

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

Date of Decision: October 15, 2018

+ **MAC.APP. 582/2018**

DEVENDER KUMAR & ORS. Appellants
Through: Mr. Shekhar Aggarwal, Advocate

Versus

RAJ BAHADUR SINGH & ORS (ORIENTAL INSURANCE CO.
LTD) Respondents
Through: Mr. Ravi Sabharwal, Advocate

+ **MAC.APP. 583/2018**

NEETU PAL (MINOR) Appellant
Through: Mr. Shekhar Aggarwal, Advocate

Versus

RAJ BAHADUR SINGH & ORS (THE ORIENTAL
INSURANCE CO LTD) Respondents
Through: Mr. Ravi Sabharwal, Advocate

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT
(ORAL)**

1. The above captioned two appeals arise out of impugned Awards of 13th December, 2017 and 24th January, 2018 vide which claim petitions of appellants have been dismissed on the ground that appellants have failed to prove that the accident in question had taken place due to rash and negligent driving of insured vehicle by its driver in an accident which

took place on 1st October, 2017. Since the grounds to challenge the impugned Awards are identical, therefore, with the consent of learned counsel for the parties, the above captioned appeals have been heard together and are being decided by this common judgment.

2. The facts as noticed in the Award are as under:-

“Briefly the facts of the case are that on 01.10.2017 at morning, the deceased alongwith her family members were coming from her native village to Delhi in a vehicle No. DL 1 ZA 7156 make maruti Artiga. The driver of the said vehicle was driving the said vehicle in a high speed and due to which, the driver of the said vehicle lost his control over said vehicle and the said vehicle was rolled out on the road. As a result of which, the deceased was died on the spot and other family members became injured. The relative of the deceased namely Jagdish Prasad informed the police; police came at the spot and taken the deceased for her post-mortem at Distt. Govt. Hospital, GB Nagar, UP where his post-mortem was conducted and other injured were taken to Naveen Hospital for treatment and thereafter injured went to other hospital.”

3. The Motor Accident Claims Tribunal (*hereinafter referred to as ‘the Tribunal’*) referred to the evidence of the claimants and thereupon, had concluded that appellants/Claimants have failed to prove that the accident in question had taken place due to rash and negligent driving of the insured vehicle by its driver-Raj Bahadur Singh. The findings returned by the Tribunal on the negligence aspect in the Award of 13th December, 2017 is as under:-

“To succeed in the claim petition and in view of section 166 of the MV Act, it is for the claimants to prove that vehicle which caused the accident was being driven rashly and negligently by its driver / respondent No.1. Husband of deceased examined himself as PW-1 in this case who deposed regarding the documents like adhar cards of the petitioners and DD entry No.11 dt. 01.10.2017 of PS Badalpur, Distt. Gautam Budh Nagar and copy of post-mortem report only. The testimony of PW-1 was shattered during cross examination as admittedly neither he nor other person boarded the vehicle suffered any injuries except his wife. No documents regarding even minor injuries to his children are produced. Admittedly, no complaint has been made to police against the driver/ respondent No.1 regarding rash and negligent driving. The witness further admitted during cross examination that, “it is correct that as per the DD entry, in order to avoid some ditches on the road, vehicle got unbalanced and overturned at the filed on the side of the road.” Merely filing of the documents are not sufficient to prove the contentions. Merely noting in the affidavit that respondent No.1 by rash and negligent driving caused the accident is not sufficient at all to prove the contentions for grant of compensation.”

4. On the negligence aspect, the Tribunal in the impugned Award of 24th January, 2018 has concluded as under:-

“From the material on record and from the testimony of the witness, it is proved that the respondent No.1 is not responsible for rash and negligent driving. In fact the petitioner failed to prove any accident causing death due to the rash and negligent driving of respondent No.1. Therefore, in view of the material on records and

testimony of witnesses, this Tribunal is of the considered view that the petitioners have failed to prove that deceased Krishna Kumar died on account of injuries sustained in accident which took place on 01.10.2017 at Dhoom Manikpur, Near Dadri Bypass, GB Nagar, UP due to rash and negligent driving of vehicle No. DL 1 ZA 7156 by respondent No.1. The issue No.1 is decided accordingly against the petitioners.”

5. To assail the impugned Awards, learned counsel for appellants/Claimants submits that the Tribunal has misread the evidence to conclude that deceased-Krishna Kumar alone had sustained injuries in this accident. It is submitted that the Tribunal has erred in relying upon DD entry to discard the evidence of *PW1-Husband of the deceased* to hold that the negligence does not stand proved. It is submitted that the Tribunal has erred in holding that the claim petition is silent on the negligence aspect. To submit so, attention of this Court is drawn to the claim petitions filed. It is also submitted that appellant-*Neetu* was minor and so, her father-*Manish* had deposed before the Tribunal on her behalf and had pleaded ignorance about the DD entry and so, it is submitted that in the face of the evidence of the Claimants, compensation under Section 166 of *the Motor Vehicles Act, 1988* deserves to be granted.

6. On the contrary, learned counsel for the respondent-*Insurer* supports the impugned Awards and submits that the claim petition under Section 166 of *the Motor Vehicles Act, 1988* is not maintainable.

7. Upon hearing and on perusal of the impugned Awards and the evidence on record, I find that appellants/*Claimants* in their evidence have categorically deposed that the accident in question had taken place

due to sole negligence of driver of the insured vehicle. The Tribunal has erred in relying upon one stray sentence in the cross-examination of appellant/Claimant-*Devendra Kumar* regarding his admission of the contents of DD entry. In the considered opinion of this Court, one stray sentence in the cross-examination of appellants/*Claimants* cannot be made basis to hold that there was no negligence on part of the driver of insured vehicle in causing the accident in question. The stray sentence in the cross-examination by appellant/Claimant-*Devendra Kumar* reads as under:-

“It is correct that as per the DD entry, in order to avoid some ditches on the road, the vehicle got unbalanced and overturned at the field on the side of the road.”

8. The aforesaid sentence has to be read in the context of the chief-examination of this witness, who has categorically stated in his evidence that the driver of insured vehicle was driving the vehicle at a high speed and he did not slow down the vehicle. This witness has denied the suggestion put to him regarding the insured vehicle being not driven at a high speed.

9. Upon reading the evidence of appellants/*Claimants-Devendra Kumar and Manish Kumar* as a whole, I find that the finding of the Tribunal on the negligence aspect is not sound. It is so said because appellant/Claimant-*Devendra Kumar* in his cross-examination has clarified that his children suffered minor injury. It is matter of record that minor child-*Neetu* had also preferred a claim petition to seek compensation, which has been dismissed by the Tribunal while holding

that the negligence of driver of the insured vehicle in causing of the accident in question does not stand proved. While invoking the principle of *res ipsa loquitur*, it is held that the driver of insured vehicle was driving the said vehicle rashly and negligently and was not able to control the speed of his vehicle on finding some ditches on the road, which resulted in accident in question.

10. In view of the aforesaid, the finding returned by the Tribunal on the negligence aspect is set aside and it is held that the accident in question had taken place due to rash and negligent driving of the insured vehicle by its driver. Such a view is taken because the adverse inference is drawn against the Insurer, who has not got examined the driver of the insured vehicle to set up a contrary version.

11. Although evidence was led by Claimants on their entitlement to compensation, but the Tribunal has erred in not returning independent findings on this aspect. Since Issue No. 2 regarding the quantum aspect remains undecided by the Tribunal, therefore, it is deemed appropriate to remand this case to the Tribunal to return a finding on the quantum of compensation, to which appellants/Claimants are entitled.

12. Consequentially, the impugned Awards of 13th December, 2017 and 24th January, 2018 are hereby set aside and the case is remitted back to the Tribunal to return findings on the quantum of compensation to which appellants are entitled.

13. Let the parties through their counsels appear before the concerned Tribunal on 30th October, 2018 for further proceedings in accordance with the law.

14. With aforesaid directions, these appeals are accordingly disposed of.

Dasti.

**(SUNIL GAUR)
JUDGE**

OCTOBER 15, 2018

v

