

\$~R-202

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

Date of Decision: October 26, 2016

+ **MAC.APP. 68/2013**

UNITED INDIA INSURANCE COMPANY LTD.Appellant

Through: Mr. Abhishek Kumar, Advocate

Versus

SMI FATEH ALAM AND ORS.Respondents

Through: Mr. Athar Alam, Mrs. Sumbu
Athar, Mr. Azhar Alam & Ms.
Kanchan Mala, Advocates for
respondents No.1, 2 & 4
Ms. Manisha Tyagi, Advocate for
respondent No.7

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 26th October, 2012 grants compensation of ₹3,96,008/- along with interest @7.5% p.a. on account of death of a motor cycle pillion rider aged 33 years on 27th November, 2007, in vehicular accident in which pillion rider was crushed under the wheels of a DTC bus.

2. The factual matrix, as noticed in the impugned Award, is as under:-

“2. Brief facts as narrated in petition are that on 27.11.2007, the victim was travelling with Danish Raza (respondent No.1 herein) as pillion rider on a motorcycle bearing No.DL-7SR-9857 and at about 8:40 p.m. when they reached near pillanju bus stand, it was hit by a three wheeler and at that time a DTC Bus DL-1PB-0231 which was being driven by its driver (respondent No.3 herein) struck the motorcycle from behind and due to this impact deceased/ victim was thrown on the road and came under the wheel of the bus resultantly causing grievous injuries. The victim was removed to Safdarjung Hospital where he expired. It is claimed that victim was young man of 33 years. He was a Senior Store Officer in RPG Cellucum based in Delhi (NCR) and was earning Rs.17,000/- per month (Rs.2,09, 086/- p.a.)”

3. Apart from the evidence of other witnesses on record, there is evidence of court witness-Mohd. Danish Raza, who was driving the motor cycle in question on the day of accident. Trial court in the impugned Award has chosen not to rely upon the evidence of court witness Mohd. Danish Raza and has relied upon circumstantial evidence, as detailed in paragraph No.13 of the impugned Award and has held that the accident in question took place due to negligence of DTC bus, owned by respondent No.7 herein. Appellant is the insurer of the said bus and so, appellant has been called upon by the trial court vide impugned Award to pay the compensation awarded.

4. The challenge to the impugned Award by learned counsel for appellant-insurer is on the ground that trial court has erroneously discarded the evidence of court witness *Mohd. Danish Raza* and has relied upon the circumstantial evidence and such a submission is made while relying upon the cancellation report filed in the FIR case qua the bus driver. Learned counsel for appellant submits that the impugned Award deserves to be set aside and respondents-claimants' claim petition ought to be dismissed.

5. To the contrary is the submission by learned counsel for respondents-claimants, who supports the impugned Award and submits that there is no substance in this appeal, as the circumstances detailed in the Award sufficiently show that the deceased was crushed under the wheels of the insured DTC bus and the standard of proof to prove the negligence is not the same as in criminal proceedings. It is thus submitted that this appeal deserves to be dismissed.

6. Upon hearing and on perusal of impugned Award and the evidence on record, I find that the proof of negligence in criminal and civil proceedings cannot be equated and that evidence of the court witness *Mohd. Danish Raza* has been rightly excluded by the trial court, as the circumstances detailed in paragraph No.13 of the impugned Award clearly show that the face of the deceased was compressed and the extent of compression was such that the face of deceased could not be recognized. There is post mortem report of the deceased on record which supports the finding of the learned Tribunal. Apart from it, there are photographs of the spot which shows that the motor cycle in question had

fallen just near the DTC bus in question. By preponderance of probability, the view taken by the learned Tribunal appears to be correct.

7. In the aforesaid view, this Court finds no illegality or infirmity in the impugned Award and hence, this appeal is dismissed. While entertaining this appeal, appellant was directed to deposit 50% of the awarded amount and it was directed to be kept in fixed deposit receipt in the UCO Bank, Delhi High Court Branch. Office noting shows that a sum of ₹2,62,906/- with upto date interest was deposited by appellant in the aforesaid Bank.

8. At this stage, learned counsel for respondents-claimants submits that respondents-claimants have opened a bank account in State Bank of India branch in District Court Saket, New Delhi and UCO Bank be directed to remit the deposited amount with interest to respondents-claimants' bank account in State Bank of India branch in District Court Saket, who shall permit the disbursement of the awarded amount in terms of Award in question. It is ordered accordingly.

9. Upon respondents-claimants furnishing the details of their bank account(s) in State Bank of India branch in District Court Saket, New Delhi to the UCO Bank, branch in Delhi High Court, the amount of fixed deposit in question along with interest accrued thereupon, be remitted to State Bank of India branch in District Court Saket, New Delhi. Four weeks' time is granted to appellant to deposit balance 50% of the awarded amount with interest in State Bank of India branch in District Court Saket, New Delhi for its disbursement in terms of the impugned Award. The statutory deposit, if made by the insurer, shall be refunded.

Let UCO Bank in Delhi High Court Branch be accordingly intimated.

10. The appeal is disposed of in aforesaid terms.

(SUNIL GAUR)
JUDGE

OCTOBER 26, 2016

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