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

% *Judgment delivered on: 19th March, 2014*

+ **MAC.APP. 1089/2011 & CM No. 21857/2011**

ORIENTAL INSURANCE COMPANY Appellant

Represented by: Mr.Tarkeshwar Nath,
Advocate.

Versus

MADHU SHARMA & ORS. Respondents

Represented by: Mr.R.P.Singh, Advocate for
Respondent Nos. 1 and 2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

MAC.APP. 1089/2011

1. The instant appeal is preferred against the award dated 09.09.2011, whereby the learned Tribunal awarded compensation for an amount of Rs.6,87,000/- with interest at the rate of 7.5% *per annum* from the date of filing of the petition till realization of the amount.

2. Mr.Tarkeshwar Nath, learned counsel appearing on behalf of the appellant/Insurance Company submits that the alleged offending vehicle No. UP 14 E 8465 was not involved in the accident, despite, the learned Tribunal held the appellant company liable to pay the compensation.

3. Learned counsel has drawn the attention of this Court to page No. 11, which is a complaint made to SHO, Police Station Phase-II, NOIDA, Ghaziabad, wherein the complainant Mohan Lal Saxena stated that his son

Umesh Saxena, who was working in NEPZ, NOIDA, Phase-II, met with an accident with the vehicle bearing No. UP 14 E 8465. However, it is apparent from the said complaint, subsequently, with a different ink and different handwriting it was added therein that one Satish s/o Subedar also received injuries in the said accident, who got admitted in some hospital in Delhi.

4. Learned counsel has also drawn the attention of this Court to the *Tehrir*, wherein the fact that Satish Kumar also injured in the accident and admitted in hospital in Delhi was also added subsequently.

5. Learned counsel submits that D.D. No. 16A was recorded on 16.04.2004 at Police Station Defence Colony, New Delhi, wherein it was stated that on 14.04.2004, at about 5.30 pm, deceased Satish Chand Sharma s/o Subedar Sharma, aged 37 years, was standing near Bhangel crossing, when a bus bearing No. UP 14 E 8465 had hit him. Consequently, he sustained injuries. Thereafter, he was admitted in Savitri Hospital, NOIDA. On 15.04.2004, he was admitted in AIIMS, New Delhi, from where he was referred to Safdarjung Hospital. During his treatment at Safdarjung Hospital, he died on 16.04.2004.

6. Learned counsel further submits that the time of the accident shown in the complaint made by complainant Mohan Lal Saxena was different, than the time mentioned in D.D.No.16A. Whereas PW1 Brijesh Kumar has stated that the accident had taken place at around 3.30 pm. He submits that since no witness has corroborated with the other, therefore, the offending bus has been falsely implicated in the case just to get compensation.

7. As per the deposition of PW1 Brijesh Kumar, which is on page No. 20 of the paper book, on the date of accident 6-7 ply boards each 8 x 4 feet size

were loaded on a rickshaw to be carried from Badarpur to the manufacturing unit of the witness in NOIDA. Satish Chand Sharma was pulling the rickshaw and he was following the rickshaw by his bicycle. They had started from Badarpur at around 12 Noon and reached Bhangel, NOIDA at around 3.30 pm. When they reached at a point where they were to cross the road, which was a double road with central verge, he took his bicycle to the other side of the road and then came to give a push to the rickshaw so as to help fast and quick crossing of the rickshaw, however, before he could reach to help Satish Chand Sharma to cross the road with his rickshaw, he saw that a bus coming from NODIA Phase-II side had hit the rickshaw of Satish Chand Sharma when he was still on that point, i.e., the central verge cut point. Thereafter, the bus did not stop but its back side number plate had fallen on the point of accident, which revealed its number as UP 14 E 8465.

8. He further deposed that Satish Chand Sharma suffered injuries, but still he was conscious. He assisted him to get up and come on the central verge and sat over there. Satish Chand Sharma told him that there was no serious or severe injury, so he left him there and went to his manufacturing unit, situated at a distance of five minutes' walk, to call his father.

9. Further deposed that two other persons, who were also on the central verge cut point waiting for crossing the road, were also hit by that bus. Meanwhile, he alongwith his father reached the place of accident, the police had already removed Satish Chand Sharma and those other two victims of that accident to the hospital. He along with his father then reached hospital, which was a private hospital, where Satish Chand Sharma was found admitted. Thereafter, he left that place and later on came to know that Satish

Chand Sharma was shifted to Government hospital in Delhi, and his father kept on visiting him.

10. During his cross-examination, PW1 Brijesh Kumar deposed that the central verge cut point was wide enough from where rickshaw was to cross. He specifically deposed that the bus in question was white colour and appeared to be a private bus. He had seen the bus coming in a speed before it caused the accident. It was proceeding towards Sector 37 and was moving on the right hand side of its lane.

11. PW2 Sh. Lala Ram had deposed that on 14.04.2004, he was present in society flats in NOIDA, where he was carrying some carpentry work. His son Brijesh Kumar told him that Satish Chand Sharma had met with an accident. Accordingly, they reached at the place of accident and came to know that Satish Chand Sharma had been removed by the police to the hospital. Thereafter, he reached Savitri Hospital, where Satish Chand Sharma had been admitted. On 16.04.2004, he was shifted to ICU of Safdarjung Hospital by AIIMS, where he died in the night of 16.04.2004.

12. Moreover, the claimants filed copies of the chargesheet, whereby the respondent No.3 was chargesheeted. The FIR in respect of the accident was recorded on the statement of an eye witness, namely, Mohan Lal Saxena.

13. The claimants had placed a medical report from Savitri Hospital, Bhangel, NOIDA, wherein it was mentioned that injured Satish was brought to the hospital at 7.00 pm as a case of roadside accident and was found to have suffered multiple wounds and was provided with a kind of first aid treatment. The claimants had filed medical report of Safdarjung hospital, which includes a post-mortem report, death summary and the inquest proceedings pursuant to D.D. No. 16A. The death summary shows that

patient was brought to the hospital on 15.04.2004 and he died on 16.04.2004. The cause of death in the post-mortem report was shock and haemorrhage following blunt force impact likely to occur in a road traffic accident. The inquest for post-mortem recorded by ASI Ikpal Singh from Police Station Defence Colony mentioned that victim/deceased Satish Chand Sharma suffered injuries in an accident caused by bus No.UP 14E 8465 and he died in the Safdarjung Hospital.

14. The fact remains that respondent Nos.3 and 4, i.e., driver and owner of the offending vehicle did not make any complaint to the higher authorities for lodging false case against the driver and involvement of the bus.

15. In view of the facts discussed above, I do not find any merit in the instant appeal. The same is accordingly dismissed.

16. Consequently, the Registry of this Court is directed to release the statutory amount in favour of the appellant/Insurance Company and the compensation in favour of the respondents/claimants in terms of the award dated 09.09.2011.

CM No. 21857/2011 (for stay)

With the dismissal of the instant appeal itself, the instant application has become *infructuous*. The same is accordingly dismissed.

SURESH KAIT, J.

MARCH 19, 2014

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