

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

Reserved on: 3rd November, 2011
Pronounced on: 19th December, 2011

+ **MAC APP. 76/2011**

NATIONAL INSURANCE CO. LTD. Appellant
Through: Ms. Neerja Sachdeva, Adv.

Versus

NARESH KUMAR MISHRA & ORS. Respondents
Through: Mr. Arun Sukhija Advocate for R-1 &
R-2.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant National Insurance Co. Ltd. challenges the award dated 03.11.2010 passed by the Motor Accident Claims Tribunal (the Tribunal) whereby the compensation of ₹ 5,48,655/- was awarded on account of the death of Sanjay Mishra. The deceased was a bachelor and aged 22 years at the time of the accident.
2. The Insurance Company questions the Tribunal's findings on the involvement of the vehicle as well as on the amount of compensation.

3. In order to establish the involvement of the vehicle number DL-1LG-5302 (Tata 407) and rashness and negligence on the part of its driver, the Respondents (Claimants) examined PW-4 Sachin Mishra. He deposed that on 09.12.2008 he along with Sanjay Mishra (the deceased) was proceeding to Sarai Rohilla from Daya Basti. At about 9:00 P.M. they reached near Usha Mata Mandir, when the vehicle Tata 407 bearing number DL-1LG-5302 being driven by Respondent No.3 (Dil Bhadur) came from behind and hit their motor cycle. On account of the forceful impact they fell down on the road and sustained injuries. He noted down the number of the offending vehicle and made a call to the police. A PCR van removed the deceased to the hospital in an ambulance. He gave the number of the offending vehicle to the PCR van.
4. In cross-examination, the witness deposed that they were travelling on a motorcycle make Pulsar having number 7786. He deposed that the offending vehicle was Tata 407 and was an open body tempo. The witness denied the suggestion that it was Tata 712.
5. Against this Jaspal Singh Chhabra (Respondent No.4) owner of the vehicle number DL-ILG-5302 Tata 712 filed his affidavit Ex.RW-1/1 and entered the witness box as PW-1. He testified that on 09.12.2008 the vehicle was loaded from Kasna Suraj Pur U.P. and was unloaded at Badarpur at 2:30 P.M.

6. The driver of the vehicle number DL-ILG-5302 filed his affidavit Ex.RW-2/2 and entered the witness box as PW-2. He corroborated the version as given by RW-1. In the cross-examination the witness deposed that on 09.12.2008 at about 9:00 P.M. he was proceeding towards Badarpur from Noida. He admitted that owner of the vehicle RW-1 was not with him at the time of the accident. He denied the suggestion that he was present near Usha Mata Mandir, Sarai Basti on 09.12.2008 at 9:00 P.M. and while driving the vehicle in a rash and negligent manner had caused the accident.
7. It is contended by the learned counsel for the Appellant that a criminal case, registered on the basis of the report made by PW-4 Sachin Kumar was sent as untraced according to the police investigation so the involvement of the vehicle was not established.
8. A complaint Ex.PW-3/1 was made by Naresh Kumar Mishra, the deceased's father regarding non-mentioning of the offending vehicle number DL-ILG-5302 to the Commissioner of Police. It is important to note that the number of the vehicle was not mentioned in the FIR though PW-4 Sachin Kumar and his father PW-1 Naresh Kumar Mishra claimed that the number of the vehicle was given to the police. PW-4 maintained that it was a Tata 407 even though the vehicle involved in the accident was Tata 712. The model Tata 712 is a vehicle slightly bigger than Tata 407. Such distinction cannot be made by a layman. A

layman can simply differentiate between a full body truck and the later versions introduced by various companies like Tata 407, Tata 712, etc. etc. It is difficult to differentiate between Tata 407 or Tata 712 as both are smaller to full body truck. If PW-4 or for that matter PW-1 (the deceased's father) really wanted to falsely involve the offending vehicle, they would have clearly disclosed later on that the offending vehicle number DL-1LG-5302 was Tata 712. The fact that they gave the number and at the same time mentioned that it was a Tata 407 showed that they were honest and were sure about the involvement of the vehicle number DL-1LG-5302. The standard of proof required in a criminal case is different from the standard of proof required in a civil suit or a claim petition under the Motor Vehicles Act. In a criminal case the offence has to be established beyond shadow of all reasonable doubt whereas in a claim petition, the involvement of the vehicle and negligence has to be established on the test of preponderance of probability. In my view, the involvement of vehicle number DL-1LG-5302 is established on the preponderance of probability and simply the fact that the police was not sure about the involvement of the vehicle would not be a ground to exonerate the owner and the driver of the vehicle number DL-1LG-5302.

9. It is claimed by the Appellant that the height of the vehicle was six ft. whereas PW-4 gave the height to be 2½ ft. In my view, it

is not a material difference as this difference can arise with the passage of time. The Tribunal rightly held that the accident was caused by vehicle number DL-1LG-5302.

10. On the quantum of compensation, the Respondents (Claimants) claimed that the deceased was employed as a Supervisor with M/s. Durga Tent House, Subhdra Colony, West Moti Bagh Delhi and was earning ₹ 6,000/- per month. Unfortunately, neither any documentary evidence nor any other corroborative evidence could be produced in support of PW-1's testimony on this count. The Tribunal, therefore, rejected PW-1's testimony with regard to the deceased's income and took the minimum wages to calculate the loss of dependency.
11. The Appellant's contention is that if the minimum wages were taken to calculate the dependency, benefit of 50% towards increase in minimum wages ought not to have been given.
12. This accident took place on 09.12.2008. It is important to note that on 01.08.2009 the minimum wages of an unskilled worker were a little less than ₹ 4,000/- and just after six months these were substantially increased by the Govt. of NCT of Delhi to ₹ 5278/- i.e. a raise of about 30%. It is evident that minimum wages are increased not only to offset inflation but also to provide better standard of living to the lowest paid workers in the country to provide them with better standard of living and to share the growth in the GDP. I am supported in this view by

judgments of this Court in (i) *UPSRTC v. Munni Devi*, IV (2009) ACC 879; (ii) *National Insurance Company Ltd. v. Renu Devi & Ors.*, III (2008) ACC 134; and (iii) *Narinder Bishal & Anr. v. Rambir Singh & Ors.* MAC APP. 1007-08/2006 decided by this Court on 20th February, 2008.

13. In the circumstances, the benefit of 50% increase in the minimum wages was rightly given by the Tribunal. The Tribunal deducted 50% of the deceased income towards his personal expenses and awarded an overall compensation of ₹ 5,48,655/- which cannot be said to be exorbitant or excessive.
14. I do not find any merit in the appeal; the same is accordingly dismissed. No costs.
15. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 19, 2011

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