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

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Decided on: 04.09.2019

+ MAC.APP. 767/2019, CM APPL. 39788/2019 & CM APPL. 39789/2019

UNITED INDIA INSURANCE CO LTD

..... Appellant

Through: Mr. Ravi Sabharwal, Advocate.

versus

SAROJ DEVI & ORS

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 31.05.2019 in MACT Case No. 305/18 on the ground that there was no eye-witness to the accident, and whereas the evidence led on behalf of the appellant clearly establishes that the deceased was drunk and that high concentration of alcohol was present in his body at the time of the accident. He went on the road in a drunken state and banged against the stationary bus. However, the aforesaid argument is not made out from the records of the case because, in the first instance, the Post-Mortem Report shows that it was a road traffic accident and his death was due to "*cranio cerebral damage as a result of antemortem injury sustained to the head due to blunt force/surface impact.*"

All injuries are antemortem in nature and could be possible in the manner as alleged."

2. The learned counsel for the appellant is unable to show any Medical Report showing alcohol in the blood of the deceased. Even the FSL Report clearly states that "*chemical & GC-HS examination, ethyl and methyl alcohol could not be detected in exhibit '1'*". This sample/exhibit was the brown coloured liquid which was recovered from the stomach of the deceased. Neither the Post-Mortem Report nor the FSL Report indicate that the deceased had alcohol in his blood, let alone the alcohol being beyond the permissible limits in the blood. So drunkenness is not proven. Therefore, the contention of the appellant that death of the deceased was on account of his walking in drunken stupor into on-coming traffic is without merit and is accordingly rejected.

3. Secondly, contention before the learned MACT was that its vehicle was stationary and while its passengers were de-boarding from the stationary bus, the deceased walked up to the vehicle and started banging his hands against it. Thereafter what happened is not stated. It stands to reason that if somebody is trying to damage the appellant's insured vehicle or otherwise trying to cause damage to himself by banging his hands against the vehicle, the driver and the conductor of the bus would ordinarily have taken some measures to restrain damages, to the bus and to such person. This was not so done; nor was the police called. On the contrary, it is an admitted fact that the driver and the conductor of the appellant bus ran away from the site and parked the vehicle at Peeragarhi Depot to escape assault by the enraged public. Alternately, if there was no accident caused by the

appellant bus, there was no reason to fear or run away, because the passengers who were deboarding, had seen the manner of the accident. If somebody was trying to hurt himself by banging his hands against the bus, people who were there would always stop him and there was no occasion to fear from the people at the site in assaulting the bus driver and conductor. Furthermore, the recorded ante-mortem injuries include “cramio cerebral damage” which could not have been caused by the deceased allegedly banging his hands against the bus. These facts themselves show that the appellant vehicle was involved in the motor-vehicular accident. Furthermore, the DAR has been filed, wherein the appellant vehicle has been found to be involved in the said accident.

4. One Civil Defence Volunteer (R1W1) was produced to testify on behalf of the driver of the vehicle. He had not been summoned by the Court. If he was an eye-witness to the accident, he should have informed the police and if he stayed at the hospital for whole night with the deceased, he should have informed the doctor or the police or some other authority but he did not do so. He was a complete stranger to the deceased and his family, there is no valid reason for him to stay at the hospital for the whole night, without intimating any authority or the family of the deceased. Therefore, his testimony was rightly held to be untrustworthy.

5. In this regard, the impugned order has reasoned as under:-

“22. The respondent No.1 has examined Sh. Pramod as R1W1 and this witness has stated that he is working as a Civil Defence Volunteer. R1W1 has further stated that he was posted as Civil Defence Volunteer for the safety of ladies passenger on Bus bearing no. DL-IPC-9953 on

29.11.2017. R1W1 has further stated that on 29.11.2017 at about 11-11:30 PM, their bus reached at Peeragarhi Bus Stand and he was standing near the front gate of the bus. R1W1 has further stated that suddenly, a man who was under the influence of alcohol came in front of the stationary bus and started hitting the wind screen of the bus with his hands. R1W1 has further stated that the said man was under the heavy influence of alcohol and due to this reason, he could not stand properly. R1W1 has further stated that he lost his balance and fell on the road. R1W1 has further stated that he alongwith Driver Sh. Baljeet Singh who was on duty on the said bus removed the said person towards one side of the road and the driver called the ambulance on 102 number. R1W1 has further stated that the police Van came and he alongwith the driver went to Sanjay Gandhi Hospital on the request of the concerned police officials. R1W1 has further stated that he and driver both stayed in the hospital for the whole night. R1W1 has further stated that in the morning, he went to the Depot and reported the matter to the Depot Incharge and thereafter, he went to his home. R1W1 has further stated that the bus was stationary at the time when the incident took place.”

25. The respondent no. 1 has also examined Sh. Satish Kumar, Conductor as R1W2 and this witness has stated that on 29.11.2017, he was on duty as Conductor on Bus bearing no. DL-IPC-9953. R1W2 has further stated that on 29.11.2017 at about 11:15 to 11:30 PM, their bus reached at Peeragarhi Bus Stand and he was sitting on the conductor seat of the bus. R1W2 has further stated that the bus was stationary at that time, then, he saw that the Driver Baljeet Singh and Civil Defence Volunteer Sh. Pramod get down from the bus and saw one person lying on the road. R1W2 has further stated that the said person who was lying on the road was under the influence of alcohol. R1W2 has further stated that then, police Van reached at spot and took the said person to Sanjay Gandhi Hospital alongwith Driver Baljeet Singh and

Civil Defence Volunteer. R1W2 has further stated that he remained at the spot and he does not know what happened thereafter.

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44. IO has been examined as PW2 and the testimony of IO in the considered opinion of this court is reliable and trustworthy. To my mind, the report of FSL cannot be brushed aside. Furthermore, it has to be seen that R1W1, in the cross-examination, categorically states that he has come to the Court at the instance of the driver of the offending vehicle and he is not a summoned witness. R1W1 failed to make any statement to the police at any point of time. No complaint was lodged by him against any higher police officials against the false implication of the respondent no.1 or that of the DTC officials. Similar are the testimonies of R1W2 and R3W1. To my mind, the testimonies of R1W1, R1W2 and R3W1 are not reliable and trustworthy in the light of their cross-examination and I am of the opinion that the CFSL report is a clinching evidence which stipulates that no presence of the ethyl and methyl was found in the blood sample of the deceased.

45. Furthermore, the PM report of the deceased categorically states that there is a alleged history of road traffic accident and the cause of death in the PM report has been mentioned as "Death is due to cranio cerebral damage as a result of antemortem injury sustained to the head due to blunt force/surface impact. All injuries are antemortem in nature and could be possible in the manner as alleged."

46. To my mind, the PM report of the deceased also strengthens the theory of the road traffic accident. In the light of the abovesaid discussion, I am of the opinion that the petitioners have been able to prove that the accident in question took place due to the rash and negligent driving of the respondent no.1."

6. What emanates from the above is a clear case of the involvement of the appellant insured vehicle and there is no reason to interfere with the impugned order. The appeal is without merit and is, accordingly, dismissed.

7. Statutory amount, alongwith interest accrued thereon, be deposited into the “AASRA Fund”.

NAJMI WAZIRI, J

SEPTEMBER 04, 2019

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