizure list. Exbt.3 was the Xerox copy of the certificate of registration. Exbt.4 was the Insurance Certificate showing that the said vehicle was insured at the relevant time with the New India Assurance Company Ltd. Exbt.5 was the copy of the post-mortem report showing that Sripati Haider aged about 45 years died due to accidental injuries.

2. As indicated earlier, the learned Tribunal below held that in column 23 of the claim-application, it was mentioned that one Sambhu Nath Mondal and other persons were travelling in the offending vehicle which was involved in the accident and as a result, Sambhu Nath Mondal and other persons sustained serious injuries and Sambhu Nath Mondal died on the spot. According to the Tribunal, thus, there was a clear contradiction as regards the name of the victim inasmuch as in the cause title of the application the name of Sripati Haider appeared as the victim whereas in column 23 of the application, a different name, viz. Sambhu Nath Mondal, has been mentioned.

3. We have already pointed out that due to the said bus accident, which was upturned, several persons were injured and died. The fact that Sripati Haider had died has been well established from the oral and the documentary evidence adduced. The Insurance Company in the written statement did not dispute the death of Sripati Haider, the predecessor-in-interest of the appellants. It, however, appeared that in column 23, the fact that Sambhu Nath Mondal and others were injured had been indicated. If the entire claim-petition was read as a whole it will appear that Sripati Haider, the predecessor-in-interest of the petitioner, died in the accident along with Sambhu Nath Mondal and others whose names appeared in column 23. Such statement in column 23 cannot be a ground for dismissing the application altogether when the death of Sripati Haider is not in dispute and it is also proved that the death occurred due to the fact that the bus overturned.

4. We, thus, find no reason of dismissal of the claim-application. Since the matter is pending for a long-time, instead of remanding the matter back, we propose to dispose the same on the basis of materials on record.

5. In this case, it has been proved from the evidence that Sripati Haider was a vegetable seller and according to the claimants he used to earn Rs.4,000/- a month. As pointed out by the Supreme Court in the case of Smt. Laxmi Devi vs. Md. Tabbar reported in AIR 2008 SC 1858 even an unskilled labourer can nowadays earn Rs. 3,000/- a month. Therefore, we propose to accept the income of the victim to be at least Rs.3,000/- a month when he has been found to be a vegetable seller. We, however, find that from Voters'' Identity Card, Exbt. 8, the age of the victim appears to be 59 years at the time of death and, thus, we are unable to accept the age of 45 years given in the claim-application. On the basis of income of Rs. 3,000/- a month and by applying the

multiplier of 8 as provided in Second Schedule of the Motor Vehicles Act for a victim aged 59 years, the amount of compensation comes to Rs. 201,500/- in terms of the Second Schedule of the Act. The claimants are also entitled to get interest at the rate of 8% per annum from the date of filing of the application till actual payment.

6. We accordingly set aside the award impugned and allow the application for compensation by passing an award of Rs. 201,500/- with interest at the rate of 8% per annum from the date of filing of the application till actual payment. The Insurance Company is directed to pay the amount within a month from today by depositing the same before the Tribunal. The amount should be disbursed by issuing four cheques by equally dividing the amount among the four claimants.

7. In the facts and circumstances, there will be, however, no order as to costs.

Prasenjit Mandal, J.

I agree.