

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

% **Judgment delivered on: 25th January, 2019**

+ **MAC.APP. 338/2017**

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.

6th floor, Ashoka Bhawan,
Nehru Place, New Delhi.

...Appellant No.1

Through: Mr. Pradeep Gaur
Advocate.

versus

1. SEEMA VERMA (WIDOW)
W/o Late Sh. Sandeep Verma,
R/o H. No. 107/II,
Mintoo Road Complex, New Delhi.
2. TANUSHKA VERMA (DAUGHTER)
D/o Late Sh. Sandeep Verma,
R/o H. No. 107/II,
Mintoo Road Complex, New Delhi.
3. RINKU KUMAR (DRIVER)
S/o Sh. Sunder Lal,
R/o C-156, Block GL-8, Prem Vihar,
Karawal Nagar, New Delhi.
4. UNIVERSAL PUBLIC SCHOOL (OWNER)
R/o Block A, Preet Vihar,
New Delhi- 110092.
5. SHAKUNTALA (MOTHER)
W/o Sh. Radhey Verma,
R/o H.No. C-1, Bal Nagar, Kartapura,
Ward No.15, Tehsil District Jaipur,
Rajasthan.
6. RADHEY VERMA (FATHER)
S/o Late Sh. Lal Verma,

R/o H. No. C-1, Bal Nagar, Kartarpura,
Ward No.15, Tehsil District Jaipur,
Rajasthan

... Respondents

Through: Mr. S.N. Parashar and
Ms. Pankaj Kumari,
Advocates for R-1 & R-2.
Mr. K.C. Kaushik and
Mr. Rahul Kaushik,
Advocates for R-4. Ms.
Pooja Goel, Advocate
for R-5 & R-6.

+ MAC.APP. 717/2017

UNIVERSAL PUBLIC SCHOOL

Block-A, Preet Vihar, Delhi-110092

...Appellant No.2

Through: Mr. K.C. Kaushik and
Mr. Rahul Kaushik,
Advocates.

versus

1. SEEMA VERMA (WIDOW)
W/o Late Sh. Sandeep Verma,
R/o H. No. 107/II,
Mintoo Road Complex, New Delhi.
2. TANUSHKA VERMA (DAUGHTER)
D/o Late Sh. Sandeep Verma,
R/o H. No. 107/II,
Mintoo Road Complex, New Delhi.
3. BAJAJ ALLIANZ GENERAL INSURANCE
CO. LTD.
6th floor, Ashoka Bhawan, Nehru Place,
New Delhi.
4. SHAKUNTALA (MOTHER)
W/o Sh. Radhey Verma,

R/o H.No. C-1, Bal Nagar, Kartapura,
Ward No.15, Tehsil District Jaipur,
Rajasthan.

5. RADHEY VERMA (FATHER)

S/o Late Sh. Lal Verma,
R/o H. No. C-1, Bal Nagar, Kartarpura,
Ward No.15, Tehsil District Jaipur,
Rajasthan

6. RINKU KUMAR (DRIVER)

S/o Sh. Sunder Lal,
R/o C-156, Block GL-8, Prem Vihar,
Karawal Nagar, New Delhi.

... Respondents

Through: Mr. S.N. Parashar and
Ms. Pankaj Kumari,
Advocates for R-1 & 2.
Mr. Pradeep Gaur,
Advocate for R-3. Ms.
Pooja Goel, Advocate
for R-4 & R-5.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. In the present appeal Bajaj Allianz General Insurance Co. Ltd and Universal Public School has preferred two separate appeals *qua* the impugned award in DAR proceedings arising from Suit No. 342/16 in respect to FIR No. 165/10 registered at P.S. Preet Vihar, Delhi under Section 279, 304A IPC dated 01.05.2010 wherein the Insurance Company was directed to release the awarded amount in favour of the Claimants with right to recover *qua* Driver Rinku Kumar and Owner Universal Public School.

2. The brief facts stated are that the Claimants filed a claim petition under Section 166/140 of Motor Vehicle Act 1988, claiming compensation of Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lac Only) on account of death of the deceased Sandeep Verma in a road accident on 01.05.2010. As per the claim petition deceased Sandeep Verma was going towards Madhuban, Preet Vihar on his motorcycle at a normal speed on 01.05.2010 at about 10:30 AM, when he reached in front of Patparganj, opposite to V3S Mall, Preet Vihar a school bus bearing registration No. DL-1VA-6707 (*hereinafter referred to as the offending vehicle*) having yellow colour and was driven by Rinku Kumar (Driver) at a very high speed, rashly, negligently, without following necessary precautions, without proper lookout, violating the traffic rule and without using horn hit the motorcycle DL-7 SBD 3069 with a great force from behind which caused grievous injuries on the person of the deceased. He was taken to Makkad Medical Centre, Priyadarshani Vihar, Delhi where he was admitted and he later succumbed to his injuries on the same day. The post mortem of the deceased was got conducted at Aruna Asaf Ali, Govt. Hospital, Mortuary, Sabzi Mandi, Delhi. On the basis of DD Entry no. 18A an FIR, FIR No. 165/10 under Section 279, 304A IPC was got registered at P.S. Preet Vihar.

3. The claim petition was filed in the Tribunal against Driver of the offending vehicle Rinku Kumar, Owner of the offending vehicle Universal Public School and Insurer of the offending vehicle Bajaj Allianz General Insurance Co. Ltd. and all were alleged to be jointly

liable to pay the compensation to the Claimants in the petition.

4. The Driver and Owner of the offending vehicle has filed the joint written statement where they denied the allegation made in the claim petition and stated that driver of the offending vehicle make Swaraj Mazda was Shyam Chand and not Rinku Kumar. They further stated that they are being falsely implicated in the present case. The vehicle in question duly completed its duty of picking up students and reach to the school at 7 AM and thereafter the same was parked in the school campus till 1:50 PM. It was further stated that Shyam Chand never handed over bus to any other person. The place of the incident, Madhuban chowk, Vikas Marg does not come in the route of the offending vehicle. Notice under Section 133 of Motor Vehicles Act 1988 was issued to school authorities and impounding of bus on 17.10.2010 is without valid reasons and the alleged vehicle is not involved in the accident. The amount claimed is exaggerated and claim petition is liable to be dismissed.

5. The Insurer Bajaj Allianz Insurance Co. Ltd. has filled the written statement and took preliminary objections that the Insurance Company is not liable to pay the compensation amount as Investigating Officer of the criminal case impounded driving license of Driver Rinku Kumar and the same was also verified by the licensing authority and found that Driver Rinku Kumar is not authorized to drive the said bus as he was holding driving license of Motorcycle and LMV which is a violation of terms and condition of the Insurance Policy. Therefore, Insurance Company is not liable and

if at all any liability arise the same is of Driver and Owner of the offending vehicle and prays that the claim petition be dismissed.

6. The claimant Smt. Seema Verma (Wife of deceased) and baby Tanushka Verma has filed claim petition No. 566/10 and parents and sister of deceased filed a separate petition No.597/10 and the same was merge vide order dated 16.03.2011 and later allotted Suit No.342/16. Thereafter issues were framed accordingly on the aforesaid date.

7. All the parties have led their evidences before the Tribunal, claimant Smt. Seema Verma has filed her affidavit Ex.PW1/A in support of her claim, claimant Smt. Shakuntala (mother of deceased) has examined herself as PW2 and claimants have examined Yograj as PW3, Karanjeet Singh as PW4 and Vinit Kumar as PW5. Subsequently, petitioner evidence was closed on 09.11.11.

Owner of the offending vehicle Respondent no.2 (*Appellant No.2 herein*) has examined Khgesh Singh Joshi as R2W1, IO Inspector Z.H. Khan (Retd.) as R2W2, Mr. V. Lakshmi Narsimhan, Senior Scientific Officer from FSL, Rohini as R2W3, Ms. Kalpana Mathur as R2W4 and Sh. Shyam Chand as R2W5.

Insurance Company (*Appellant No.1 herein*) has examined Mr. Ramnique Sachar, Senior Executive from the company as R3W1, Ct. Parsan Singh as R3W2, Ct. Rameshwar as R3W2A and Ct. Brahm Prakash as R3W3. Subsequently, Respondent evidence was closed on 19.11.2015.

8. On the basis of pleadings and evidence led by the parties, impugned award dated 16.12.2016 was passed by Motor Accident Claims Tribunal (*henceforth referred to as the Tribunal*) of Rs. Rs.1,08,58,000/- alongwith interest at the rate of 9% p.a. on the total compensation amount from the date of filing of petition till its realization. The breakup of compensation awarded is as under:-

<i>Sl. No.</i>	<i>On Account of</i>	<i>Amount (Rs.)</i>
1.	<i>Loss of dependency</i>	<i>Rs. 1,06,08,000/-</i>
2.	<i>Loss of Consortium</i>	<i>Rs. 1,00,000/-</i>
3.	<i>Pain of Love and affection</i>	<i>Rs. 1,00,000/-</i>
4.	<i>Loss of Estate</i>	<i>Rs. 25,000/-</i>
5.	<i>Funeral expenses</i>	<i>Rs. 25,000/-</i>
	<i>TOTAL</i>	<i>Rs. 1,08,58,000/-</i>

9. Aggrieved from the award dated 16.12.2016 passed by Tribunal, appellants have preferred the present appeals.

10. Learned counsel for the Appellant No.1/Bajaj Allianz General Insurance Co. Ltd. has submitted that Insurance Company is not liable to pay the compensation award as the driver of the offending vehicle Rinku Kumar was not holding valid driving license for driving HMV i.e. offending vehicle, as the offending vehicle was driven in contravention of policy terms and conditions of insurance policy, the concept of pay and recover cannot be made liable where Insurance Company has no liability as per the Section 149 (2) Motor Vehicle Act, 1988. Appellant No.1 placed its reliance on the Apex Court judgment in *Oriental Insurance Co. Ltd. v. Brij Mohan and Ors*,

2007 AIR SCW 3734 and in ***Ram Prakash Singh and Ors. v. State of Bihar and Ors***, 2006 AIR SCW 5312.

11. Learned counsel for the Appellant No.2/Universal Public School has submitted that the Tribunal wrongly placed its reliance on the evidence of Yograj PW3 who is not an eye witness to the incident and he is an introduce witness and his testimony cannot be relied upon in view of his admission as under: -

“I have no MCD license or any other licence for my business. I give money to police and MCD officials to run my thela ”.

12. Learned counsel for the Appellant No.2 has further submitted that the claim petition suffers from various irregularities in investigation as Sh. Arun Sharma was not examined in the claim petition.

13. Learned counsel for the Appellant No.2 has further submitted that the evidence available on record is not sufficient to hold that Driver Rinku Kumar was driving the offending vehicle and prays that the impugned award dated 16.12.2016 be set aside.

14. Per contra, learned counsel for Claimants has submitted that the accident occurred due to rash and negligent driving by Driver Rinku Kumar and eye witness Yograj (PW3) is an independent witness who has seen the accident on 01.05.2010 at Maduban Chowk, in front of Patparganj opposite to V3S Mall, Preet Vihar through his naked eye and learned Tribunal has rightly allowed the claim petition. He further

submitted that both the appeals deserves to be dismissed.

15. The driver of the offending vehicle Rinku Kumar despite filing the written statement, did not prefer to examine himself or any other witness to rebut evidence of Yograj PW3.

16. The contention of the learned counsel of the Appellant No.2 that Yograj PW3 is not an eye witness to the incident, he is an introduced witness, his statement is at the behest of the police, does not seems to be correct.

17. Yograj PW3 is examined in the claim petition as well as in a criminal proceeding in FIR No.165/10 under Section 279, 304A IPC P.S. Preet Vihar, Delhi. The statement of the PW3 Yograj in the criminal case was recorded on the basis of his statement under Section 161 Cr.P.C. The Ld. APP in the said case cross-examined Yograj PW3 and put a suggestion that his statement made before police under Section 161 Cr.P.C was on the basis of truthfulness. The Yograj PW3 affirmed the suggestion of the learned APP and stated that his statement under Section 161 Cr.P.C. Ex.PW11/A was recorded on the basis of truthfulness.

18. Learned defence counsel in the said case did not put any suggestion that he is not witness to the incident.

19. Learned defence counsel further did not confront the statement of the PW3 which is already recorded in claim petition on 19.05.2011 and his affidavit filed in claim petition affidavit Ex.PW3/A wherein he

has specifically stated that on 01.05.2010 at about 10:30 AM, a motor cycle no. DL-7SBD-3069 was standing on Red light along with other vehicles waiting for green signal. In the mean time a school bus No. DL-1VA6707 (Yellow colour) of Universal Public School, which was being driven by its driver at a very high speed, rashly, negligently, without taking necessary precautions, without proper lookouts, violating the traffic rules and without using horn came from back side and hit the motor cycle No. DL-7SBD-3069 with a great force.

20. As a result of this violent impact the motorcycle and the rider fell down on the road and sustained grievous injuries on his person.

He was immediately taken by one person who was having a Maruti car and the driver of the bus was caught at the spot by the public persons but he succeeded to get rid of the public and fled away.

21. Driver Rinku Kumar has neither rebutted the statement of Yograj PW3 in the claim petition nor has examine himself as a witness in the claim petition as well as in the criminal case FIR 165/10 under Section 279, 304A IPC in P.S. Preet Vihar, Delhi.

Rinku Kumar by doing so succeeded in taking the benefit of doubt in the aforesaid criminal case.

22. However, in the present claim petition the affidavit Ex.PW3/A is corroborated with the statement Ex.PW11/A under Section 161 Cr.P.C., and his presence at the spot is neither denied by him nor by Owner/Universal Public School during the cross examination on both the occasions.

23. Therefore, his acquittal in criminal case on the benefit of doubt *ipso facto* would not absolve him from his tortious liability in the claim petition, reliance is placed on ***N.K.V. Bros (P) Ltd. v. M. Kurumai Ammal***, (1980) 3 SCC 457. So far, his admission that he does not hold MCD license and he gives money to MCD and police official to run *thela* on the road loses its significance in presence of non denial of his presence at the spot in absence of his personal gain.

24. The contention of the learned counsel of the Appellant No.2 that Arun Kumar Sharma material witness has not been examined is concerned, it loses its significance in presence of statement of Yograj PW3. The MLC record does not disclose the address of the Arun Kumar Sharma. Driver and Owner of offending vehicle did not cross examined the claimant that she knew Arun kumar prior to the date of incident so as to furnish whereabouts of Arun Kumar. The claimant cannot be expected to know the address of the stranger, therefore, non examination of Arun Kumar would not affect the claim of the petition.

25. The contention of the learned counsel of the Appellant No.2 that there is no sufficient evidence on record that Rinku was driving the offending vehicle on the date of the incident at the spot is also not convincing.

26. The written statement on behalf of the Driver and Appellant No.2 was filed on 16.03.2011 wherein Appellant No.2 does not dispute the employment of the Driver Rinku Kumar with the school on the date of the incident.

27. The Claimant Smt. Seema Verma relied upon her affidavit Ex.PW1/A wherein she has stated that deceased Sandeep Verma was her husband. He was going toward Madhuban Chowk on his motorcycle DL-7 SBD 3069 in a normal speed on 01.05.2010 at 10:30 AM when he reached near V3S Mall, Preet Vihar Delhi a school bus bearing No. DL-1VA-6707 was driven by its driver at a very high speed, rashly, negligently without following necessary precautions, without proper lookout violating the traffic rule and without using horn hit the motorcycle No. DL-7 SBD 3069 with great force, as a result of which her husband fell down on the road and sustained grievous injuries. He was taken to Makkad Medical Centre, Priyadarshani Vihar, Delhi and later died. Her husband was 29 years old at the time of incident and he was an Associate with M/s. Dell PEROTSYSTEMS TSI, 103, Ashoka Estate-24, Barakhamba, Road New Delhi and was getting salary of Rs. 6,08,943/- per annum. Appointment Letter and Salary certificate Ex.PW1/1, Driving License of her husband are Ex.PW1/1, photocopy of Driving License and Education Certificate are mark A and B respectively. Entire family i.e. herself, mother, father, sister and daughter were dependent on deceased. The claimant Smt. Shakuntla has also examined herself as PW2 and relied upon her affidavit Ex.PW2/A.

28. In support of their claim petition, the claimants have examined Yograj S/o Bhure Lal as PW3 who has filed affidavit and stated therein that he saw a motorcycle no. DL-7SBD-3069 was standing on Red light on 01.05.2010 with other vehicle waiting for

green signal. In the meantime a school bus no. DL-1 VA 6707 (yellow colour) Universal Public school, which was driven by its driver at a very high speed, rashly, negligently without following necessary precautions, without proper lookout violating the traffic rule and without using horn and hit the motorcycle with a great force. As a result motorcycle rider fell down and sustained grievous injuries and taken by one person who was having Maruti Car and the driver of the bus was caught by the public persons but he succeeded to get rid of the public person and ran away. The claimant has examined Karnjeet Singh as PW4, who proved the Salary Certificate Ex.PW4/2. The claimant has also examined Sh. Vinit Kumar as PW5, who has proved the document Ex.PW4/2.

29. To rebut the claim petition the A-2 has examined Khagesh Joshi R2W1. R2W1 during the cross-examination has admitted that on the date of the incident driver Rinku Kumar reached at 11:00 AM. Appellant No.2 has not specifically pleaded that he appointed Driver of the offending vehicle as driver of principal of the school. However, Appellant No.2 has tried to convince that one Shyam Chand was the driver and bus in question reached to the school at 7:45 AM and remained in school premises till 1:50 PM. However, presence of driver Shyam Chand R2W5 does not authenticate his presence with the school bus at the time of the incident as there is cutting and overwriting in the attendance register of the school. Moreover, because of this reason it is crystal clear that driver was neither holding driving license for HMV nor he has claimed so in his written

statement. The statement of the claimants are corroborated with the statement of Eye-witness Yograj PW3 and with MLC No. 51/2010. Further, driver failed to bring on record any proof of driving license for HMV.

30. The reliance placed by the Appellant No.1 on the judgments of the Apex Court in ***Brij Mohan*** (*supra*) and in ***Ram Prakash Singh*** (*supra*) is misplaced as Universal Public School is the insured owner as per the insurance policy.

31. Therefore, I find no infirmity in the impugned award and the same is upheld. Both the present appeals are accordingly dismissed. Pending applications too are disposed of accordingly.

32. The balance awarded amount be released in terms of the impugned award.

33. Let one copy of this judgment be sent to the concerned Court and one copy be placed in MAC. APP. 717/2017. LCR File be sent back. No order as to costs.

I.S.MEHTA

(JUDGE)

JANUARY 25, 2019