

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

Reserved on: 14th December, 2011
Pronounced on: 23rd December, 2011

+ **MAC APP. 458/2011**

BAJAJ ALLIANZ GENERAL INSURANCE CO..... Appellant
Through: Ms. Neerja Sachdeva, Advocate.

Versus

PARWATI & ORS. Respondents
Through: Mr. Kundan Kumar Lal, Advocate for
Respondents No.1 to 5.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. Appellant Bajaj Allianz General Insurance Company Limited impugns the award dated 25.01.2011 whereby a compensation of ₹ 10,57,860/- was awarded by the Motor Accident Claims Tribunal (the Tribunal) in respect of the death of Raghubir, who lost his life in an accident which took place on 06.05.2009.
2. The contentions raised on Appellant's behalf are :-
 - (i) The accident did not take place on account of rash or negligent driving of Respondent No.6 Shiv Kumar Kaushik, rather, the deceased was travelling as a gratuitous passenger in truck number HR-47-A-9421 who fell from it and died at the spot, and

- (ii) The compensation awarded is exorbitant and excessive as although the deceased's income was not established, yet applying the minimum wages of an unskilled worker, benefit of 50% was given on account of inflation.

CONTENTION NO. (i)

3. It is urged by the learned counsel for the Appellant that in the criminal case a confession was made by Respondent No.6 Shiv Kumar Kaushik before the police which shows that the deceased was a gratuitous passenger. The statement was to the effect that a labourer (the deceased) was engaged by the driver to transport bricks into the truck (the offending vehicle). At about 2:30 P.M. they were returning to Najafgarh, the truck capsized on account of his (driver's) rash and negligent driving due to which passenger sitting beside him suffered fatal injuries. This confessional statement recorded by the police officer during investigation of a criminal case is not admissible in evidence. The Tribunal for the purpose of making an inquiry to give a finding on negligence was required to analyze the evidence produced before it. On the question of negligence, the Tribunal observed as under:-

“9. The petitioners have examined Sh Rambir (PW2) to prove the manner of accident. He has deposed that on 6/5/2009 he had gone to village Dhansa. He was coming back on his two wheeler scooter. A Tata 407 had over taken him at a fast speed. The time was 2/2.30 p.m. After covering a

distance of about 20/30 meters, that Tata 407 had hit the middle patri. He had reached there. It was found that some person had come under that vehicle. The number of that vehicle was HR-47-9421. He had studied upto 8th class. The accident had taken place entirely due to fault of the driver. He had driven the vehicle at a very fast speed. Police officials had reached there. The police officials had inquired the facts from him. He had narrated to them as to how the accident had taken place. He did not know the person who had come underneath Tata 407.

10. The statement of PW2 was recorded on 29/7/2010. On that date R1 and R2 were Ex parte.

11. Counsel for R1 and R2 did appear on 26/8/2010 and the Ex parte proceedings were set aside. However, no application for recalling PW2 was moved.

12. Except a bald suggestion that he (PW3) had been introduced as a witness by the petitioners, no other material has been brought in his cross examination conducted on behalf of R3, to show that PW2 was not present at the time of accident.

13. In the present case R1 and R2 have not disputed the fact that the offending vehicle had hit the middle patri. The plea of R1 and R2 is that the deceased was lying on the other side of the road. It was for R1 and R2 to substantiate their defence.

14. It is a fit case in which principle of 'Res Ipsa Loquitur' can be applied. This principle belongs to the law of torts where negligence is in issue. The event of accident must be of a kind which does not happen in the ordinary cause of things, if those who have the management and control use due care. Further, the event which caused the accident

must be within the defendant's control. The reason for the second requirement is that where the defendant has control of the thing which caused the accident (injury) he is in a better position than the plaintiff to explain how the accident occurred.

15. R1 has not appeared, therefore, an adverse inference shall have to be drawn against him."

4. From PW-2's testimony it cannot be inferred that the deceased was sitting in the offending vehicle as a gratuitous passenger or otherwise at the time of the accident.
5. Kapil Dev was examined under Section 165 of the Evidence Act by the Tribunal. He disowned the statement Ex.R3W1/B attributed to him. Thus, there was no material on record to conclude that the deceased was a gratuitous passenger in the offending vehicle (a goods vehicle), which will give a right to the Insurance Company to avoid the liability. It was not the case of Respondents no.6 and 7 before the Tribunal or even in the Appeal that the deceased was a gratuitous passenger. Rather, Respondents No.1 and 2's plea was that at the time of the accident the deceased was lying on the other side of the pavement. On the basis of PW-2's testimony for the purpose of deciding a petition under Section 166 of the Motor Vehicle Act, it can be inferred that there was culpable negligence on the part of Respondent No.6 in driving the offending vehicle number HR-47-A-9421.

CONTENTION NO. (ii)

6. The deceased's income was claimed to be ₹ 6,000/- per month. In the absence of any cogent evidence to prove the income, the Tribunal took the minimum wages of an unskilled worker under the Minimum Wages Act i.e. ₹ 3934/- per month as the deceased's income. The Tribunal relied on *Kumari Chunni v. Balwant & Ors. II (2010) ACC 156 (DHC)* to add 50% of the deceased's income to offset inflation.
7. In view of the 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, 50% of the minimum wages have to be added to offset the inflation due to indexation. The minimum wages are revised not only to meet the inflation but also to improve the standard of living of the lowest paid workers and hence there is need to add 50% of the minimum wages to arrive at the victim's income.
8. The accident took place on 06.05.2009 and just within seven months the minimum wages were enhanced to ₹ 5278/-. Enhancement in the minimum wages is not only to offset inflation, but also to improve the standard of living of the lowest paid workers. Within two years and five months the

minimum wages have almost doubled as the same are ₹ 6650/- w.e.f. 01.10.2011.

9. Hence in view of the judgments of this Court in *Munni Devi*, *Renu Devi* and *Narinder Bishal's (supra)* making addition of 50% by the Tribunal was justified in the circumstances. There is no error or infirmity in the impugned award. The appeal is without any merit; it is accordingly dismissed.
10. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 23, 2011

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