

West Bengal Form No. 3702.

HIGH COURT FORM NO. (J) 3

HEADING OF JUDGMENT

DISTRICT : COOCH BEHAR.

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL , DINHATA.

M.A.C.C. NO. 01 (D) OF 2014

Present : Sri Bimal Kanti Bera,
Judge Claims Tribunal,
Dinhata.

Thursday, the 25th day of June, 2015.

1. Anowar Miah &
2. Rupbhan BibiPetitioners.

Versus

1. Rafikul Islam &
2. The Branch Manager, Shriram General Insurance
Company Ltd.Opposite Party.

Under Section : 166 of the Motor Vehicles Act

Ratan Chandra RoyAdvocate for Appellant(s)
Sudip Das Advocate for Respondent No.-2

and having been stood for consideration to this day, the Court delivered the following judgment :-

This is a claim case under section 166 of the Motor Vehicles Act. The case of the claimants is that on 22-10-2013 at about 5 p.m when their son Rana Miah was returning home after private tuition riding his bi-cycle the truck bearing no. WB 69-3238 being run in a rash and negligent manner hit him and he fell down on the ground and sustained serious injuries . The locals removed him to Dinhata SD hospital and the doctor on duty declared him dead. The victim was the only son of the petitioners. He was a good student. He was strong and healthy. Due to premature death of the child the petitioners suffered great loss, grievous mental pain and agony.

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The child might have become a bread earner of the family. The petitioners pray for the compensation of Rs. 3,50,000/- with interest.

The O.P no.-1, Rafikul Islam-- owner of the vehicle did not contest the case. The O.P no.-2, Shriram General Insurance Company Ltd. obtained leave u/s 170 of the Motor Vehicles Act and contested the case by filing written statement taking all the defence available to the owner of the vehicle. Defence case is that the driver of the vehicle had no valid effective driving licence at the time of the accident and the owner contravened the provision of the Motor Vehicles Act by handing over the possession of the vehicle to the driver. The contesting O.P no.2 denies that the said vehicle caused the accident.

On consideration of the claim petition and the written statement filed by the contesting O.P no. 2 the following issues have been framed.

- 1) Is the case maintainable ?
- 2) Did the accident take place due to rash and negligent driving ?
- 3) Was there valid insurance coverage of the vehicle extended by the O.P no. 2 at the time of the accident ?
- 4) Are the claimants entitled to any relief ?

The claimants examined 2 witnesses and documents produced on behalf of the claimants were marked exhibit- 1 to 10. The contesting O.P no. 2 examined the driver of the vehicle and documents produced were marked exhibit- A & B.

DECISION

Issue No.-1

The claimants states that their son while returning home from private tuition was hit by a truck driven in a rash and negligent manner in

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front of the house of Niranjn Das, S/O Baganu Das at about 5 p.m on 22-10-2013 at village Dasagram, Gobrachhara (Kadamtala) under P.S Dinhata, Cooch Behar and succumbed to his injuries. The petitioners are the residents of village Dasagram, Gobrachhara, P.O Kisamata Dasagram, P.S Dinhata. The case as framed does not appear to suffer from any infirmity and the issued is held in the affirmative.

Issue No.-2

The PW-2 Manik Barman states that at about 5 p.m on 22-10-2013 while he was returning home through Dasagram, Gobrachhara (Kadamtala) he witnessed the truck bearing no. WB 69 – 3238 hitting the boy who fell down on the ground. He rushed to the place of the accident and saw the son of the claimants with serious injuries. Rash and negligent driving was the cause of the accident. He with the help of some other persons took the victim to Dinhata SD hospital where the doctor on duty declared him dead. The PW-2 stood the test of cross-examination and the O.P no.-2 failed to elicit anything in cross-examination shaking his credibility.

The PW-1 is the father of the victim boy. He corroborates the PW_1. However, in his cross-examination he states that he is not an eye-witness. He reveals in his cross-examination that his brother lodged FIR . Exhibit-1 is the certified copy of formal FIR. Exhibit-2 is the certified copy of FIR lodged by Aminur Rahaman, S/O Alauddin Mia. He alleges in the FIR that the truck bearing no. WB 69 – 3238 with a high speed knocked down his nephew, Rana Miah at about 5 p.m on 22-10-2013 and rash and negligent driving was the cause of the accident. On the basis of the FIR Dinhata P.S case no. 1334/2013 dated 23-10-2013 u/s 279/304-A of the IPC was registered. Exhibit-3 is the certified copy of charge sheet submitted in the case u/s 279/304-A of the IPC.

Above oral and documentary evidence prove that the accident took place due to rash and negligent driving and the issue is held in the affirmative.

Issue No.-3

Exhibit-6 is the copy of insurance certificate-cum-policy schedule in respect of the vehicle no. WB 69 – 3238 with Rafikul Islam as the insured effective from 12-09-2013 to 11-09-2014. The contesting O.P no. 2 has not disputed the genuineness of the Exhibit-6. The insurer has not specifically denied that the vehicle was covered with insurance extended by them. The accident took place on 22-10-2013 within the validity period. So issue decided in the affirmative.

Issue No.-4

Exhibit-5 is the copy of certificate of registration in respect of the vehicle no. WB 69 – 3238 standing in the name of Md. Rafikul Islam. It appears from the exhibit-3 that the charge sheet was submitted against Niranjana Das, driver of the vehicle no. WB 69 – 3238 and R.C book and driving licence were seized. The exhibit-4 is the copy of postmortem report of the victim boy. As the victim boy died of accident caused by the truck the parents are entitled to get compensation.

There is no plea or proof of income of the said boy. A child having no income cannot be equated with non-earning person mentioned in the schedule -II of the Motor Vehicles Act . In the case of Kishan Gopal Vs. Lala reported in (2014) 1 SCC 244 the Hon'ble Supreme Court fixed the notional income of a child @ Rs. 30,000/- per annum . So in the instant case also the notional income is fixed @ Rs. 30,000/- per annum. 50% of the notional income be deducted towards personal expenses as claimants are parents. As per the decision of Sarla Verma Vs. Delhi Transport Corporation the multiplier in case of victim child is 15. So notional loss of dependancy comes to (Rs. 30,000 – 15,000/- being 50 % of notional income) X 15 = 2,25,000/- . As per the above judgment of Kishan Gopal a sum of Rs. 50,000/- be allowed towards loss of love and affection and funeral expenses . Total compensation thus comes to Rs. 2,25,000/- + 50,000/- = 2,75,000/- .

It appears from the evidence of O.P.W. no.-1 – the driver of the offending vehicle that he had valid driving licence at the relevant time of the accident. Exhibit-A is the copy of letter of authorization issued by the owner to drive the vehicle. Exhibit-B is the copy of driving licence. As the contesting O.P no.-2 is the insurer and as there was valid insurance coverage the O.P is liable to pay the compensation with interest. The issue is accordingly decided in favour of the claimants.

Hence, it is

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that the claim case be and same is allowed ex-parte against the O.P no.-1 and on contest against the O.P no.-2 without cost. The O.P no.-2 is directed to pay the sum of Rs. 2,75,000/- with simple interest @ 6 % per annum from the date of filing the claim case till payment within 60 days from this date by cheque through this court.

Dictated & corrected

Judge Claims Tribunal,
Dinhata.

Judge Claims Tribunal,
Dinhata.