IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK

FMA 2832 of 2015
Smt. Pipli Pal
versus
United India Insurance Company Ltd. & Anr.

For the Appellant-Claimant	:	Mr. Krishanu Banik, Advocate
For the Respondent No.1-Insurance Company	:	Mr. Rajesh Singh, Advocate
Heard on	:	20.02.2023
Judgment on	:	04.10.2023

Bivas Pattanayak, J. :-

1. This appeal is preferred against the judgment and award dated 31st October, 2014 passed by learned Judge, Motor Accident Claims Tribunal, 3rd Court, Balurghat, Dakshin Dinajpur in M.A.C. Case No. 215 of 2005 dismissing the claim application of the claimant-injured filed under Section 166 of the Motor Vehicles Act, 1988.

2. The brief fact of the case is that on 19th February, 2005 at about 18:30 hours while the victim was proceeding by riding a *thela* van from Raiganj side towards Itahar keeping left side of *kancha* portion of the NH-34 and when he reached at Sripur Krishi Farm, at that time the offending vehicle bearing registration no. WB-62/6150 (scooter) proceeding towards the same direction in a rash and negligent manner dashed the victim from behind. Due to such impact, the victim fell down on the road and sustained multiple injuries and fracture injuries on his both legs.

Immediately the victim was admitted to Itahar Hospital wherefrom he was shifted to Raiganj District Hospital. For the reason of injuries sustained, the victim had permanent disablement. On account of the injuries received in the accident and the subsequent permanent disablement, the claimant-injured filed application through his wife Smt. Pipli Pal for compensation of Rs. 5,00,000/- only under Section 166 of the Motor Vehicles Act, 1988.

3. The claimant-injured in order to establish his case has examined himself and his wife as well as two other witnesses and produced documents which have been marked as **Exhibits-1** to **8** respectively.

4. The respondent no.1-insurance company did not adduce any evidence.

5. The respondent no.2-owner of the offending vehicle did not contest the claim application and the case was disposed of *ex parte* against the owner of the offending vehicle.

6. In the present appeal, in spite of service of notice of appeal, respondent no.2-owner of the offending vehicle is unrepresented.

7. Upon considering the materials on record and the evidence adduced on behalf of the claimant-injured, learned Tribunal dismissed the claim application of the claimant filed under Section 166 of the Motor Vehicles Act, 1988.

8. Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the claimant-injured has preferred the present appeal.

9. Mr. Krishanu Banik, learned advocate for the appellant-claimant submitted that the learned Tribunal erred in dismissing the claim application. The learned Tribunal disbelieved the evidence of the victim of

involvement of the vehicle on the ground that offending vehicle dashed the victim from behind and since the accident has taken place around 6:30 P.M. in the month of February, it was not possible for him to see the registration number of the offending vehicle and the evidence of another eyewitness to the occurrence namely P.W.3 since his presence was not justified and he was not named as a witness in the charge sheet. Such findings of the learned Tribunal is not in sync with the materials on record. P.W.2 (injured) has truly stated in the cross-examination that he did not see the particular vehicle since he was dashed from behind, however, the evidence of P.W.3 has remained unchallenged in cross-examination which the learned Tribunal failed to appreciate. In motor accident claim cases, the claimant is to establish its case on the touchstone of preponderance of probabilities and is not required to prove its case beyond the shadow of reasonable doubt. To buttress his contentions, he relied on the decisions of the Hon'ble Supreme Court passed in ***Sunita & Ors. versus Rajasthan State Road Transport Corporation & Anr.***[1] and ***Bimla Devi & Ors. versus Himachal Road Transport Corpn. & Ors.***[2].

Relying on the decision of this Court passed in ***The New India Assurance Co. Ltd. versus Mita Samanta & Ors.***[3], he submitted that the insurance company in spite of taking leave under Section 170 of the Motor Vehicles Act failed to examine the owner of the offending vehicle to primarily show

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[1] ***AIR 2019 SC 994***

[2] ***2009 (2) T.A.C. 693 (S.C.)***

[3] ***(2010) 1 WBLR (Cal) 137***

non-involvement of the vehicle and thus the version of the claimant, in absence of any contrary evidence, is to be accepted.

He further submitted that the manner of accident clearly shows that there was negligence on the part of the driver of the offending vehicle and principle of *res ipsa loquitur* applies to the facts of the case. In support of his contentions, he relied on the decision of Hon'ble Supreme Court passed in ***Pushpabai Purshottam Udeshi & Ors. versus Ranjit Ginning & Pressing Co. (P) Ltd. & Anr.***[4].

Further he submitted that the learned Tribunal doubted the case of the claimant on the ground of delay in lodging of the FIR. Delay *per se* in lodging of the FIR will not effect the claim of the claimant until and unless it is found that such FIR is the outcome of any fabrication or concoction or engineering. In support of his aforesaid contentions, he relied on the decision of the Hon'ble Supreme Court passed in ***Ravi versus Badrinarayan and Others***[5].

He further submitted that the learned Tribunal without any basis disbelieved the evidence of the doctor who treated the claimant and issued disability certificate.

So far as the quantum of compensation is concerned, Mr. Banik, learned advocate for the appellant-claimant submitted that at the time of accident the victim was 42 years of age and as such the multiplier should be 14.

With regard to the income of the victim, he fairly submitted that the income has not been proved but bearing in mind the economic factors in the year 2005, the income should be considered at Rs. 3,000/- per month.

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[4] AIR 1977 SC 1735
[5] 2011 (1) T.A.C. 867 (S.C.)

The claimant-injured is further entitled to an amount equivalent to 25% of his annual income towards future prospect.

Since the victim sustained 60% disablement, his loss of earnings should be considered on such basis.

In light of his aforesaid submissions, he prayed for setting aside the order of dismissal of the learned Tribunal and granting compensation in favour of the claimant-injured.

10. In reply to the contentions raised on behalf of the appellant-claimant, Mr. Rajesh Singh, learned advocate for respondent no.1-insurance company submitted that the vehicle could not be detected by P.W.1 (injured) who admitted in his cross-examination that he could not see the particular vehicle. The claimant has adduced evidence of one other witness P.W.3, who claimed to be an eyewitness to the occurrence. P.W.3 is a resident of Khamrua which is far from the place of occurrence and thus the presence of the witness near the place of occurrence is doubtful. The witness, as per his evidence, is known to the claimant and, therefore, is an interested witness. Further P.W.3 has admitted in his evidence that he did not accompany the victim to the hospital. Moreover, the accident having taken place in the month of February at 6:30 P.M., the visibility of the number of the offending vehicle as stated by P.W.3 is far from being true. Further, P.W.3 is not a listed witness in the chargesheet filed by the investigating agency. Therefore, the evidence of P.W.3 with regard to the involvement of the vehicle is unreliable.

He further drew the attention of the Court to the fact that the vehicle was not seized on the date of accident and none of the medical documents

reflects the registration number of the offending vehicle, therefore, its involvement as claimed by the claimant is doubtful.

Furthermore he submitted that where the evidence on record clearly indicates of non-involvement of the offending vehicle and the facts manifest of falsity, the claim should be dismissed. In support of his contention, he relied on the decision of the Hon'ble Supreme Court passed in ***Anil and Ors. versus New India Assurance Co. Ltd. and Ors.***[6].

He further submitted that neither the driver nor the owner of the offending vehicle has informed of the accident in terms of Section 134 of the Motor Vehicles Act to the police soon thereafter which raises serious doubt as to the occurrence and injuries sustained by the victim in the accident as well as involvement of the alleged vehicle.

Further relying on the decision of the Hon'ble Supreme Court passed in ***Safiq Ahmad versus ICICI Lombard General Insurance Co. Ltd. and Others***[7], he submitted that with the rise in filing of false claim cases, Hon'ble Supreme Court has taken cognizance of such fact and had issued direction for filing status report by concerned authorities.

In light of his aforesaid submissions, he prayed that the order of dismissal passed by the learned Tribunal should be affirmed.

11. The learned Tribunal in order to decide the claim application framed the following issues:

1. Is the claim case maintainable in its present form and prayer?
2. Is the case valued properly and court fees paid accordingly?

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[6] (2018) 2 SCC 482

[7] 2021 (4) T.A.C. 682 (S.C.)

3. Is the vehicle bearing registration no. WB-62/6165 (Scooter) was involved in the accident of Santosh Pal, husband of claimant Pipli Pal?

4. Whether the accident took place due to rash and negligent driving on the part of the driver of offending vehicle?

5. Whether the offending vehicle in question was duly covered by valid Insurance policy at the relevant point of time?

6. Is the claimant entitled to get any compensation as prayed for?

7. To what other relief or relieves, if any, the victim entitled to get?

12. The issue nos. 1, 2 and 5 were decided in favour of the claimant. The issue nos. 3 and 4 were decided against the claimant which resulted in dismissal of the claim application. Therefore, the aforesaid two issues dealing with involvement of the offending vehicle and rash and negligent act of the driver of the offending vehicle are precisely to be dealt with in this appeal.

13. At the very outset, it is settled proposition of law that claim cases are to decided on the touchstone of preponderance of probalities and the standard of proof beyond reasonable doubt cannot be applied while dealing with motor accident cases as has rightly been argued by Mr. Banik, learned advocate for appellant-claimant relying on *Sunita (supra)* and *Bimla Devi (supra)*. The involvement of the offending vehicle was doubted on the ground of lack of reliability in the evidence of Santosh Pal, P.W.2 (claimant-injured) and Dipak Shil, P.W.3 (eyewitness to the occurrence) and delay in lodging of the FIR. The claimant in order to establish the

involvement of the vehicle has examined himself as P.W.2 and also adduced evidence of one eyewitness namely Dipak Shil as P.W.3 and produced documents in the form of FIR **(Exhibit-1)**, charge sheet **(Exhibit-2)** and seizure list **(Exhibit-3)**. Though P.W.2, Santosh Pal (claimant-injured) deposed that on the relevant date of accident he was dashed by the offending vehicle bearing registration no. WB-62/6150, yet in cross-examination this witness admitted that he did not notice the very particular vehicle by which he was dashed from behind. Thus, the evidence of the claimant-injured as to the involvement of the vehicle becomes inconsequential. Be that as it may, P.W.3, Dipak Shil in his evidence-in-chief has categorically deposed that on the relevant date of accident (i.e. 19th February, 2005) at about 18:30 hours the victim was dashed by the offending vehicle bearing registration no. WB-62/6150 (scooter) resulting in his injuries and that he was an eyewitness to the occurrence. The evidence of this witness has been challenged by the insurance company on the ground that his residence is far away from the place of occurrence, that he was an interested witness, that he was not named as witness in the charge sheet and his possibility to see the number of the alleged vehicle at the relevant time. It is true that this witness in cross-examination had admitted that his residence is about 8 kms. away from the place of occurrence, however, only because of his residence is far away does not make the presence of the witness near the scene of occurrence doubtful. The witness might be a chance witness. There is no cross-examination challenging the presence of the witness near the scene of occurrence. Although this witness deposed in his evidence

that injured and his wife are known to him, such fact cannot *per se* raise doubt in the otherwise reliable evidence of this witness. Only acquaintance with the claimant does not show that he is an interested witness. It is a fact that this witness has not been named in the charge sheet. Be that as it may, there are no hard and fast rule that only charge sheeted witness are to examined in the claim cases. The evidence of the eyewitness has also been challenged on the ground that it was not possible for the witness to see the number of the offending vehicle on the relevant date and time of the accident in the evening hours. It is pertinent to note that in cross-examination there are no iota of evidence that the place of occurrence was totally dark at 6:30 P.M. due to setting of the sun. Rather the evidence of this witness shows that there are number of shops in both sides of the road at Durgapur. The light from such shops could have made the place of occurrence visible. Thus, the possibility to see the number of the offending vehicle by the witness at such time cannot be brushed aside.

13.1. The insurance company has not adduced any evidence of the owner or the driver of the scooter regarding non-involvement of the offending vehicle. This Court in *Mita Samanta (supra)* has observed as follows.

> *"Therefore, the Insurance Company in spite of taking leave under Section 170 of the 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 concerned or the rash and negligent driving, the Court is left with no other alternative but to accept the allegation of the claimants unless there is either admission of the claimants or their witness about non-involvement of the vehicle or about contributory negligence of the victim in the accident or*

> *there exists other evidence of unimpeachable nature given by uninterested witness showing falsity of the allegation of the claimants. In this case, there is no such admission or evidence of that nature. In this case, the driver has been charge sheeted and thus, there is no reason why the Insurance Company in spite of taking leave under Section 170 of the Act should not summon the said driver to give evidence for disclosing the truth. We are unable to presume collusion between the driver and the claimants when the driver has been indicted in the criminal proceedings. It will be a travesty of justice in the facts of the present case to disbelieve the eyewitness of the claimants when the owner and the driver are neither appearing nor are they even summoned by the Insurance Company even after taking leave under Section 170 of the Act to face cross examination at the instance of the claimants."*

13.2. Bearing in mind the aforesaid observation of this Hon'ble Court, as the appellant-insurance company in spite of taking leave under Section 170 of the Act has failed to adduce the evidence of owner or the driver of the offending vehicle to establish its defence of non-involvement of the vehicle, hence it will be a travesty of justice to disbelieve the eyewitness namely P.W.3 examined on behalf of the claimant in this regard.

13.3. The involvement of the vehicle has also been doubted on the ground of delay in lodging FIR. It is true that the accident has taken place on 19th February, 2005 and the complaint has been lodged after about 28 days on 21st March, 2005. The wife of the claimant Pipli Pal is the informant who in the written complaint has stated that, due to treatment of her husband, there was delay in lodging of the FIR. Learned Tribunal observing that the victim was released from the hospital on 9th March, 2005 whereas FIR was

lodged on 21st March, 2005, held that such delay has not been duly explained. The findings of learned Tribunal in this regard appears to be hyper technical. There are no ground to any fabrication or concoction or engineering of the FIR. In the absence of any evidence of any fabrication or concoction or engineering in the FIR, delay *per se* cannot make the claimant's case doubtful. I find substance in the submissions of Mr. Banik, learned advocate for appellant-claimant relying on *Ravi (supra)*.

13.4. Though Mr. Singh, learned advocate for respondent no.1-insurance company has strenuously argued that the occurrence is doubtful since no information was given to the police authorities by the driver or the owner of the offending vehicle in terms of the Section 134 of the Motor Vehicles Act, yet such non-compliance by the driver or the owner of the offending vehicle does not lead to adverse presumption against the claim made by the claimant.

13.5. It is further found from the discharge certificate dated 9th March, 2005 that the victim was admitted to the hospital on 19th February, 2005 on the date of accident with history of road traffic accident.

13.6. Further upon completion of investigation, charge sheet has been submitted against the driver of the offending vehicle. Therefore, considering the evidence of P.W.3 corroborated by the FIR **(Exhibit-1)** and charge sheet **(Exhibit-2)**, it is quite manifest that the vehicle was involved in the said accident causing injuries to the victim.

13.7. In *Pushpabai Purshottam Udeshi (supra),* the car dashed against the tree while proceeding from Nagpur to Pandurna which is factually quite dissimilar to the case at hand.

13.8. The facts involved in *Anil (supra)* is also distinct and different and, therefore, does not apply to the case at hand.

14. With regard to rash and negligent act of the driver of the offending vehicle, it is found that P.W.3, eyewitness to the occurrence, has categorically stated that the accident occurred due to rash and negligent driving of the driver of the offending scooter. Such fact has remained unchallenged in cross-examination. The evidence of P.W.3 is being corroborated by the charge sheet which has been submitted, upon completion of investigation, against the driver of the offending vehicle under Sections 279/338 of the Indian Penal Code. Such being the position, the claimant has succeeded in establishing the fact of rash and negligent act of the driver of the offending vehicle.

15. Although Mr. Singh, learned advocate for respondent no.1-insurance company relying on *Safiq Ahmad (supra)* tried to impress upon the Court that filing of false claim cases are on the rise, yet in my view, no generalised approach can be resorted and each case has to be dealt with on its own merits.

16. In view of the above discussion, the order of dismissal passed by the learned Tribunal is liable to the set aside.

17. Now the determination of compensation is to be considered. While dealing with such determination, following aspects are to be taken into account:

(i) Multiplier,

(ii) Income,

(iii) Loss of earnings,

(iv) Pecuniary and non-pecuniary damages.

17.1. It is found from the Voter's Identity Card **(Exhibit-4)** that the victim was aged about 32 years on 1st January, 1995. Thus, on the date of accident on 19th February, 2005, the victim was aged 42 years and 1 month. Following the observation of the Hon'ble Supreme Court in ***Sarla Verma (Smt) and Others versus Delhi Transport Corporation and Another***[8], the multiplier should be 14.

17.2. So far as income is concerned, as per the claim application and the evidence adduced on behalf of the claimant, the injured at the time of accident was a *thela* puller and his monthly income was Rs. 3,000/- per month. Considering the economic factors prevalent at the time of accident in the year 2005, I am of the opinion that income claimed by the claimant is reasonable and should be accepted. The victim is further entitled to an amount equivalent to 25% of his annual income towards future prospect since at the time of accident he was 42 years of age and was self-employed.

17.3. With regard to the loss of earnings, it is found that the injured-claimed, in order to prove his disablement certificate, has examined Dr. Aninda Sarkar as P.W.4 who proved the disablement certificate marked as **Exhibit-8**. P.W.4 deposed that the victim sustained disability of 60%. P.W.4 is a surgeon (orthopaedic) attached to Raiganj District Hospital. He operated the injured-victim and discharged him on 9th March, 2005. He further deposed that he along with the superintendent and other doctors formed medical board which issued disability certificate to the injured showing 60% disablement. This witness also deposed that the victim

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[8] ***(2009) 6 SCC 121***

sustained polytrauma injury on scalp, closed segmental fracture on left leg and Grade-3B fracture on right leg distal third. The discharge certificate dated 9th March, 2005 **(Exhibit-6)** also reveals of such injuries sustained by the victim in the road traffic accident. The evidence of P.W.4 was disbelieved by the learned Tribunal on the ground that some of the columns of disability certificate **(Exhibit-8)** was not filled up. Be that as it may, there are no contrary evidence suggesting of any manufacturing or procuring of such disability certificate. The doctor (P.W.4), who treated the patient and was member of the board, deposed that the victim sustained 60% disablement. Such being the position, physical disablement of 60% is acceptable. Now it is to be ascertained whether such physical disablement has effected the earnings of the victim. The victim deposed that he was a *thela* puller and, due to such injuries, he has become unemployed. However, there are no medical evidence that the victim, due to the fracture injuries, is unable to work at all. In cross-examination, P.W.4 has admitted that there is no note of shortage or any amputation of the limb. Considering the above, in my opinion, the loss of earnings of the victim should be considered at 30%.

17.4. It is found that for treatment of his fracture injuries the victim had to be hospitalised on several occasions which is revealing from the discharge certificate (**Exhibit-6, 6/1, 6/2, 6/3** respectively). Though no medical expenses has been proved, but bearing in mind that the victim was hospitalised on several occasions, I am inclined to allow an amount of Rs.5,000/- towards medical expenses.

17.5. As far as non-pecuniary damages is concerned, under the heads of pain and sufferings, bearing in mind the hospitalisation and operative measures undertaken by the victim, I am inclined to allow an amount of Rs. 30,000/-.

18. Other factors have not been challenged in the present appeal.

19. In view of the above discussion, the calculation of compensation is made hereunder:

Calculation of Compensation

Monthly income	Rs. 3,000/-
Annual income (Rs. 3,000/- x 12)	Rs. 36,000/-
Add: Future prospect @ 25% of the annual income	Rs. 9,000/-
	Rs. 45,000/-
Loss of earnings: 30% loss of income	Rs. 13,500/-
Adopting multiplier 14 (Rs. 13,500/- x 14)	Rs. 1,89,000/-
Add: Medical expenses incurred	Rs. 5,000/-
Add: Non-pecuniary damages	Rs. 30,000/-
Total compensation	Rs. 2,24,000/-

20. Thus, the claimant is entitled to compensation of Rs. 2,24,000/- together with interest at the rate of 6% per annum from the date filing of the claim application till payment.

21. Respondent no.1-insurance company is directed to deposit the aforesaid compensation amount together with interest as indicated above by way of cheque before the learned Registrar General, High Court, Calcutta, within a period of six weeks from date.

22. Upon deposit of the aforesaid amount, learned Registrar General, High Court, Calcutta shall release the same in favour of appellant-claimant on satisfaction of his identity.

23. With the aforesaid observation, the appeal stands allowed. The impugned judgment of dismissal of the claim application by the learned Tribunal is hereby set aside. No order as to costs.

24. All connected applications, if any, stand disposed of.

25. Interim order, if any, stands vacated.

26. Let a copy of this judgment be forwarded to the learned Tribunal along with lower court records for information.

27. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)