

\$~17

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

%

Decided on: 07.08.2019

+

MAC.APP. 713/2019 & CM No. 35574/2019

THE NEW INDIA ASSURANCE CO LTD. Appellant
Through: Mr. Sanjay Kumar Dubey, Advocate
with Ms. Shuchi Singh, Advocate.

Versus

IMAM GAZALA & ORS. Respondents
Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation on two grounds. Firstly, that the minimum wages applicable to a matriculate has been applied when the issue of actual or correct minimum wage is still sub-judice. On a query put to the learned counsel for the appellant as to whether there is a stay on the operation of the minimum wages as notified by the Government of NCT of Delhi, which was taken into consideration, he states that there is no stay. In other words, the said minimum wages as notified are applicable even today. Therefore, there can be no reason to challenge or doubt or dispute the minimum wages applicable to a matriculate, as taken into consideration by the learned Tribunal.

2. The second ground is that there was no eye-witness to the accident. This issue has been dealt with by the learned Tribunal as under:-

“10. It is the case of the claimants that Khawar Jamal died in accident caused-by vehicle bearing registration no. HR-73-6820, being driven in rash and negligent manner by respondent No.1 Umar Mohd. They produced eye-witness PW2 Shebaz Malik, who deposed by way of his affidavit Ex.PW2/A as under. On 09.03.2017 he was driving the truck bearing registration No. UP-16L-8620 loaded with paper packing material and was going from Ecoteck IJI, Plot No. 392. Greater Noida to Aligarh for delivery of materials. At about 4 a.m. when he was crossing Jagat Farm Round about, he saw one truck bearing registration No.HR-73-6820 coming from opposite direction on the right side road at high speed in a rash and negligent manner and suddenly applied brakes on round about and was unable to negotiate the turn on the round about. Then he heard a sound of tyre bust and truck had also hit one two-wheeler on its left side. Further, he had deposed that since he was on other side, he could not do anything immediately, however, he saw one PCR of UP police at a distance of 1km and he informed them about the accident.

11. This witness was cross-examined by all the respondents, however, nothing could be extracted which may discredit his testimony. Though, Ld. Counsel for the respondent No. 3 argued that 10 (TW1) has clarified that he had not met with any eye witness regarding accident in question, however, it is noteworthy that he has also clarified that the offending vehicle and motorcycle of the deceased were found in accidental condition at the spot and the motorcycle was in burnt condition. Further, it is not the case of the respondents that the accident was the result of mechanical defect in the offending vehicle as in that case burden of proof was on the owner of the

vehicle to establish that fact (refer : "Minu B. Mehta and Anr. Vs. Balkrishna Ramchandra Nayan and Anr., 1977 ACJ 118'). Further, PW2 has also clarified that he found the truck tilted towards its left side and its axle and tyres were damaged. He also stated that left tyre was burning and motorcycle was entangled into left side of truck, which was loaded with rodi (stones). In view of above, the version of eye witness stand substantiated.

12. It is settled law that strict proof of the accident caused by the offending vehicle in a particular manner may not be possible to be done by the claimants and they are merely to establish their case on touchstone of preponderance of probability (refer; "Bimla Devi and Ors. Vs. Himachal Road Transport Corporation and Ors., 2009 ACJ 1725).

13. Further, the PMR of the deceased filed alongwith criminal case record Ex.PW1/4 makes it clear that death was due to shock and hemorrhage as a result of number of injuries suffered in the accident. It is pertinent to mention here that the cause of death is not in dilute.

14. In view of this court, there is sufficient material on record to establish that the accident had occurred due to rash and negligent driving of the offending vehicle by respondent No.1 and that has resulted into death of Khawar Jamal."

3. What emanates from the above is that the accident happened in the wee hours of the morning when the deceased undergraduate student was returning on a motorcycle to his hostel near Knowledge Park, District Gautam Budh Nagar, Uttar Pradesh. The offending vehicle, insured by the appellant, which was being driven in a rash and negligent manner, hit the unfortunate motorcyclist and crushed him under its left front wheel. The

accident was witnessed by a person present there, namely, Mr. Shebaj Malik (PW2). He promptly intimated the police van, which was stationed about a kilometre away. The police rushed to the spot and thereafter took the fatally injured to the hospital, where he took his last breath. The offending insured vehicle was found to have crushed the motorcycle. The motorcycle was burnt and there was extensive damage to the left front wheel and axle of the truck, which was loaded with '*Rodi*' (stones). Criminal proceedings have been initiated against the owner and driver of the offending vehicle. The chargesheet has been filed implicating the offending vehicle. Furthermore, the owner and driver of the offending vehicle as well as the appellant, despite being provided sufficient opportunities, have not cross-examined PW2 and were unable to shake his testimony. Therefore, on the principle of preponderance of probability, the learned Tribunal has rightly believed the claimants' version and awarded the compensation.

4. In view of the above, the Court does not find any merit in the appeal. Alongwith pending application, it is dismissed.

5. The statutory deposit of Rs.25,000/-, alongwith interest accrued thereon, shall be deposited in the 'AASRA' Fund.

NAJMI WAZIRI, J.

AUGUST 07, 2019

sb