

**REPORTED**

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

**+ MAC APP. NO.109/2009**

NEW INDIA ASSURANCE COMPANY LTD. .... Appellant  
Through: Mr. D.K. Sharma, Advocate.

versus

KUNTI DEVI AND ORS.. .... Respondents  
Through: Mr.Sajan K. Singh, Advocate, for the  
respondents no.1 to 6.

% Date of Reserve : November 10, 2010  
Date of Decision : November 29, 2010

**CORAM:**  
**HON'BLE MS. JUSTICE REVA KHETRAPAL**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

**: REVA KHETRAPAL, J.**

1. By way of this appeal, the appellant seeks to assail the Award dated 27<sup>th</sup> September, 2008 passed by the Motor Accident Claims

Tribunal awarding a sum of ₹ 8,74,000/- along with interest @ 7.5% per annum from the date of the filing of the petition till realization, passed in favour of the respondents no.1 to 6.

2. The brief facts necessary for the disposal of the present appeal are delineated as follows: On 31<sup>st</sup> December, 2005 at about 9.20 p.m. the motorcycle of one Mahender Pratap Singh (hereinafter referred to as ‘the deceased’) was hit by a tempo bearing registration no. RJ-02-G-3961 on the main Ring Road, near the red light of Maya Puri Fly Over. The deceased was removed to DDU Hospital where he was declared “brought dead.” A claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed on behalf of his widow, his three minor children and his parents (the respondents no.1 to 6 herein), against the driver (respondent no.7 herein), the owner (respondent no.8 herein) and the insurer (the appellant herein) of the offending vehicle. The respondents no.7 and 8 did not contest the petition and were proceeded *ex parte* in default of appearance. The appellant also denied the claim of the petitioners, though admitted the

fact that the offending vehicle stood insured with it on the date of the accident.

3. The sole ground on which the award has been assailed by the appellant is that the learned Tribunal erred in relying upon the evidence of PW2, Sh. Narender Sharma, the alleged eye-witness. Mr. D.K. Sharma, the learned counsel for the appellant contended that the First Information Report had been registered on the statement of R3W2, Sh. Ankur Patni, at 9.25 p.m., who was unable to give the registration number of the offending vehicle to the police. It was on 1<sup>st</sup> March, 2006 that the police was informed about the registration number of the vehicle, i.e. two months after the accident and the petition itself was filed on 4<sup>th</sup> September, 2006. In such circumstances, the learned counsel contended that the finding rendered by the Tribunal with regard to the rash and negligent driving of the respondent no.7 (the respondent no.1 in the claim petition) was wrong.

4. It may be noted at this stage that the respondents no.7 and 8, the driver and owner of the offending vehicle, though duly served

with the notice of the filing of the appeal did not care to appear and were accordingly proceeded *ex parte*. Mr. Sajan K. Singh, the learned counsel for the respondents no.1 to 6, however, sought to rebut the contentions raised by the appellant by pointing out that neither the respondent no.7 nor the respondent no.8 in their respective written statements filed before the learned Tribunal had denied the factum of the accident with their vehicle and as a matter of fact, both the respondents in paragraph 10 of their respective written statements had alleged contributory negligence on the part of the deceased. This being so, it was not open to the appellants to contend that the testimony of PW2, Sh. Narender Sharma, should be brushed aside merely on account of the fact that he was tardy in forwarding the vehicle number of the offending vehicle to the police.

5. A look now at the affidavit by way of evidence tendered by the PW2, Sh. Narender Sharma, before the Tribunal, which is reproduced hereunder in its entirety and reads thus:

“Affidavit of Shri Narender Sharma, son of Shri B L Sharma, resident of RZG-105, Vishwas Park, Uttam Nagar, New Delhi.

I, the above named deponent do hereby, solemnly affirm and declare as under :

1. That the deceased Shri Mahender Pratap Singh was my friend and was working in the same company with me as Senior Machine Operator and drawing of Rs.6,000/- per month apart from other benefits and allowances. Apart from his regular job, he was also working part time as Consultant with the various Printing Press concerns and also earning about Rs.4,000/- to 4,500/- per month.
2. That on 31.12.2005, both of us were going to attend our duty on our respective motor cycle from the residence of the deceased at a normal speed taking due care and caution as well as by following the traffic rules.
3. That on 31.12.2005 at about 9.20 p.m., when we reached at Main Ring Road, Near Mayapuri flyover, New Delhi, a Tata Tempo bearing no.RJ-02-G-3961 had come from behind, driven by respondent no.1 Shri Sharwan Kumar rashly and negligently, and hit the deceased. As a result of the impact, deceased had fallen down and sustained multiple fatal injuries. After the accident, the driver of the offending tempo had fled away from the spot. I had chased the offending vehicle and noted down the number of the offending vehicle in my diary. But unfortunately my diary was misplaced when the same was found I had informed the police about the number of offending vehicle.
4. That the accident in question had happened only because of rash and negligent driving of the respondent no.1 who was driving the tempo in question very rashly and negligently.”

6. In the course of his cross-examination, PW2, Sh. Narender Sharma, reiterated that he had chased the offending vehicle and noted down its number. He also volunteered to state that on 1<sup>st</sup> March, 2006 he had given in writing to the SHO regarding the fact that he was an eye-witness to the accident, certified copy whereof was on record as Ex.PW1/A. He explained that he had lost his diary in which he had noted the number of the offending vehicle but had found the same after about 8 days. Thereafter, he had gone to Alwar as the police had asked him to enquire about the vehicle whose number had been written by him in his diary.

7. The evidence of PW2, Sh. Narender Sharma, is corroborated by the evidence of R3W2, Sh. Ankur Patni, who was also an eye-witness to the accident. In the course of his testimony, R3W2 stated that on 31<sup>st</sup> December, 2005, he witnessed a truck hitting a motor cycle at the Mayapuri Fly Over while he was going from Naraina to his house at New Rajender Nagar, Delhi, in his Santro Car. The motorcycle was going ahead of the truck and the truck had hit it from the back. The

truck was at the speed of 40-50 kmph and the accident had happened because of the negligence of the truck driver. As a result of the impact, the motorcyclist had fallen and his skull had come under the tyres of the truck. He, however, stated that he did not follow the truck as the truck driver had fled away from the spot after the accident. Interestingly, this witness in cross-examination stated that there was one more motorcyclist there at the time of the accident.

8. The aforesaid statement of R3W2 also finds support from the death report wherein the name of PW2 Sh.Narender Sharma is mentioned. PW2, Sh. Narender Sharma cannot therefore, be called a planted witness, as is sought to be made out by the learned counsel for the appellant. It is not in dispute that the deceased and PW2 Narender Sharma were working as machine operators in the printing press belonging to the same company, viz., Swan Press, B-71, Naraina Industrial Area, Phase-II, Delhi. Both the deceased and the PW2 were residing at Uttam Nagar, which is apparent from the statements of PW1, Smt. Kunti Devi (the widow of the deceased) and PW2 himself, recorded by the learned Tribunal. Both were bound for

the same destination at the fateful hour and were proceeding on their respective motorcycles to the printing press where they were working. PW2 has testified that he had chased the offending vehicle in order to note down the number of the offending vehicle and his testimony stands corroborated by the fact that the eye-witness to the accident produced by the appellant itself, i.e. R3W2, Mr. Ankur Patni, testified that the truck driver had fled away from the spot after the accident and was chased by some people. He also stated that there was one more motorcyclist there at the time of the accident.

9. In view of all the aforesaid facts and circumstances taken cumulatively, I find no reason to doubt the testimony of PW2, Sh. Narender Sharma, who was neither related to the deceased nor had any axe to grind with the Insurance Company. The report filed by the said witness with the SHO, Police Station Kirti Nagar, Delhi, dated 1<sup>st</sup> March, 2006 further lends credence to his version. There also does not appear to be any plausible reason as to why the driver and the owner of the offending vehicle would unequivocally admit in their written statements that the accident was caused by the offending

vehicle. Their only defence that the deceased was guilty of contributory negligence further fortifies the version of the respondents no.1 to 6 that the accident was caused by the offending vehicle.

10. In view of the aforesaid discussion, there is no merit in the present appeal. The same is accordingly dismissed.

**REVA KHETRAPAL  
(JUDGE)**

**November 29, 2010**  
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