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

Date of Decision: 25.05.2016

\+ MAC.APP. 10/2013

NATIOANL INSURANCE COMPANY LTD. ..... Appellant

Through: Mr. Arbaaz Hussain for Ms. Shantha Devi Raman, Advocate

versus

ANITA MEHTA & ORS. ..... Respondents

Through: Mr. R.K. Kohli, Advocate

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Ashok Mehta was riding two wheeler scooter no.DL-6SR-7752 (scooter) on 13.04.2004 on way to his office in Punjab National Bank, Tolstoy Marg, Delhi and when he had reached the Tolstoy Marg, Janpath Lane area, he was involved in a motor vehicular accident that occurred at about 9.30 a.m. As a consequence of the injuries suffered, he died. On 29.08.2005, his widow and two children, first to third respondents herein (claimants), instituted an accident claim case (old no.293/2005, new no.11/2011) seeking compensation under Section 166 of the Motor Vehicles

Act, 1988 (M.V. Act) on the averments that the accident had involved Maruti Car bearing registration no.DL-2C-AA-4180 (car) which had been allegedly driven in a negligent manner by the driver. Kusum Gupta (fourth respondent herein) was impleaded as first respondent before the tribunal, she concededly being the registered owner of the car. Additionally, National Insurance Co. Ltd. (appellant) was also shown as a respondent (second respondent before the tribunal), it having admittedly issued an insurance policy covering third party risk for the period in question. Both the said respondents, when noticed, filed their respective written statements denying involvement of the car in the accident.

2. The tribunal held inquiry and, by judgment dated 18.11.2011, returned a finding that the accident had indeed occurred on account of the negligent driving of the car, thus holding Kusum Gupta liable to pay and the appellant liable to indemnify. The tribunal awarded compensation in favour of the claimants by the said judgment, followed by order dated 21.11.2011, directing its apportionment which appears to have been subsequently corrected by another order dated 12.09.2012.

3. The insurer which had been primarily burdened with the liability to satisfy the award has come up in appeal to challenge the finding about involvement of the car and negligence on the part of its driver. Its prime contention is that the entire story of the involvement of the car had been fabricated and a false witness Ghanshyam Dass (PW-6) had been set up to bring on record eye witness testimony which cannot be believed. The insurance company points out that in the first information report (FIR) registered by the local police, vide no.201/2004, in Police Station Connaught

Place, respecting the accident wherein Ashok Mehta had died, there was no reference of any vehicle other than the scooter on which the deceased was riding. Instead it was noted in the FIR that when the police arrived at the scene, there was no eye witness available, the victim having been taken to the hospital and declared not fit for any statement. The FIR, thus, had been registered on the basis of preliminary facts that had been gathered by the local police. It is also pointed out that in the request for post mortem examination of the dead body submitted by the investigating officer on 18.04.2004, the police had indicated that the accident had been caused by some "unknown vehicle". The insurer had contested the case of the claimants by referring to the fact that the local police had investigated into the aforementioned FIR twice, the result both times being that no reliable evidence could be gathered to launch prosecution against any person, it not having been found as to which was the other motor vehicle that had caused the accident. The insurer examined Sub Inspector Ghasi Ram (R2W1) who was the investigating officer of the police case at the time of initial probe and whose testimony is stated to be revealing some collusion in view of the fact that he deposed about some relationship between Ghanshyam Das (PW-6) on one hand and Kusum Gupta (owner of the vehicle) on the other. The insurance company referred to testimony of R2W1 to submit that there was complicity between the said person and Col. Mehta, elder brother of the deceased, who statedly had visited him (the witness) in the police station on 12.08.2004 to persuade him to act upon the suggested theory of the car of Kusum Gupta being the vehicle involved in the collision.

4. The tribunal considered the above submissions but, upon a detailed analysis of the evidence led, rejected the contention of the insurer about the fabricated story having been set up. It accepted the version of Ghanshyam Dass (PW-6) as reliable and, on that basis, returned a finding affirming the case of the claimants that the car of Kusum Gupta had been involved and there was negligence on the part of driver of the said vehicle which had led to the fatal accident. The compensation was awarded on basis of such conclusion.

5. The insurer, by the appeal at hand, re-agitates its contention about collusion and fabrication of evidence.

6. Having heard both sides and having gone through the tribunal's record, this court finds no substance in the appeal. It has to be remembered that in dealing with the claim cases for compensation on account of death or injury suffered in a motor vehicular accident, the test is not the same as that applied in the criminal cases. Unlike the criminal charge where the accusations have to be proved beyond all manner of doubts, in cases arising out of liability in torts, the test of preponderance of probabilities is to be applied. It does appear that the claimants took their own time in reaching out to the tribunal to seek compensation. But, the delay, by itself, cannot mean that they were spending their time in knitting a false story. It has to be borne in mind that, in the present case, the investigating police was not accepting their version based on the testimony of Ghanshyam Dass (PW-6) who had come in their contact as an eye witness.

7. SI Ghasi Ram is on record to state that Ghanshyam Dass (PW-6) had come to the police station offering his own version. He, however, does not

say in any manner that he had recorded his statement during investigation. From the manner in which he deposed before the tribunal, it appears that sub-inspector Ghasi Ram had rejected the version of Ghanshyam Dass (PW-6) outright even before he recorded his statement or analysed it for its worth. This definitely was not an appropriate or fair approach.

8. SI Ghasi Ram spoke about some relationship (brother and sister) between Ghanshyam Dass (PW-6) and Kusum Gupta (owner) and further that both are advocates by profession. Merely because both are advocates by profession (so assuming for present discussion) does not mean that they would be comrade-in-arms to set up a fabricated story. There is nothing before this court on which the suggestion that both Ghanshyam Dass (PW-6) and Kusum Gupta are related to each other should be accepted.

9. The tribunal has considered the above aspects in the impugned judgment and has rejected the innuendo raised on its basis for sound reasons. The least that the investigating police officer was expected to do was to put on record in his case diary the fact of he having been improperly approached or propositioned for accepting a false witness. Since no material to that effect has been brought on record, it has to be assumed that he did nothing of this sort and simply decided to close the case arising out of the FIR concluding that the vehicle which had caused the collision against the truck could not be traced out. The failure on the part of the police to find out evidence and fix responsibility on a specific motorist for causing the fatal collision to support a criminal charge, however, does not mean the claim for compensation by the dependent family members should be disbelieved.

10. Thus, the appeal is found to be unmerited and liable to be dismissed.

11. By order dated 04.01.2013, the insurance company had been directed to deposit 60% of the awarded compensation with upto date interest which was directed to be kept in fixed deposit receipts in the name of the first claimant. The amount thus deposited shall now be released to the claimants in terms of the impugned judgment. The insurance company shall deposit the balance of its liability under the impugned judgment / order.

12. The Statutory deposit, if made, shall be refunded after confirmation that the award has been satisfied.

13. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 25, 2016
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