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

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Decided on: 30.08.2019

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MAC.APP. 657/2019 & CM No.30529/2019

THE ORIENTAL INSURANCE CO LTD.

..... Appellant

Through: Mr. Pradeep Gaur, Advocate.

Versus

SANU BALA & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. In this appeal the insurer impugns the award of compensation dated 23.04.2019 passed by the learned MACT in MACP No. 130/2014 on the ground that because it was the case of the claimants that the fatality of their kin was on account of a head-on collision between the two motor vehicles, therefore, negligence ought to have been apportioned equally on both the parties.

2. In the earlier round of litigation, the Award of compensation was set aside by this Court in the insurer's appeal and the case was remanded to the learned MACT for reconsideration by permitting the claimants to lead evidence of an eye-witness-Mr. Ashok Kumar Yadav, who has erroneously, not been examined. Subsequently, on considering the testimony of the said

eye-witness, the learned MACT came to the conclusion that his testimony could not be relied on because he was in another vehicle behind the one which the deceased was driving, that the accident happened around mid-night and he could not have possibly seen the manner in which the accident happened. Furthermore, he being a helper would be and indeed was sitting on the left side of the vehicle, therefore, he could not have a clear view of the entire accident. Additionally, there was no mention of the said witness – Mr. Ashok Kumar Yadav (PW3) in the claim petition, whereas Mintu, the helper, who was sitting beside the deceased driver Narayan Singh, was never produced. The learned MACT accepted the case of the claimants and granted them due compensation without apportioning any contributory negligence on the part of the deceased driver.

3. Mr. Gaur, the learned counsel for the appellant – insurance company, refers to the Site Plan made by Sub Inspector of Police on 19.12.2013 at 12:40 hours i.e. approximately 12 hours after the accident, which shows the two vehicles plying on their extreme left respective side of the road. The involvement of the two vehicles in the accident is not in doubt. The offending insured vehicle i.e. HR-38N-9699 is shown to be lying beyond the width of the road. Similarly, the Eicher Van, which the deceased was driving, is also shown to be lying beyond the width of the road. It is argued that since both the vehicles are shown to be on their respective sides of the road, therefore, in the absence of any eye-witness, it cannot be assumed that only the offending insured vehicle was at fault.

4. However, the issue has been elaborately dealt with in the impugned order as under:-

“ Thus, it is clear from the above that the evidence led on record is sufficient to establish that the above accident resulting into death of deceased Narayan Singh was caused due to rash and negligent driving of the offending vehicle by R-1, though the extent thereof requires some further appreciation of evidence and discussions.

As already discussed above, in its previous judgment/award dated 26.05.2015, the Ld. Predecessor of this tribunal had taken it to be a case of contributory negligence on the part of R-1 as well as the deceased, himself and their contributions were taken as 50% each. It is the contention of Ld. Counsel for R-3 that again the same finding or inference is required to be drawn by this tribunal. However, in terms of the specific directions already given by the Hon'ble High Court in its above judgment, this tribunal is not bound to take the same view on any aspect. It is also his contention that there are various judgments of the Hon'ble Supreme Court and different Hon'ble High Courts, including the judgment in the case of Bijoy Kumar Dugar Vs. Bidya Dhar Dutta 11 (2006) SLT 651 cited in the previous judgment/award of this tribunal, which require that in such a case of head on collision between two vehicles, the drivers of both the vehicles involved in accident should be held equally liable for the said accident.

However, this tribunal is not in agreement with the above argument of Ld. Defence Counsel that the evidence led on record suggests or makes it to be a case of contributory negligence and that too in equal shares or proportions on part of both the drivers. It is observed that in the earlier judgment/award of this tribunal, the Ld. Predecessor had proceeded on an assumption that it was a case of head on collision between two vehicles as the petitioners themselves had stated so in the petition. However, when the above documents Ex.PW1/8 (colly) of the criminal case are appreciated by this tribunal, it is found that though the cabin portion of the Eicher van driven by deceased was completely damaged in the accident, but no fresh damage at all was observed to have been caused to the offending vehicle, which

could not have been possible in a case of head on collision between two vehicles and that too, when the vehicle which did not suffer any damage is alleged to have been driven at a very fast speed and in a rash and negligent manner. It is found specifically mentioned in the remand report (Case Diary Part-I) that cabin portion of the Eicher van was completely damaged and its cleaner also sustained head injury and was under treatment and the deceased driving it was almost crushed in the accident as his right hand was cut off and his head was also broken in the accident. Though, the mechanical inspection report of Eicher van has not been filed on record as a part of the above documents, but an attested copy of mechanical inspection report of the offending truck was filed as a part of the said documents and it is found specifically mentioned therein that there was no damage on this vehicle due to the accident. The apparent reason for this was that as per the above remand report, the offending truck driven by R-1 was too widened with the loaded iron and Eicher van of deceased appears to have actually hit against the iron loaded in the offending vehicle. It is so as the above documents show that iron articles loaded in the offending truck were coming out of the vehicle and it resulted in widening the width of the said vehicle and was also the cause of above accident. It cannot be ignored that the above accident took place around midnight and there is nothing further on record to suggest that R-1 was driving his vehicle while giving indicators to show the presence of the above loaded iron articles in the vehicle and extension of width of the vehicle, so as to alert the other vehicles using the road. Therefore, it is held that the evidence led on record establishes that the above accident took place only due to the negligence of R-1 and not of any other person. Hence, in view of the above, this tribunal is of the considered opinion that there was no contributory negligence on the part of deceased in driving the above Eicher van or in not noticing the above loaded iron articles in the offending vehicle or in causing the said accident.

Thus, it is held that the oral and documentary evidence led on record establishes that the above said accident resulting

into death of the deceased was caused only due to rash and negligent driving of the offending truck bearing no. HR-38N-9699 by R-1, which was owned by R-2 and insured with R-3 at the relevant time of accident. This issue is accordingly decided in favour of the petitioners and against the respondents.”

5. The appellant seeks reduction of the quantum of compensation payable by it on the ground that there was contributory negligence of the victim. However, what emanates from the preceding discussion and conclusion of the learned MACT, is that in the first instance there was no head-on collision of the manner, which it has been canvassed by the appellant. It is only the passenger cabin of the ‘Eicher Van’ that was completely crushed, the skull of the deceased too was broken and his hand was cut-off; the cleaner of the vehicle too had sustained head-injuries. Its being driven with protruding iron articles, especially in dark of the night constituted rash and negligent driving. Furthermore, in a head-on collision both vehicles would have suffered somewhat similar frontal damage, but the offending vehicle did not suffer any damage. Whereas the passenger cabin of the Eicher Van was completely crushed. The learned Tribunal had reasoned on the basis of the records that the accident had been caused by the iron articles being carried in the offending vehicle; the offending insured vehicle was loaded heavily with iron rods, protruding beyond the normal width of the vehicle; and obviously it occupied a larger width of the road, which was merely 16 feet wide; its weight was far more than the prescribed carrying load. In all probability, it was being driven in the middle of the road to maintain its balance, and would, therefore, have every likelihood of being struck against the Eicher Van, which the deceased was driving.

6. In view of the above, the contention of the appellant is untenable and is accordingly rejected. No case is made out to interfere with the impugned order.

7. There is no merit in the appeal. It, alongwith pending application, is accordingly dismissed.

8. The statutory deposit of Rs.25,000/-, alongwith interest accrued thereon, be refunded to the appellant – insurance company.

AUGUST 30, 2019/sb

NAJMI WAZIRI, J.



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