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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 16th January, 2015

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MAC.APP. 10/2014

ICICI LOMBARD GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Ms. Suman Bagga, Advocate

versus

ANJANA PATIAL & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. There is a twin challenge to the judgment dated 17.09.2013 passed in Petition No.1011/2010 whereby a compensation of Rs.47,17,300/- was awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) for the death of Anoop Singh who died in a motor vehicular accident which occurred on 22.05.2010 at 3:25 p.m.
2. It is urged by the learned counsel for the Appellant that there was negligence on the part of the deceased Anoop Singh himself or in any case, there was contributory negligence and therefore, the owner of the insured bus was not liable to pay compensation; consequently, the Insurance Company is not liable to pay any compensation. It is stated that the

compensation awarded is excessive as although the deceased was in business, future prospects were taken into consideration.

3. While dealing with the issue of negligence, the Claims Tribunal noticed the testimony of PW1 who was the widow of the deceased and PW2 who was an independent witness as also of R2W2 who was the driver of the offending bus. Paras 9 to 12 of the impugned judgment are extracted hereunder:

“9.The petitioners have examined two witnesses PW1and PW2. PW1has stated that on 22.05.2010 she alongwith her husband and son was going from New Delhi to Distt. Kangra Himachal Pradesh in a car bearing no. DL4C M 5497. When they reached near Amb. at Pucca Pul Paroh, Distt. Una, at around 2.00 to 3.00 PM, a Haryana Roadways bus bearing no. HR 68 4373 being driven by respondent no.2 in a rash and negligent manner hit their car and crushed its front cover. Her husband was driving the car. She alongwith her son was sitting behind the driver seat. Due to sudden impact she became unconscious. On the next date she came to know that her husband died. She sustained injuries on her face, eye and her son also went into coma. She denied that the accident took place due to negligent driving of her husband. She stated that he was driving the car at a normal speed.

PW2 has stated that he was on the spot at that time. He had seen the bus being driven by its driver in a rash and negligent manner and high speed which crushed the Santro car which was coming from Una. The bus was coming from Amb. The car got totally damaged and the persons sitting were serious. Someone called the police. The persons were taken to the nearest Hospital by

the public. He stated that at that time he was doing PTA from Jalandhar at Amb. He was coming from his relative house at Pucca Pura on a two wheeler scooter no. HP 19 A 0284. He admitted that police did not record his statement and he did not call the police at 100 no. or the relatives of the injured. He stated that he stayed in the Hospital for about 15 minutes and then went to his home. At that time he was on the bridge behind the Santro car. He denied that he had not seen the accident or he is related to the deceased. He denied that the bus did not struck the Santro car.

10.R2W2 also tendered his affidavit Ex.R2W2/1 and stated that he was falsely implicated in the accident by the police. Actually, the deceased himself was negligent as he struck his car on to the stationary bus. He himself had lodged the FIR. He also placed on record his driving licence and the policy Ex.RW1/A and Ex.RW1/B.

11. Ld. counsel for the respondent no.3 stated that the case was registered against the vehicle of the deceased and the accident had occurred due to his negligence. In support of his contention, he placed reliance on the case Vandana & Ors. Vs. Rajesh Kumar & Ors. 2013 ACJ 1239 (Delhi High Court) to contend that it is open to the owner or the insurance company, as the case may be, to defeat a claim under section 163A of the Act by pleading and establishing through cogent evidence a fault ground.

12.On perusal of FIR, I find that the case was registered on the statement of the bus driver i.e. respondent no.2. He had stated that he was going to Talwara via Amb. About 4045 passengers were sitting in the bus. At about 2.20 PM when the bus reached Pucca Proha Pul, a car bearing no. DL

4C M 5497 being driven by its driver at a fast speed came. The car driver lost balance of the car, brought it on the wrong side and hit the bus from front. He had seen the car coming on the wrong side, so, he stopped the bus on the side. However, the car struck against the bus.

It is to be mentioned that the deceased and PW1 immediately after the accident sustained multiple injuries. They were not in a position to give statement. PW2 has specifically stated that the bus was being driven rashly and negligently by the respondent no.2 and the accident had occurred due to his fault. He has denied that the car driver was negligent. He has also denied that he is relative of the deceased or knew him from before. He was subjected to detail cross examination but his testimony remain consistent and cogent. PW1 was also subjected to anvil of cross examination and testimony remained intrinsic worth believing. On considering the documents placed on record and on an analysis of testimony of the witnesses, the reasonable inference which can be drawn in the present case is that the accident had occurred due to rash and negligent driving of the bus bearing no. HR 68 4373 by the respondent no.2. The accident resulted into death of Anoop Singh. As per the postmortem report, his cause of death was shock caused by extensive liver injury and internal hemorrhage. As regards to the contention that the deceased did not have a valid and effective licence, the petitioners have filed the driving licence of the deceased which was valid for the category of vehicle LMV(NT) for the said period. It has come on record that the respondent no.2 was the owner of the vehicle and it was insured with respondent no.3.”

4. In my view, the learned Claims Tribunal rightly analysed the evidence adduced. It may be mentioned that in a petition under Section 166 of the Motor Vehicles Act, 1988, negligence is to be proved on the touchstone of preponderance of probabilities, which was sufficiently established.
5. As far as addition of future prospects is concerned, the Income Tax Returns for the Assessment Years. 2007-08, 2008-09 and 2009-10 are on record wherein the deceased filed return of Rs.1,73,520, Rs.2,14,529 and Rs.3,89,910/- respectively. The deceased was in the business of supplying decorative flowers in Five Star Hotels. He had a lucrative business and his income was increasing by almost 40% every year.
6. In view of this, the Claims Tribunal was justified in making a provision of 30% (as per the age of the deceased) towards future prospects.
7. The appeal is devoid of any merit; it is accordingly dismissed.
8. Pending applications also stand disposed of.
9. Statutory amount of Rs.25,000/-, if any, shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

JANUARY 16, 2015

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