

**IN THE COURT OF JUDGE, MOTOR ACCIDENT CLAIMS TRIBUNAL
4TH COURT, MURSHIDABAD, BERHAMPORE.**

**Present : Sri Tarak Nath Bhagat,
Additional District Judge,
4th Court, Murshidabad, Berhampore.**

**M.A.C.C. NO. 325/2014
(CNR no WBMD01-005168-2014)**

**1. Md. Yeakub Sekh @ Yakub Seikh
2. Hasina Bibi**

.... **Claimants/ Applicants**

Vs.

1. Jiaur Rahaman		OP no.1
2. ICICI Lombard General Insurance Company Ltd.		O.P No.2

**Under Section 166 of M.V ACT
Date of Delivery of Judgment : 8th day of June , 2023**

J U D G M E N T

This is a case under section 166 of the M. V. Act. The instant case has been filed by the claimants claiming compensation of an amount of Rs. 6,62,000/- from the OP.

The claimants case in brief is that when the boy Md. Asmat Sekh @ Md. Asmat Ali Sk. was going to Berhampore bus stand with his bicycle on 08.02.2014 at around 9:30 a.m. on the way when he reached at Gitaram Hospital a high speed motorcycle bearing registration no. WB 58X 1455 struck the victim from the back side and as a result his son fell down and got seriously injured specially on head. When he was taken to Berhampore Medical College & Hospital he was declared as dead.

An F.I.R was lodged against the driver for rash and negligent driving which was registered as Berhampore PS case no. 447/2014 dated 09.04.2014 u/s 279/304A IPC.

The owner of the vehicle, O.P No. 1 did not contest the case and the case proceeded ex parte against him. His defence was taken up by the ICICI Lombard General Insurance Company Ltd. as per provisions of Section 170 of the M.V Act.

The O.P. No. 2 / the ICICI Lombard General Insurance Company Ltd. filed written statement and contested this suit. The O.P. No.2/ the ICICI Lombard General Insurance Company Ltd. has denied all material allegations as made in the claim petition. He has denied that the deceased was aged 21 years of age and he was knocked down by the alleged offending vehicle. He has further denied the income of the victim and his profession. He has further denied the date, place and manner of the alleged accident and the nature of the injury of the victim He does not admit that the offending vehicle was covered under a policy issued by OP no.2 at the material time of accident. He has also denied that the offending vehicle was in any way responsible for

Contd.....P/2

the injury of the victim. The O.P no. 2 has denied that vehicle no. WB 58X 1455 was being driven rashly and negligently at the time of the alleged accident and was involved in the said accident. His further case being that the alleged offending vehicle was being driven by an unauthorized person having no license. As such, Insurance company is not liable to pay compensation .

Upon the pleading of the parties, the following issues have been framed for consideration in this case.

ISSUES

1. Is the case u/s. 166 of the M.V. Act maintainable in law and in fact ?
2. Whether Md. Asmat Sk. died in a motor accident on 08.02.2014 as alleged ?
3. Whether the offending vehicle being no. WB 58X 1455(Honda Motorcycle) was involved in the said accident ?
4. Whether the said vehicle was duly insured with OP no. 2 at the time of accident ?
5. Whether the said accident took place due to rash and negligent driving of the said offending vehicle ?
6. Whether the O.P.s are liable to pay compensation as prayed for ?
7. Whether the petitioner is entitled to any other relief , if so what other reliefs the petitioner is entitled to ?

Decision with reasons

Issue No.1.

The O.P. No. 2 / the ICICI Lombard General Insurance Company Ltd. did not press this issue at the time of advancing his respective arguments before this court. However on careful consideration and perusal of the relevant materials on record, this court is of the view that there is nothing to show that the instant case is not maintainable and the claimants do not have right to sue or there is no cause of action. As such this issue is decided in favour of the applicant/ claimants.

Issue Nos.2- 7:

These six issues are taken together for brevity of discussion and convenience .

In this case the following documents have been marked as exhibit:

Certified copy of FIR, complaint and charge sheet filed in connection with Berhampore P.S. Case no. 447 of 2014 dt. 09.04.2014;

Attested copy of Postmortem report of deceased Md. Asmat Sk. aged 21 years;

Photo copy of death certificate of deceased Asmat Ali Sk. ;

Photocopy of voter identity card of petitioner Yakub Sk.

Photocopy of voter identity card of deceased Md. Asmat Sk;

Photocopy of Registration certificate of Jiyaur Rahaman ;

Photocopy of policy certificate in the name of Jiyaur Rahaman ;

Photocopy of driving licence of Rajibul Islam valid up to 23.10.2016.

It is apparent from the complaint and charge sheet filed in Berhampore P.S. 447 of 2014 that on completion of investigation police came to the conclusion that on 08.02.2014 at around 09:30 hrs. one Md. Asmat Sk. was proceeding to

Berhampore bus-stand by bicycle and on the way near Gitaram Hospital the offending vehicle (motorcycle) bearing no. WB 58X 1455 knocked him from behind and as a result he received serious injury. Local people took him to Gitaram Hospital from where he was shifted and admitted at Murshidabad Medical College & Hospital. Subsequently, the doctor of the said hospital declared him as dead. The said accident happened due to rash and negligent driving by the driver of the said vehicle namely, Rajibul Islam. As such, police submitted C/S against this accused driver u/s. 279/304A of IPC to face trial.

It further appears that in course of investigation police seized the offending vehicle bearing no. WB 58X 1455 (motorcycle) along with its connected documents being registration certificate of offending vehicle in the name of OP no. 1 Jiyaur Rahaman, tax token, the insurance policy certificate issued by OP no. 2/ insurance company valid up to 12.03.2014, General Power of attorney dt. 07.05.2016.

It is apparent from these documents that on the date of the said accident on 08.02.2014 the offending vehicle was carrying all valid documents for plying the vehicle. The D/L of the accused driver reveals that on the date of the said accident the accused driver had a valid license to drive the said offending vehicle. Moreover the offending vehicle was in his custody legally as apparent from the general power of attorney seized by police.

In this case claimant Md. Yekub Sk. has deposed as PW1 and Sajamal Sk. an eye witness has deposed as PW2. The legal manager of OP no. 2 Insurance Company Janmonjoy Nandi has deposed as OP no. 1.

PW1 in his evidence has stated that he is the father of the deceased and his son was aged 21 and half years at the time of death. He was a skilled mason earning Rs. 4,800/- per month. The said accident involving motorcycle no. WB 58X 1455 which took place on 08.02.2014 at around 8:30 a.m. near Gitaram Hospital was due to rash and negligent driving on the part of the driver of the said vehicle. He has further stated that has no document to show the monthly income of his deceased son and he heard the incident from his neighbors Chand Md. and Sajamal Sk. He did not file any document to prove the date of birth of his son.

PW2 has stated in his evidence that he is a garment seller and he saw the accident which happened on 08.02.2014 at about 9:30 a.m. at Uttarpara more near Gitaram Hospital involving motorcycle bearing registration no. WB 58X 1455 which dashed the deceased who was riding a bicycle from behind causing him to fall on the ground and sustain serious injury. The said deceased was a Rajmistiri and the incident happened due to rash and negligent driving on the part of the driver of the said motorcycle. He has further stated that he brought the victim from the PO to Gitaram Hospital from where he was taken to Murshidabad Medical College and Hospital where he expired. This witness has withstood the test of cross-examination.

The witnesses PW1 and PW2 have supported the findings of police as stated in the charge sheet. Considering the same this court comes to a finding that Md. Asmat

Sk. who was a skilled mason died in a road traffic accident which happened on 08.02.2014 on national High way near Gitaram Hospital involving motorcycle no. WB 58X 1455 which was duly insured on the date of occurrence under a valid policy issued by OP no. 2/ Insurance Company. The said accident happened due to rash and negligent driving on the part of the driver of the said vehicle. As such , OP no. 2/ Insurance company is liable to pay compensation.

It further appears from the PM report that Asmat Sk. aged 21 years died as a result of injuries as mentioned therein which was antimortem and accidental in nature.

The death certificate of deceased Asmat Ali Sk. gives his age as 21 years on the day of his death. The voter identity card gives his date of birth as on 06.09.1992. As such it is apparent on the day of accident the deceased was aged above 20 years , but not exceeding 25 years. It apparent from the voter identity card of the deceased that the claimant Sk. Yeakub is his father. The voter identity card of claimant Hasina Bibi reveals that Yeakub is her husband. Now the only question to be decided is the income of the deceased.

It appears that the claimants have claimed that the deceased was a skilled mason earning Rs. 4,800/- per month. Considering the age of the deceased and the provisions of the minimum wages Act, I am inclined to accept the claim of the claimants that the deceased had a income of Rs. 4,800/- per month.

Ld. Lawyer for the OP insurance Company has argued that no documents of treatment of Gitaram Hospital where the deceased was initially taken as alleged has been produced . As such the story of alleged accident is concocted. He has also cited rulings as appearing in 2001 ACC 484 and 2017 AAC 2436. However this court does not agree with the argument of the counsel for the insurance company that the story of RTA is false and concocted in view of the observation/discussion as made above.

As the age of deceased was less than 25 years , but more than 20 years , the multiplier as per Sarla Verma Case [2009 ACJ 1298 (SC)] applicable will be 17. The amount of compensation which the claimants are entitled is given as hereunder.

<u>Heads</u>	<u>Compensation</u>
i. Income	Rs. 4,800/-
ii. Deduction towards personal expenditure (1/3 rd of Rs.4,800/-)	Rs. 1,600/-
iii. Total income (2/3 rd of Rs. 4,800/-)	Rs. 3,200/-
iv. Multiplier	17
v. Loss of future income (Rs. 3,200/-X12X17)	Rs. 6,52,800/-
vi. Funeral expenses	Rs. 5,000/-
vii. Loss of estate	Rs. 5,000/-
Total compensation	Rs. 6,62,800/-

The claimants are each entitled to get Rs. **3,31,400/-** as compensation. Both the claimants do also get interest on such amount @ 6% from the date of filing of the claim application till actual realisation.

In view of the same, the instant case succeeds. Accordingly the issues are disposed of.

The claimants are to pay deficit court fee ,if any, within one month.

Hence , it is

ORDERED,

that the instant M.A.C.C case no. **325/2014** be and the same is allowed ex parte without cost against OP No. 1/Owner and on contest against O.P. no 2/ ICICI Lombard General Insurance Company Ltd. without cost .

The claimants namely, **1) Hasina Bibi and 2) Md. Yeakub Sekh @ Yakub Seikh** do each get compensation of **Rs.3,31,400/- (Three lakh and thirty one thousand four hundred)**. The claimants also do get interest @ 6 % per annum from the date of filing of the claim application till actual realization.

The OP no. 2 / ICICI Lombard General Insurance Company Ltd. is directed to issue two account payee cheques for the amount as mentioned herein above in favour of the claimants along with interest at the rate of 6 % p.a on such amount from the date of filing of the claim application till its actual realization within two months of the date of this order.

Let a copy of this judgment be supplied to the Ld. Advocate for the O.P no.2 / ICICI Lombard General Insurance Company Ltd.. for compliance.

Dictated and corrected by me,

MAC,Tribunal Judge,
4th Court, Bmp., Msd.

MAC,Tribunal Judge,
4th Court, Berhampore, Murshidabad.
J.O. No. WB 00564