

\$~ R-32 to 36A

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

Date of Decision: 3rd March, 2016

+ **MAC.APP. 393/2007**

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Nemo.

versus

B.M. ANAND AND ORS. Respondents

Through: Mr. N S Dalal, Adv.

+ **MAC.APP. 395/2007**

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Nemo

versus

B.M. ANAND AND ORS. Respondents

Through: Mr. N S Dalal, Adv.

+ **MAC.APP. 199/2016**

BRIJ MOHAN ANAND AND ORS. Appellant

Through: Mr. N S Dalal, Adv.

versus

NEW INDIA ASSURANCE CO. LTD. Respondents

Through: Nemo

+ **MAC.APP. 396/2007**

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Nemo

versus

SHILPA ANAND AND ANR. Respondents

Through: Mr. N S Dalal, Adv.

+ **MAC.APP. 397/2007**

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Nemo

versus

B.M. ANAND AND ORS. Respondents

Through: Mr. N S Dalal, Adv.

+ **MAC.APP. 198/2016**

BRIJ MOHAN ANAND Appellant

Through: Mr. N S Dalal, Adv.

versus

NEW INDIA ASSURANCE CO. LTD. Respondents

Through: Nemo

+ **MAC.APP. 398/2007**

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Nemo

versus

B.M. ANAND AND ORS. Respondents

Through: Mr. N S Dalal, Adv.

+ **MAC.APP. 200/2016**

BRIJ MOHAN ANAND AND ORS. Appellant

Through: Mr. N S Dalal, Adv.

versus

NEW INDIA ASSURANCE CO. LTD. Respondents

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. All these eight appeals arise out of judgment of Motor Accident Claims Tribunal (the Tribunal) rendered on 29.03.2007 whereby six claim petitions presented under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) were decided and various amounts of compensation awarded fastening the liability on New India Assurance company Ltd. (the insurer) of Tata Sumo car bearing registration No.DL 6CA 8049 (hereinafter referred to as "the car").

2. On 23.08.1999, the car, indisputably driven by Subhash Chand was going from Delhi towards Balaji via Mathura (UP). It met with an accident at about 11 PM in the area of village Janak within the jurisdiction of Goverdhan, District Mathura (UP) when there was a collision between the said vehicle and Mahindra Jeep registered as RJ 34C 0112 (hereinafter referred to as "the jeep") coming from opposite direction. In the car, six members of a family were traveling as passengers, they including Brij Mohan Anand, his wife Suman Anand, his father B R Anand, his mother Ved Rani and two daughters named Gunjan and Shilpa. As a result of the collision, three members of the family viz. Suman Anand, B R Anand and Ved Rani died. The other members of the family viz. B M Anand, Gunjan

and Shilpa suffered injuries. Six claim petitions were brought, three by the injured persons and the other for compensation on account of deaths of Suman Anand, B R Anand and Ved Rani.

3. The claim petitions respecting the deaths of Suman Anand, B R Anand and Ved Rani were registered by the Tribunal as suit Nos.205/2003, 206/2003 and 204/2003. Similarly, the claim petitions of B M Anand, Gunjan and Shilpa were registered as suit Nos.207/2003, 208/2003 and 209/2003.

4. The claimants, in the above mentioned cases, impleaded Subhash Chand, the driver of the car as the first respondent alleging that he was the principal tort-feasor as the accident had occurred on account of rash/negligent driving of the car by him. The claimants also impleaded Kartar Singh Mann (the second respondent) he being the owner of the car. The insurer was impleaded as party respondent (third respondent) in each of the said claim cases.

5. All the six claim cases were inquired into together. Whilst the driver (Subhash Chand) and the owner (Kartar Singh Mann) contested denying the allegations of negligence, the insurance company contested, *inter alia*, taking up the plea that the cases had been fabricated as there was neither any involvement of the car nor any negligence on the part of its driver. Its contention was that the claim petitions had been filed on 31.05.2001 belatedly after it had been realized that the jeep which was involved in the accident was not insured against third party risk.

6. The Tribunal, during the course of inquiry, gave opportunity to all sides to lead evidence. While the claimants examined themselves to affirm the facts relating to the accident primarily through the word of B M Anand (PW1), Gunjan (PW4) and Shilpa (PW5), they also relied on the evidence of record of local police which had registered a first information report (FIR) No.106/1999 (PW6/1) in police station Goverdhan on 23.08.1999 on the statement of Anurag Anand (PW3) son of B R Anand and one of the claimants in the claim arising out of his death and that of Ved Rani.

7. The respondent driver, on the other hand, examined himself as R1W1 and the owner of the car examined himself as R2W1, both also relying on the testimony of Padam Singh (R1W2), an official from the office of motor licensing officer, for proving that the driver of the car held a valid and effective driving license at the time of the accident.

8. The Tribunal by a common judgment passed on 29.03.2007 rejected the contentions of the insurance company about there being no involvement of the car or there being no negligence on the part of its driver. It awarded compensation in the sum of ₹ 3,55,000/- in the case of death of Suman Anand (suit No.205/2003); the sum of ₹ 2,30,000/- as compensation in the case of death of B R Anand (suit No.206/2003); and the sum of ₹ 95,000/- on account of death of Ved Rani (suit No.204/2003). For the injuries suffered by B M Anand he was compensated in the sum of ₹ 1,65,475/- (suit No.207/2003). For the injuries suffered by Gunjan an amount of ₹ 10,000/- was awarded (208/2003) while in the case of injuries of Shilpa an amount of ₹ 20,000/- was awarded (suit No.209/2003).

9. The Tribunal directed the insurance company to pay the above-mentioned amounts of compensation with interest from the date of filing of the petitions till realisation.

10. The insurance company did not challenge the award in the case of injuries of Gunjan (suit No.208/2003). It, however, brought appeals questioning the award of compensation in the other five claim cases, its appeals in the case of deaths of Suman Anand, B R Anand and Ved Rani having been registered as MAC.APP.No.393/2007, MAC.APP.No.398/2007 and MAC.APP.No.395/2007 respectively. Similarly, the insurance company filed appeals questioning the award of compensation for injuries suffered by B M Anand and Shilpa by MAC.APP.Nos.397/2007 and 396/2007. While resisting the appeals of the insurance company, B M Anand and the legal heirs of Suman Anand and B.R. Anand have come up with cross-objections seeking enhancement of compensation in each of the said cases, the said cross objections having since been registered as MAC.APP.No.198/2016, 200/2016 and 199/2016 respectively. It may be added that the cross-objections (now appeals) in the last two said matters were wrongly presented with reference to MAC Appeal nos. 398/07 and 395/07 respectively, but are being considered in cases to which they actually relate.

11. Having heard arguments, the issue of involvement of the car, and negligence on the part of its driver, as raised by the insurance company in its appeals, are taken up first.

12. These matters were heard in part on 2nd March, 2016, when the counsel for the insurance company, Mr. D.K. Sharma, was present and made

his submissions. When these matters have been taken up today no one has appeared on behalf of the said party.

13. It is the submission of the insurance company that it was the driver of the jeep who was at fault inasmuch as the said vehicle had come at break neck speed from the opposite direction causing a head-on collision against the car. It is pointed out that this was the version of Anurag Anand (PW3) on basis of which the FIR (PW6/1) was registered by the police on 23.08.1999. It is pointed out from the case diary of the investigation of the said FIR (Ex.PW6/2) that this was the stand taken by surviving members of the family (the claimants) during their respective statements under Section 161 of the Code of Civil Procedure, 1973 (Cr.P.C.). The learned counsel referred to the entries in the case diary indicating that the post-mortem examination of the dead bodies of Suman Anand, B R Anand and Ved Rani was dispensed with, at the request of Anurag Anand (PW3). He referred to the copy of the site plan (page 233 of the Tribunal's record) to show that the accident had occurred due to rash/negligent driving of the jeep by its driver. He also referred to the statements of the witnesses examined by the claimants including PW1 wherein it was conceded that the driver of the jeep was also at fault though the car driver had at some stage also been negligent in that he had been driving at rash speed but had been instructed to slow down. The counsel for the insurance company argued that a case of composite negligence was thus clearly brought out from the material on record and, therefore, the theory on the basis of which the petitions were filed, 21 months after the accident, is an afterthought.

14. It is trite that in cases relating to compensation for injuries or damage suffered in a motor vehicular accident, the standard of proof of the fault cannot be the same as that applied in criminal jurisprudence. Whilst it is correct that on the criminal charge in the corresponding case brought before the criminal court the culpability of the driver is required to be proved beyond all reasonable doubts, in the accident claim brought before the tribunal, it being essentially a case of liability in torts, the evidence adduced to prove the fault of the driver of the offending vehicle is to be examined on the principle of preponderance of probabilities. In such cases direct evidence may not always be available. This is where the maxim of *res ipsa loquitur* comes in. The circumstances attendant upon the events leading to the accident may possibly be demonstrated through evidence gathered by the police officer during investigation for appropriate conclusions to be reached. Thus, if from the circumstances the guilt on the part of the driver may be inferred, the burden shifts on to the driver to explain the said circumstances.

15. Having given considered thoughts to the submissions made by the insurance company, this Court finds no reasons why the plea of composite negligence should be accepted or it be held that the accident had occurred not because of any fault on the part of the car driver but for reasons wholly attributable to the driver of the jeep. The testimony of PW3 cannot be of any consequence. He was not member of the party which was travelling in the car. It is admitted case of the insurance company that he had gone from Delhi to attend on the members of his family who had suffered the accident, with three of them having died. There is nothing to be read into the requests that the post mortem examination be dispensed with. The said requests

could not conceivably have been made with any reasons to hide any facts. The insurance company has not come up with any theory, much less evidence to show that the deaths had occurred for reasons other than injuries suffered in the motor vehicular accident.

16. The evidence of PW1, PW4 and PW5 is consistent. Even if a wrong report was made by PW3 attributing the entire fault to the jeep driver (which for reasons mentioned above cannot come in the way), the testimony of these witnesses deserves to be accepted. After all, they were traveling in the car and had watched over the conduct of its driver. They clearly reveal that the car driver was also moving the vehicle at rash speed. It may be that there was a head-on collision. But this fact, by itself, does not mean that the theory of composite negligence or contributory negligence will have to be accepted. For this, the party so alleging must show as to how in the head-on collision, it was the driver of the jeep who only was at fault and not that of the car. The site plan (at page 233 of the Tribunal's record) cannot be referred as no witness was called upon to prove it. Similarly, the statements under section 161 Cr.P.C. forming part of the case diary also cannot be acted upon as they are not substantive evidence, none of the witnesses of the claimants having been confronted with the said documents.

17. On the foregoing facts, and in the circumstances, the argument of the insurance company about composite or contributory negligence or want of negligence on the part of car driver, is rejected.

MAC.APP.Nos.393/2007 & MAC APP. 200/2016

18. These appeals relate to the award (in suit No. 205/2003) relating to the death of Suman Anand. The evidence adduced before the tribunal, as

summarized in the impugned judgment shows that the deceased was 45 years old and her income-tax return showed her income to be in the region of ₹ 65,000/- per annum from publishing business. The tribunal, however, did not accept the said evidence for the reason income-tax return had been filed after her death. It assumed her income notionally at ₹ 3,000/- per month and, on that basis, computed the loss of estate to the extent of 50% and after deducting 1/3rd towards personal expenses computed the loss of dependency at ₹ 3,30,000/-. After adding ₹ 5,000/- towards cremation charges and ₹ 20,000/- towards loss of consortium and loss of love and affection, the total compensation is calculated at ₹ 3,55,000/-.

19. The insurance company in its appeal vaguely stated that the compensation has been assessed on the higher side. On the other hand, by their independent appeal (cross-objections), it is argued by the claimants that the income-tax return could not have been rejected as proof of income, since it had to be filed only after it was due. It is further argued that the multiplier of 11 is incorrect because as per the decision in *Sarla Verma (Smt.) & Ors v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, appropriate multiplier would have been 14.

20. It is noted that the tribunal has added 50% towards future prospects which was not permissible in the given facts and circumstances where the income was being assessed notionally. Thus, the compensation awarded in the case is recomputed on the notional income of ₹ 36,000/- per annum. 1/3rd is deducted and annual loss of dependency comes to ₹ 24,000/-. In this view, the total loss of dependency is calculated as (₹ 24,000 x 14) ₹ 3,36,000/-.

21. The tribunal granted a composite sum of ₹ 20,000/- towards loss of consortium and loss of love and affection. This was not correct. Following the view taken in FAO 102/2001 titled as *Madhu Marwaha & Anr. Vs. Dal Chand & Anr. Dated 1st February, 2016* award of ₹ 50,000/- each towards loss of consortium and loss of love & affection is added besides funeral charges enhanced to ₹ 10,000/-. In this view, the total compensation payable in the case of death of Suman Anand is calculated as (3,36,000 + 50,000+50,000+10,000) ₹4,46,000/-. The compensation is enhanced accordingly.

MAC.APP.Nos.398/2007 & 199/2016

22. These appeals relate to award (in suit No.206/2003) on account of death of B R Anand. The claim was filed by his sons B R Anand and Anurag Anand each of them having appeared in the evidence as PW1 and PW3 respectively. As per the evidence B R Anand was 73 years old, earning his livelihood as an author, his income being in the region of ₹90,000/- per annum as reflected by documents relating to income received from M/s Aster Educational Public Pvt. Ltd. The Tribunal calculated the loss to the estate to the extent of ₹45,000/- and applying the multiplier of 5 arrived at loss of dependency in the sum of ₹2,25,000/-, adding ₹5,000/- towards funeral charges. Total amount awarded was ₹ 2,30,000/-.

23. The contention of the insurance company in appeal is that there was no substantive evidence led about income of the deceased B R Anand. It is pointed out that the income tax return relied upon was filed after his death. Be that as it may, PW3 also proved that the fact that the deceased was an author of various books, he having produced sixteen of such publications (collectively Ex.3/1). Having regard to the evidence of PW1 and PW2

affirming the above mentioned facts, which were not refuted by any cross-examination, the contention of the insurance company questioning the calculation of the income cannot be accepted. The appeal (MAC.APP.No.398/2007) against the award (in suit No.206/2003) is liable to be dismissed.

24. By cross objection (MAC.APP.No.199/2016), the claimants contend that non-pecuniary heads of damages were not awarded. It is pointed out that no award has been made on account of loss of love & affection. Having regard to the date of death, an award in the sum of ₹50,000/- towards loss of love & affection deserves to be added. Thus, the award in the case of death of B R Anand is enhanced by ₹ 50,000/-.

MAC.APP.Nos.395/2007

25. In this appeal, the insurance company vaguely stated that the compensation awarded (in suit No.204/2003) concerning the death of Ved Rani is on the higher side and deserves to be reduced. The tribunal assessed the income of the deceased notionally at ₹ 36,000/- and calculated the loss of estate to the extent of 50% and applying the multiplier of 5 (the deceased being 67 years old) computing the compensation at ₹ 90,000/- adding ₹ 5,000/- towards funeral expenses. The tribunal has set out sound reasons to arrive at the amount of ₹ 95,000/- payable as compensation which does not need to be interfered with. Therefore, the appeal is liable to be dismissed.

MAC.APP.Nos.397/2007 & 198/2016

26. These appeals relate to compensation on account of injuries suffered by B.M. Anand. The tribunal calculated the compensation in this case as under:-

“25. In this suit the petitioner Sh. B. M. Anand has claimed compensation for the injuries suffered by him. He suffered from fracture of his pelvic bones. His medical expenses has been evidenced through his treatment record and his bills for ₹ 35,475/- which have been filed. He is, therefore, awarded the same. In addition, he is awarded a sum of ₹ 30,000/- towards pain and suffering, ₹ 10,000/- towards special diet, ₹ 5,000/- towards conveyance, ₹ 5,000/- towards attendant and other charges and ₹ 10,000/- towards loss of amenities and expectation of life. The petitioner has also claimed loss of income. His IT returns filed after the accident reflect his income in his business from running a publication house and not from any salary. He is, therefore, being awarded a sum of ₹ 20,000/- as notional loss of income for the period of recuperation.

26. The petitioner has stated that he has suffered from permanent disability which has been opined at 5% (five per cent of left lower limb. Keeping the nature of injuries in view, he is awarded compensation for the disability suffered by him and its long term repercussions at ₹ 50,000/- on a lumpsum basis. The total compensation awarded is ₹ 1,65,475/-.”

27. The insurance company in its appeal questions the compensation again on vague plea that it was on the higher side. By his cross-appeal, the claimant has submitted that that he has not been awarded any compensation for loss of future income in account of permanent disability which has been assessed to the extent of 5% of the left lower limb. Having regard to the extent of disability and further the nature of avocation in which he was engaged, the lumpsum award of ₹ 50,000/- towards disability, along with other damages, cannot be grudged.

28. Therefore, both these appeals are without substance and are liable to be dismissed.

MAC.APP.Nos.396/2007

29. The insurance company in its appeal did not raise any meaningful issue as it, again vaguely, submitted that the compensation awarded is on the higher side. The appeal is without substance and is liable to be dismissed.

30. With the awards in the cases of death of B.R. Anand and Suman Anand modified as above, the appeals stand disposed of. The statutory deposits, if made, be refunded.

MARCH 03, 2016
VLD/nk



R.K. GAUBA
(JUDGE)