

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

% **Judgment delivered on: 15th March, 2019**

+ **MAC.APP. 117/2015**

NEW INDIA ASSURANCE CO. LTD.

...Appellant

Through: Mr. C.K. Gola, Advocate
with Mr. Abhishek Gola,
Advocate.

versus

1. **SMT. SANGEETA**
W/o Late Shr. Yashpal Singh
2. **DIKSHANT**
S/o Late Shri. Yashpal Singh,
3. **DEV**
S/o Late Shri. Yashpal Singh,
4. **SHRI RAM**
Father of Late Shri Yashpal Singh,
5. **SMT. RAMVATI DEVI**
Mother of Late Shri Yashpal Singh,
6. **SHRI ANT RAM SINGH (DRIVER & OWNER)**

...Respondents

Through: Mr. Narender Singh,
Advocate for R-1 to R-5.

CORAM:
HON'BLE MR. JUSTICE I.S. MEHTA

JUDGMENT

I. S. MEHTA, J.

1. Instant appeal is arising from the impugned award dated 29.10.2014 in

MACT Case 94/11 passed by Sh. Arvind Kumar Presiding Officer, MACT, Kakardooma Courts, (Shahdara) Delhi (*henceforth referred to as the Tribunal*) whereby Respondent Nos.1 to 5 were awarded Rs. 1,10,63,368/- (*inclusive of interim compensation*) at interest rate of 9% p.a. from the date of filing of petition till the date of its realization.

2. Brief facts stated are that on 01.08.2010 deceased Yashpal Singh while going to his home on motorcycle bearing No. DL-5SAA-9800 was hit by car bearing No. UP-16Z-9634 at Haridarshan Police Chowki, Sector-11, Noida. The said car was driven by Ant Ram Singh (*Respondent No.6 herein*) in very high speed, rashly and negligently which resulted in receiving of grievous injury on person of the deceased Yash Pal. The deceased was taken to Metro Hospital, Sector-11, Noida, where he succumbed to his injuries. FIR No. 645/2010 under Section 279/338/427/304A IPC was got registered at P.S. Sector-24, Noida.
3. Thereafter, claim petition was filed on 18.07.2011 against Respondent No.6, driver-cum-owner of the offending vehicle and Appellant, Insurer of the offending vehicle by the claimants.
4. Respondent No.6 filed written statement and stated that deceased was driving motorcycle at a very high speed and hit against his car. Therefore, he is not liable to pay any compensation.
5. Appellant, Insurance Company filed written statement stating that said

vehicle was insured with Insurance Company. It is stated that it was a hit and run motor accident as provided under Sections 161/162/163 of Motor Vehicle Act 1988 and this Court does not have jurisdiction to entertain and adjudicate upon the issues arose out of present matter. Further it is stated that alleged accident occurred on 01.08.2010 at 11:00 PM and FIR No.645/10 was registered on 02.08.2010 under Sections 279/338/427/304A IPC at P.S. Sector-24, Noida against an unknown vehicle and the police had closed the case after final report on 25.09.2010. It is also stated that the car bearing No. UP-16Z-9634 had been deliberately, intentionally and illegally shown as involved in the alleged accident with a view to cause undue harassment and undue financial loss to the owner and insurer of the said vehicle. It is stated that claim petition was bad for mis-joinder of Respondent No.6 and Appellant, the petitioner Nos.1 to 3 were not the legal heirs of the deceased. It is also stated that mother and father of the deceased had not been impleaded as party. Hence, the petition was bad for non-joinder of parties. It is also stated that petitioners have claimed much exaggerated amount. Insurance Company has denied almost all material contents of the petition.

6. On the basis of the pleadings of the parties issues were framed on 26.04.2012 by the Ld. Tribunal.
7. Claimant (*Respondent No.1 herein*) has filed her affidavit Ex.PW1/A in support of her claim petition and examined herself as PW1. She relied upon photocopy of her election ID card Ex.PW1/1, photocopy

of election ID card of deceased Ex.PW1/2, photocopy of ration card Ex.PW1/3, photocopy of her PAN card Ex.PW1/4, photocopy of death certificate Ex.PW1/5, photocopy of acknowledgment of ITR for the assessment year 2007-08 Ex.PW1/6, photocopy of certificate of Secondary School Examination Ex.PW1/7, photocopy of ITR for the assessment year 2008-2009 and 2009-2010 Ex.PW1/8 and photocopy of ITR for the assessment year 2010-2011 is marked X. The Claimants also examined Sh. Raj Pal Singh as PW-2, Sh. Satish Kumar as PW-3, Sh. Vijay Kumar Pal as PW-4 and Sh. Tej Bahadur Mishra as PW-5.

Respondent No.6 filed his affidavit i.e.Ex.R1W1/A in support of his claim and examined himself as R1W1. The Insurance Company examined Sh. Prem Singh, Deputy Manager, New India Assurance Company as R2W1 and Sh. Pradeep Kumar Singh, Sub-Inspector, P.S Phase-II, Noida as R2W2.

8. On the basis of pleadings and evidence led by the parties, impugned award was passed. Aggrieved from impugned award, appellant insurance company has preferred the present appeal.
9. Learned counsel for the Appellant has submitted that the impugned award is bad. The records only indicate that it is a case of “hit-and-run” only.
10. Learned counsel for the Appellant further submitted that FIR No. 645/2010 was registered on the complaint of Satbir Singh and Sunil at P.S. Sector-24, Noida, Gautambudh Nagar against “Agayat Vahan”

(Unknown vehicle). Thereafter, Investigating Officer recorded statement of only Satbir Singh, brother of the deceased, and not of any eye-witness including Sunil, who was alleged eye witness of the incident. Consequently, the case was closed after final report on 25.09.2010 since the unknown vehicle involved in the alleged accident could not be traced out.

11. Learned counsel for the Appellant further submitted that police re-opened the case after long lapse of time on receiving an application from Devender, brother of the deceased alleging that the vehicle bearing No. UP-16Z-9634 was involved in the accident, the allegation was based on Rajpal Singh PW2 and Satish Kumar PW3 who allegedly chased the said vehicle after the alleged incident. On the other hand, neither Rajpal Singh nor Satish Kumar lodged the complaint with the police nor even informed the family members of the deceased about the alleged accident.
12. Learned counsel for the Appellant further submitted that statement of Rajpal Singh PW2 and Satish Kumar PW3 cannot be relied upon as their statement is contradictory. Therefore, the finding of the Ld. Tribunal on the basis of these two witnesses is erroneous.
13. Learned counsel for the Appellant further submitted that Ld. Tribunal erred in holding PW2 and PW3 as eye witness of the incident, clearly overlooked the fact that the only eye witness was Sunil, who was not produced as a witness. Moreover, both witnesses were neither cited as

eye witnesses nor they were summoned witnesses, rather they were brought to the Court by Satbir, the brother of deceased to depose in favour of the claimants, thus, their testimony is not trustworthy.

14. Learned counsel for the Appellant further submitted that Ld. Tribunal erred in observing the annual loss of income is Rs.6,76,773/-.
15. Learned counsel for the Appellant further submitted that Ld. Tribunal erred in adding 50% towards future prospects without appreciating that the deceased was a businessman and was neither a person with permanent stable job nor fell under the expression “self-employed”.
16. Learned counsel for the Appellant further submitted that the parents were not dependent upon the deceased as admitted by PW1 in her cross-examination on 16.02.2013 wherein it was stated that “*My father-in-law and one of my brother-in-law are working in Government Sector.*” Thus, the only dependents were the two minor children of the deceased. The widow was not dependent upon the income of the deceased and relied upon judgments: ***Sarla Devi & Ors. v. DTC & Anr.***, 2009 ACJ 1298, ***Bimla Devi & Ors. v. Himachal Road Transport Corporation and Ors.***, (2009) 13 SCC 530, ***National Insurance Co. Ltd. v. Vijay Laxmi & Ors.***, MAC. APP. No.375/06 dated 05.07.2012, ***ICICI Lombard General Insurance Co. Ltd. v. Angrej Singh & Ors.***, MAC. APP. No. 846/2011 dated 30.09.2013 and ***ICICI Lombard General Insurance Co. Ltd. v. Seema Madan & Ors.***, 2013 ACJ 1656.

17. Per contra, learned counsel for the Claimants submitted that the compensation awarded by the Ld. Tribunal is fair, just and reasonable and present appeal deserves to be dismissed.

18. From the perusal of the record it shows that the initial claim petition was filed on 18.07.2011 under Sections 140 & 160 of Motor Vehicles Act, 1988 by the petitioners i.e. Sangeeta (Respondent No.1), Dikshant (Respondent No.2) and Dev (Respondent No.3).

Respondent No.6 and Appellant have filed written statement of the claim petition on 17.11.2011 and 26.04.2012 respectively.

19. On the basis of the pleadings of the parties following issues were framed on 26.04.2012 by Ld. Tribunal:

1. Whether Sh. Yashpal Singh suffered fatal injuries in the accident occurred on 01.08.2010 due to rash and negligent driving of vehicle No.UP-16-Z-9634 (Car) being driven by respondent No.1? (OPP)
2. Whether the petitioners are entitle for any compensation, if so, to what amount and from whom? (OPP)
3. Relief.

20. Claimant Respondent No.1 has filed her affidavit Ex.PW1/A in support of her claim petition and examined herself as PW1. Claimants have also examined Sh. Raj Pal Singh as PW2, Sh. Satish Kumar as PW3, Sh. Vijay Kumar Pal as PW4 and Sh. Tej Bahadur Mishra as

PW5.

Respondent No.6 has filed his affidavit Ex.R1W1/A and examined himself as R1W1. Appellant Insurance Company examined Sh. Prem Singh, Deputy Manager, New India Assurance Company as R2W1 and S.I. Pradeep Kumar Singh, P.S Phase-II, Noida as R2W2.

21. Thereafter, on 27.10.2014 the Respondent No.1, 4 and 5 have moved application under Order VI Rule17 for impleading Respondent No.4 and 5 as claimants and same was taken on record vide order dated 20.10.2014 at the back of the Respondent No.6 and Appellant.
22. The Ld. Tribunal without issuing prior notice to the Respondent No.6 and Appellant with respect to the application under Order VI Rule 17 and without seeking reply on behalf of the Respondent No.6 and Appellant without formal order in haste included the name of Respondent No.4 and 5 in the award which is contrary to the principles of natural justice, laws and facts. The determination of dependency of the Respondent No.4 and 5 is required to be determined on the basis of the pleading of the parties and evidence thereof on a material point.

In the instant case, the Ld. Tribunal in haste has not sought any reply from Respondent No.6 and Appellant and passed the impugned award without giving reasonable opportunity to Respondent No.6 and Appellant for objecting the impleadment of Respondent No.4 and 5.
23. Therefore, the impugned award suffers from the basic procedure and

violation of principles of natural justice for determination of dependency on deceased Yashpal Singh after his death. Consequently, impugned award dated 29.10.2014 is set aside and present petition is remanded back to the Tribunal for affording opportunity to file reply under Order VI Rule 17 and written statement on behalf of the Respondent No.6 and Appellant. Thereafter, written statement, if any, evidence to be lead by the parties pertaining to claim and defence of Respondent No.4 and 5 only.

24. The parties are directed to appear before the Tribunal on 15.04.2019. The Ld. Tribunal is directed to pass a fresh award after considering all the material pleadings and evidence available on record and dispose of the petition preferably within six months.
25. Let one copy of this order be sent to the concerned Court. TCR be sent back forthwith to the Tribunal. No order as to costs.

I.S.MEHTA
(JUDGE)

MARCH 15, 2019