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

% ***Judgment delivered on: 11th February,2019***

\+ MAC.APP. 735/2018

THE ORIENTAL INSURANCE CO. LTD. ...Appellant

Through: Mr. S.P. Jain, Advocate with Ms. Amandeep Kaur, Mr. Himanshu Gambhir and Mr. Abhijit Chakravarty, Advocates.

versus

Smt. KAHKASHAN NAQUI
W/o Sh. Lakhte Hasnain Naqui …Respondent no.1
Sh. LAKHTE HASNAIN NAQUI
S/o G.H. Naqui …Respondent no.2
Sh. DEVANAND (DRIVER CUM OWNER)
S/o Late Sh. Chaman Lal ... Respondent no.3

Through: Ms. Kamna Vohra, Ms. Nandita Rao, Advocates.

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

JUDGMENT

I. S. MEHTA, J.

1. The Appellant has challenged the award in MACT Case No. 75442/16 dated 06.04.2018 passed by Sh. Sameer Bajpai, Presiding Officer, MACT South District, Saket Courts, New Delhi (*hereinafter called as "Tribunal"*) whereby compensation of Rs.96,75,300/-

alongwith simple interest at 9% p.a. from the date of filing the petition till realization was awarded to Respondent No.1 and No.2/Claimant.

2. Facts in brief are that deceased Ali Hasnain Naqui aged 35 years on 26.08.2013 at about 10 PM was crossing Ring Road on foot from South Extension Part-I to South Extension Part-II. Deceased got hit by a Baleno car bearing no. DL-4CP-3986 (*hereinafter called the offending vehicle*) driven by one Devanand (*Respondent No.3 herein*) who was driving the car in fast, rash and negligent manner. As a result deceased fell down and sustained grievous injuries.

Driver Devanand sped away from the spot without bothering to stop and take the injured to the hospital.

After the hit, one Dr. Kamaljeet Singh and his wife took the injured to Jai Prakash Narayan Apex Trauma Centre where injured was found without a pulse, on treating him , the injured got revived in 12 minutes but was without any brain activity and ultimately succumbed to fatal injuries. Meanwhile, a passerby took the phone of the deceased and informed his sister about the accident, on receiving the information she rushed alongwith her husband and brother and reached to hospital. On 27.02.2013 an FIR, FIR No. 325/13 got registered at P.S. Hauz Khas under Sections 279, 337 IPC.

3. The parents of the deceased are the Claimants in Claim Petition No. 75442/16 claiming compensation for the negligent act of the Driver/Owner Devanand Respondent No.3. Claimant further alleged the offending vehicle was insured with Oriental Insurance Co. Ltd.

(*Appellant herein*). Therefore, the insurance company as well as driver of the car are liable to pay the compensation.

4. Appellant insurance company in its written statement has not denied the existence of valid policy, Policy No. 272300/31/2013/3727 in favour of the Driver/Owner Devanand for the period from 21.03.2013 to 20.01.2014 of the offending vehicle.

5. The driver Respondent No.3 Devanand filed written statement and denied having any cause of action arisen in favour of the claimant. He has not driven the offending vehicle rashly and negligently. He further stated that compensation demanded is highly excessive.

6. In support of the claim petition, claimant Smt. Kahkashan Naqui has examined herself as PW1 and filed her affidavit Ex.PW1/1 who has specifically stated that deceased was her son and was working as a consulting advocate and was partner in his own law firm at Defence Colony and was maintaining the claimants i.e. parents of the deceased. She stated, on 26.08.2013 at 10 PM deceased was crossing road from South Extension Part-I to South Extension Part-II on foot. The driver/Respondent No.3 of the Baleno Car bearing No. DL-4CP-3986 hit the deceased while he was crossing the road. Driver was driving rashly and negligently in a fast speed. Due to the hit by the car deceased fell down and driver sped away from the spot. The FIR on the basis of DD No. 56A Ex.PW1/C was got registered as FIR No. 325/13 Ex.PW1/E under Section 279, 304A IPC at P.S. Hauz

Khas. Copy of site plan of the spot is Ex.PW1/D, letter of eye witness Sh. Aditya Singh dated 02.09.2013 is Ex.PW1/F. Thereafter, one Dr. Kamaljeet Singh and his wife came on the spot at about 10:15 PM who took the injured to Jai Prakash Narayan Apex Trauma Centre and got him admitted vide MLC Ex.PW1/H, copy of trauma centre report is Ex.PW1/G. Later, the injured succumbed to his fatal injuries, his post mortem report is Ex.PW1/L, death report of the deceased is Ex.PW1/N, copy of accident information report is Ex.PW1/O. Thereafter, chargesheet Ex.PW1/Q was filed by ASI Suresh Kumar. Smt. Kahkashan Naqui further stated that the claimant parents were dependant on the deceased and tendered copy of Income Tax Return Ex.PW1/Y, copy of bank statement of the deceased Ex.PW1/Z and copy of death certificate of the deceased Ex.PW1/Z-1.

7. Claimant examined Sh. Yuvraj, personal banker HDFC as PW2 who proved bank statement of the deceased for the period from 01.08.2012 to 30.09.2013.

8. To rebut the aforesaid claim of the claimant appellant insurance company filed its written statement on 14.02.2014 and has not denied registration of FIR 325/13 under Section 279, 337 and 304A IPC at P.S. Hauz Khas. Insurance company also doesn't deny the existence of the valid policy No. 272300/31/2013/3727 from 21/01/2013 to 20/01/2014 of the offending vehicle issued in the name of driver Devanand and admits its liability.

9. Insurance company examined Rizwan R2W2, a shopkeeper nearby the incident, stated, he heard noise of the accident and saw the injured lying on road at around 10 PM on 26.08.2013. He called police on 100 number. Later, he gave his statement Ex.R2W2/A. Insurance company further examined ASI Suresh Kumar R2W3 who filed chargesheet, site plan Ex.R2W3/2, application mentioning the number of the vehicle Ex.R2W3/3. He recorded the statement of eye witness Ex.R2W3/4, the mechanical inspection of the car Ex.R2W3/5. Insurance company examined Sh. C.B. Arora, Income Tax Inspector R2W4 to prove income tax return of Smt. Kanashka Naqui. Insurance company further examined Sh. Narender Yadav, Income Tax Inspector R2W5 to prove income tax return of Sh. Lakhte Hasnain Naqui.

10. After hearing the parties, the impugned award dated 06.04.2018 was passed by the learned Tribunal. Aggrieved from the said award, appellant has preferred present appeal.

11. The counsel of the appellant has submitted that finding of the Tribunal is against the facts and law. The counsel of the appellant has further submitted that no rash and negligent act on the part of the driver is proved in the instant petition and claim made is a fictitious claim and relied on ***Safiq Ahmad v. ICICI Lombard Gen Ins. Co. Ltd. & Ors.*** SLP(C) No. 001110/2017 and ***Lachoo Ram v. Himachal Road Transport Corpn.*** 2014 (1) TAC 724 SC. He further submitted claim claimed by the claimants is to extract crores of rupees of public

exchequer to get undue and illegal gains and advantage and claimants colluded with eye witness Aditya Singh and the I.O. of the case to file the claim petition. He relied on ***Anil v. New India Assurance Co. Ltd.*** 2018 (1) TAC 355 SC, ***United India Insurance Co. Ltd. v. Rajendera Singh and Ors.*** (2000) ACC 484 SC and ***S.P. Chengalvaraya Naidu v. Jagnnath & Ors.*** 1994 (1) SCC 1.

12. The learned counsel of appellant has further pointed out that the fact of mechanical inspection of the vehicle and other facts on record does not seem believable and requires probe. He further submitted that FIR is no encyclopedia of the case and relied on ***Kamlesh v. Attar Singh*** 2015 (4) TAC 611 SC, ***Oriental Insurance Co. Ltd. v. Rajender & Ors.*** MAC.APP. 364/2017 and ***Sunita v. Deepak*** (2017) ACC 802. He further stated the proof of negligence on the part of driver has to be proved and the same is *sine qua non* to the case and relied on ***MCD v. Punia & Ors.*** MAC.APP. 81/2010, ***Minu B. Mehta v. Balkrishna Ramchanra Nayan*** (1977) 2 SCC 441, ***Oriental Insurance Co. Ltd. v. Meena Variyal*** 2007 (5) SCC 428, ***New India Assurance Co. Ltd. v. Devki & Ors.*** MAC.APP. 165/2013, ***Raj Pal & Anr. v. Haryana Roadways & Ors.*** MAC.APP. 658/2012, ***Surender Kumar Arora & Anr. v. Dr. Manoj Bisla & Ors.*** Civil Appeal No. 2943 of 2012, ***Bajaj Allianz General Insurance Co. Ltd. v. Suman Lata*** MAC. APP 425/2015, ***ICICI Lombard General Insurance Co. Ltd. v. Jitender Kumar*** MAC.APP. 334/2013 and ***New India Assurance Co. Ltd v. Harsh Mishra and Ors.*** (2014) ACC 435. He further submitted that Tribunal went wrong in relying on income of

2013-2014 instead of income of 2012-2013. He also pointed out that the multiplier is erroneously applied as 16 and multiplier of 15 is applicable, as the deceased was over 35 years of age. He prays that the said award be set aside.

13. On contrary the counsel for claimants have submitted that learned Tribunal has rightly passed the impugned award, it be upheld and appeal be dismissed.

14. The contention of Appellant the claimant failed to prove that incident taken place was not due to negligence on part of driver of the offending vehicle does not seems to be correct.

Claimant examined herself and specifically stated in her affidavit Ex.PW1/1 that on 26.08.2013 while her son Ali Hasnain Naqui was crossing road at about 10 PM, offending vehicle hit him which was driven by Devanand in high speed, rashly and negligently as result of which he fell down and was taken to Jai Prakash Narain Apex Trauma Centre by Dr. Kamaljeet Singh and his wife, he later died in the hospital.

The appellant examined Sh. Aditya Singh, eye witness to the incident, on behalf of Insurance Company as CW1 vide order dated 08.02.2018. He specifically stated in his statement that he has seen the incident through his naked eyes while passing through the same road on parallel lane and deceased being hit by offending vehicle, deceased fell down on the road and driver of the offending vehicle sped away from the spot.

Aditya Singh CW1 was a witness examined on behalf of the insurance company. Appellant did not put any suggestion to the him that he has not seen the incident, therefore, statement of Aditya Singh remains unrebutted on the record.

Driver/Owner Devanand Respondent No.3 has examined himself as R2W1.

Appellant does not dispute that Devanand was driving the offending vehicle at time of the accident and a valid policy does exist.

Moreover, Devanand in his Examination-in-Chief itself has specifically stated that he was driver of the offending vehicle and he has hit the deceased pedestrian Ali Hasnain Naqui.

The said statement is reproduced as under:

> "Right side rear view mirror was hit by the injured/deceased."

This statement remains unrebutted.

Further, aforesaid statement is corroborated with his statement before the Investigating officer on 02.09.2013 and on 03.09.2013 which are also reproduced below:

<u>02.09.2013</u>: hand written note by Devanand on Ex.R2W2/2.

> *Sir, I was driving my own vehicle on 26.08.2013 at about 10 PM and was going towards my house. When I reached in front of south extension, one pedestrian struck against my car and fell down and the said car is driven by me and same is brought in the police station.*
>
> *Sd/-*
> *Devanand*

<u>03.09.2013</u>: Statement of Devanand to I.O. Ex.R2W1/1.

> *He reside at E-15/211, Sector-8, Rohini, Delhi-85. He resides alongwith his family and is a mechanic by profession. On 26.08.2013 at about 10 PM he was driving*

> *his vehicle DL-4CP-3986 and was going from Lajpat Nagar to his house in Rohini, when he reached South Extension Market, he saw a person crossing the road who suddenly came in front of his car after saving himself from another car which was moving on the parallel lane of the same road and hit the side mirror of his car, as a result he (deceased) fell down. He could not stop the car as he was driving down from the flyover and hence was in speed and could not stop the car, he became frightened and kept on driving the car and reached his house. The accident was caused by him. He committed a mistake and he be pardoned. He can point out the place of the incident where the accident took place, the statement was read to him and same was volunteered and correct.*

The aforesaid incident was further witnessed by Rizwan R2W2 who was examined by appellant insurance company who too has specifically stated that he too heard noise of accident on the date of incident and saw the injured lying on the road.

Therefore, the contrary contention of the appellant does not inspire confidence, reliance placed by counsel of appellant on ***Safiq Ahmad (Supra), Lachoo Ram (Supra), Punia & Ors. (Supra), Minu B. Mehta (Supra), Meena Variyal (Supra), Devki & Ors. (Supra), Raj Pal & Anr. (Supra), Surender Kumar Arora & Anr. (Supra), Suman Lata (Supra), Jitender Kumar (Supra), Harsh Mishra and Ors. (Supra), Attar Singh (Supra), Rajender & Ors. (Supra)*** and ***Sunita v. Deepak (Supra)*** is misplaced since statement of the eye witness and the claimant are corroborated with the statement of driver Devanand and statement of Rizwan which leaves no doubt on record that on the date of the incident at about 10 PM, Respondent No.3 Devanand was driving the offending vehicle rashly and negligently at a high speed and thereby hitting the pedestrian Ali Hasnain Naqui who later died in hospital.

15. The contention of the Appellant that the claim is filed by the claimants in collusion with the eye witness and I.O. also loses its significance. Eye witness Sh. Aditya Singh S/o Sh. R.S. Sandhu CW1 in his Examination-in-Chief vide order dated 24.02.2018 has deposed that he is an eye witness and has seen the accident occur by his own naked eyes and his presence on the spot at the relevant time is unimpeachable as it was the appellant who called this witness and while cross examining him appellant did not put a suggestion to him that he has not seen the accident or that he has colluded with either claimants or the Investigating Officer. Therefore, the allegation of collusion between the claimants, investigating officer and eye witness has no substance, reliance placed by learned counsel for appellant on ***Anil (Supra), Rajendera Singh and Ors. (Supra)*** and ***S.P. Chengalvaraya Naidu (Supra)*** is misplaced.

16. The contention of appellant that awarded amount is excessive and Tribunal has not applied appropriate multiplier, does not seems to be correct as deceased was aged 35 years at time of the accident and appropriate multiplier of 16 was rightly applied by the Tribunal, reliance is placed on Apex Court judgment in ***National Insurance Company Ltd. v. Pranay Sethi*** (2017) 16 SCC 680, relevant paragraph is reproduced as under:

> *"We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and*

Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years); reduced by one unit for every five years, that is, M-17 for 26 to 30 years, M- 16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

17. The contention of learned counsel of appellant that learned Tribunal wrongly calculated compensation on the basis of the income of 2013-2014 and not on the basis of 2012-2013 is without merit. The incident has taken place on 26.08.2013 and the income of the year 2013-2014 is the financial year for the purposes of calculating the income for that year. Therefore, the Tribunal has rightly calculated the compensation on the income earned in 2013-2014.

18. Therefore, I find no infirmity with the impugned award passed by the Tribunal. As such, the present appeal and applications (if any) are dismissed and impugned award is upheld. Awarded compensation be made in manner as stated in the impugned award.

19. Let one copy of this judgment be sent to the concerned Court. No order as to costs. LCR File be sent back.

I.S.MEHTA

(JUDGE)

FEBRUARY 11, 2019