

\$~R-523 and 524

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 21st November, 2017

+ **MAC. APP 687/2012 & CM 11086/2012**

THE NEW INDIA ASSURANCE CO LTD Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

SANJEEV MALHOTRA AND ORS Respondents

Through: Mr. J.S. Kanwar, Advocate.

+ **MAC. APP 75/2015**

SANJEEV MALHOTRA AND ORS Appellants

Through: Mr. J.S. Kanwar, Advocate.

versus

THE NEW INDIA ASSURANCE CO LTD Respondent

Through: Mr. Pankaj Seth, Advocate.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 03.12.2009, a motor vehicular accident took place near the roundabout 25-31, Jalvayu Vihar, Noida, Gautam Budh Nagar, U.P., concededly involving two motor vehicles, one being motorcycle bearing registration No. DL-13S-2123 (the motorcycle) driven by Karan Malhotra (deceased) and the other being a Maruti WagonR car bearing registration No. DL-5CD-6960 (the car) admittedly driven by

Babuddin (the respondent in these appeals), Karan Malhotra dying as a result of injuries consequently suffered. Accident claim case (MAC. Petition No. 470/10) was instituted on 04.02.2010 by his parents (claimants) seeking compensation on the allegations that the collision had taken place due to negligent driving of the car by the said Babuddin.

2. Muaneeruzzaman Siddiqui (the fourth respondent) was admittedly the owner of the car at the relevant date, it concededly being insured against third party risk with New India Motor Assurance Company Limited (the insurer) for the period in question.

3. The Tribunal held inquiry, in the course of which the driver and the owner of the car submitted written statement denying their involvement in the accident, taking the position that no accident had been caused. The Tribunal on the basis of evidence led passed the judgment on 23.04.2012 holding the said car driver responsible and awarded compensation in the total amount of Rs.16,64,850/- in favour of the claimants and fastened the liability to pay on the insurer with interest at 7.5% per annum.

4. The insurer has challenged the award by appeal (MAC. Appeal No. 687/2012) on the contention that the involvement of the car or negligence on the part of its driver had not been strictly proved. It has also questioned the computation of compensation.

5. *Per contra*, the claimants have also come up in appeal (MAC. Appeal No.75/2015) submitting that the compensation awarded is inadequate.

6. During the inquiry before the Tribunal, the claimants had examined themselves (PW-1 and PW-2) besides Pradeep Sharma (PW-3) through whom the facts relevant for calculating the loss of dependency were brought on record. On the other hand, Babuddin was examined as witness in defence (R3W1). The claimants also relied upon the copies of the record relating to the corresponding criminal case to prove the involvement of the car in the accident and the negligence on the part of its driver. The Tribunal rejected the testimony of Babuddin (R3W1) as incredible and returned finding affirming the negligence on his part on the basis of the criminal court record.

7. During the pendency of the appeal of the insurance company, on the request of the claimants, they were permitted to lead additional evidence. In the wake of such liberty taken, they examined Rajeev Kumar Verma (RW-1) as additional witness. It may be mentioned here that presence of Rajeev Kumar Verma at the scene was mentioned in the pleadings in the first instance, he being a person travelling on the pillion of the motorcycle driven by the deceased at the relevant point of time.

8. Against the above backdrop, the fate of the claim case on the principle of fault liability under Section 166 of the Motor Vehicles Act, 1988, hinges on the testimonies of Rajeev Kumar Verma (RW-1) admitted to be present at the scene, on one hand and, that of Babuddin (R3W1), the car driver, on the other. Having perused the said evidence, in the light of corresponding record of the criminal case investigated by the police, this Court finds that the deficiency in the

evidence led before the Tribunal during inquiry has now been made good.

9. The evidence of RW-1 brings home the fact that the motorcycle was approaching the roundabout from east to west while the car had approached the roundabout from the southern direction intending to take a right turn i.e. towards east. Thus, while the motorcycle was to go west, it is the car driver, who intended to take a right turn, was to cross the path of the motorcycle. The site plan (page 257 of the Tribunal's record) confirms the evidence of RW-1 that the motorcycle was in its correct path following the left side of the roundabout, while approaching the junction of the roads. On the other hand, the car driver had taken a wrong turn by not going around the roundabout but wrongly coming in the way of the motorcycle from the right side of the roundabout. In these circumstances, the negligence on the part of the car driver is writ large on the record of the case. It may be added, as is also observed by the Tribunal in the impugned judgment, that the car driver and the owner had falsely pleaded in the first instance that there was no involvement of the car in the fatal accident. It is only when the car driver was called upon to depose at the inquiry that he came up with the theory that it was the motorcyclist who had been negligent, though being constrained at that stage to admit the factum of collision. It is clear that the effort to attribute negligence on to the motorcyclist was an afterthought which cannot be accepted.

10. For the foregoing reasons, the finding on the issue of negligence returned by the Tribunal does not call for any interference. The same is accordingly affirmed.

11. The deceased, admittedly was still a student of the Course of study leading to the degree of Bachelor of Architecture. Though the claimants tried to prove through Pradeep Sharma (PW-3), proprietor of firm M/s Design Aids that the deceased had served as a trainee with the said entity for the period 15.7.2008 to 15.11.2008 and had already been given an offer of employment with effect from 01.07.2010 post completion of the degree course, yet such prospective income cannot be accepted as the benchmark to calculate the loss of dependency. The fact remains that, as on the date of the death, the deceased was not an earning hand, it being admitted at the hearing that no remuneration was paid for the period of training for four months. In these circumstances, the minimum wages payable to a graduate (Rs.4,713/-) - the deceased was almost on the verge of completion of the degree course, it being a professional degree - for calculation of loss of dependency, may be taken as the notional income.

12. The Tribunal has applied the multiplier of 13, going by the age of the claimant mother. This would not be correct in view of the decision of the Supreme Court rendered on 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.* Given the age of the deceased, the multiplier of 18 would apply. At the same time, the element of future prospects of increase to the extent of 40% would deserve to be added. Calculated thus, the loss of dependency is worked out as $(4,713 \times 140/100/2 \times 12 \times 18)$ Rs.7,12,605.60 rounded off to Rs.7,13,000/-.

13. The Tribunal, it is noted, awarded Rs.25,000/- towards loss of love and affection, Rs.10,000/- for loss of estate and Rs.5,000/-

towards funeral expenses. These awards have to be modified as per dispensation in *Pranay Sethi* (supra). Thus, Rs.15,000/- each are added on account of loss of estate and funeral expenses.

14. The total compensation in the result would come to (7,13,000+15,000+15,000) Rs.7,43,000/- (Rupees Seven Lakhs and Forty Three Thousand Only). The award is modified accordingly.

15. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*].

16. The Tribunal had apportioned the award by specifying the amounts in favour of each claimant. Since the award has been reduced, it is directed that if any balance is to be paid the same shall go only to the mother.

17. By order dated 06.07.2012 in MAC. Appeal No.681/2012, the insurance company had been directed to deposit the entire awarded amount and out of such deposit 50% was permitted to be released to the claimant. The registry will calculate the balance amount payable, if any, to the claimants in terms of the modified award and release the same from the remainder, refunding the excess in deposit to the insurance company. Conversely, if excess amount has been released to the claimant they shall be liable to refund the same to the insurance company.

18. The statutory deposit shall be refunded to the insurance company.

19. Both the appeals are disposed of in the above terms.

R.K.GAUBA, J.

NOVEMBER 21, 2017

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