

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ MAC APP. 74 OF 2006
&
MAC APP. 403/2011

% JUDGMENT DELIVERED ON:26.08.2011

THE NEW INDIA ASSURANCE CO. LTD. APPELLANT
Through: Mr. Joy Basu, Advocate

VERSUS

KIRAN DEVI & ORS. RESPONDENT
Through: Mr. Sanjeev Mehta
for R-1 to R-5.

CORAM:

HON'BLE MR. JUSTICE A.K. SIKRI

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

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1. Respondents no. 1 to 5 are the legal heirs of the deceased Sh. Lal Chaudhary who died in an accident on 23rd April, 2001. The deceased, on the fateful night, was returning back to his home alongwith one Sh. Sushil Kumar in a TSR bearing no. DL-IRD-4940 which was driven by Sh. Shiv Mohan @ Pappu. As per the version of the respondents no.1 to 5 (claimants before the MACT), Sh. Lal. Chaudhary and Sh. Sushil Kumar had hired the aforesaid TSR from

Ajmeri Gate for going to Jahangir Puri, resident of the deceased. When they reached Libra Petrol Pump, Jahangir Puri, it was about 1.45 a.m. A quarrel took place over the fare with Sh. Shiv Mohan, driver of the TSR. According to the claimants, the fare was settled at Rs. 70/- and to give this fare, the deceased had given 100 rupee note to the driver but the driver did not return the balance amount, instead he accelerated the said three wheeler at a fast speed with the intention to run away without returning the balance amount of Rs. 30/- The deceased tried to stop the said three wheeler by catching the iron rod on the roof of the TSR. In the process, the three wheeler which was at fast speed, overturned and deceased was pressed under it. He was taken to BGRM Hospital where he was declared as "brought dead". It is not in dispute that the said TSR was insured by the appellant herein. In these circumstances, the claimants filed the claim in the Court of MACT impleading Sh. Shiv Mohan as respondent no.1, Sh. Khushi Ram, (owner of the TSR) as respondent no.2 and the appellant Insurance Company as respondent no.3.

2. The claim of the claimants was contested by the respondent. However, after certain few hearings, the respondent no.6 and 7 herein i.e. driver and owner of TSR stopped appearing and were proceeded ex-parte. The appellant, accordingly was the sole contestant.

3. On the basis of the pleadings, following three issues were framed:-

- (i) Whether Lal Chaudhary died after fatal injuries in the road accident caused due to rash and negligent driving of three wheeler scooter no. DL1RD-4940 by R1 on 23/4/2001 at about 1.45 AM at in front of Libra Petrol Pump, GTK Road, Jahangir Puri?.
- (ii) To what amount of compensation the petitioners are entitled, if so, from whom?
- (iii) Relief.

4. Insofar as issue no.(i) is concerned, Sh. Sushil Kumar, who was accompanying the deceased appeared as PW-1. He was the eye witness to the accident and deposed the manner in which the accident took place, as noted above. His deposition was corroborated by the chargesheet Ex. P-1 which mentions PW-1 as the complainant and the eye witness to the accident. On the basis of his testimony and testimony of other witnesses, the learned MACT returned the finding on issue no.1 in favour of the claimants holding that the deceased died after receiving fatal injuries in the road accident because of the rash and negligent driving of the TSR driver. The defence of the appellant herein was that facts as established on record would show that it was a case of culpable homicide or murder of the deceased than the road traffic accident

and as such petition filed by the claimant was not maintainable under the provisions of the Motor Vehicle Act. This contention was rejected, and rightly so, by the learned MACT relying upon the judgment of the Apex Court in *Rita Devi and others Vs. New India Assurance Co. Ltd. and another*, 2000 ACJ 801.

5. On the second issue, the learned MACT held that the claimants would be entitled to compensation of Rs. 5,92,360/-. The MACT awarded that compensation alongwith interest @ 7.5 per annum.

6. This appeal is filed challenging the aforesaid award dated 28th September, 2005 rendered by the learned MACT awarding the compensation in the manner stated above. Two grounds are raised to challenge the award of the Tribunal. In the first place, it is argued that Sh. Shiv Mohan @ Pappu, driver of TSR was not holding a proper and valid driving licence and, therefore, the Insurance Company cannot be fastened with any liability. Second ground which is raised pertains to the contributory negligence on the part of the deceased.

7. Insofar as first ground is concerned, in order to prove that the driver was not holding a valid licence and in fact the licence had expired on the date of accident, the Insurance Company had

produced photocopy of Form-6 (under Rule 16 (1)) which was the form of Driving Licence purportedly issued to the driver. It bears the date as 12th March, 1998. The second document which was produced was photocopy of Form-54. The accident information report as per which the licence was renewed further w.e.f. 4th December, 2001. Learned counsel, referring to Section 14 of the Motor Vehicle Act submitted that the validity of such licence issued to drive a passenger vehicle is three years and when the licence was issued on 12th March, 1998 which was expired on 11th March, 1998, thereafter renewal was taken place on 4th December, 2001 for another period of three years i.e. upto 3rd December, 2004. On this basis, it was sought to argue that on 23rd April, 2001 namely the date of accident, the licence had expired and had not been renewed. However, the appellant cannot rely upon the aforesaid documents which have not been proved on record at all. As stated above, only photocopies were filed and no witness from the Transport Authority was produced by the appellant to prove the said documents. These documents were, thus, rightly rejected by the learned Tribunal.

8. Coming to the second argument raised by the learned counsel for the appellant, as already noted above, the only defence which was taken by the appellant was that it was a case of murder/homicide and petition under the Motor Vehicle Act was

not maintainable. The appellant did not set up a case of contributory negligent at all. In the absence of any such defence raised before the Tribunal it is not open to the appellant to set up all together new case for the first time in this appeal.

9. I thus did not find any merit in this appeal which is accordingly dismissed.

10. All pending applications also stand disposed of.

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11. Dismissed as not pressed.

**(A.K. SIKRI)
JUDGE**

AUGUST 26, 2011
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