



\$~13

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

Date of decision: 31st July, 2023

+ **MAC.APP. 195/2019 & CMs 5505/2019, 7123/2021**

ARAFAT & ORS

..... Appellants

Through: Mr.S.D.Ansari, Mr.I. Ahmed,
Adv.

versus

DHEERAJ KUMAR TRIPATHI

..... Respondent

Through: Mr.Manish Maini, Mr.Vibhor
Jain, Ms.Yashika Miglani,
Mr.Vaibhav Yadav, Adv. for
R-1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellants challenging the Award dated 26.09.2018 passed by the learned Motor Accidents Claims Tribunal-01 (Central), Tis Hazari Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT Case No.356542/2016, titled ***Sh.Dheeraj Kumar Tripathi v. Sh.Manjeet & Ors.***

2. The claim petition was registered on the Detailed Accident Report (in short, 'DAR') filed by the Police, which stated that the name of the registered owner of the offending vehicle, that is, Scorpio car, bearing registration no. DL3FAD 0025, was Mr.Irshad Ahmed. The DAR stated that the present owner of the vehicle is, however, the

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 04.08.2023

16:27:22

MAC.APP.195/2019



respondent no.3 herein/Mr.Vijay.

3. The first ground of challenge to the Impugned Award by the appellants arises out of the above statement in the DAR.

4. The learned counsel for the appellants submits that late Sh.Irshad Ahmed had died on 13.03.2013, whereas the accident occurred on 21.05.2013. The offending vehicle had been transferred to Mr.Vijay, that is, the respondent no.3 herein, even prior to the death of Sh. Irshad Ahmed. He submits that, therefore, liability to pay the compensation could not have been fastened on the appellants. In fact, I find that it is on this submission, that this Court by its *interim* order dated 05.02.2019, stayed the operation of the Impugned Award to the extent of the liability of late Irshad Ahmed.

5. The learned counsel for the respondent has pointed out that this submission of the appellants is false and this Court has been misguided into passing the *interim* order in favour of the appellants. In support of his submission, he has drawn my attention to the order dated 29.10.2015 passed by the learned Tribunal, recording the statement of the Investigating Officer, Head Constable Ramesh Chandra Singh, who disclosed that late Irshad Ahmed died on 13.03.2013; and that the transfer document was recovered from the respondent no.3 which showed that the same was executed only on 23.07.2013, that is, after the accident.

6. I find merit in the submission made by the learned counsel for the respondent. Apart from a vague statement that the vehicle already stood transferred to the respondent no. 3, the appellants have not filed



any document or evidence on record to substantiate the said submission. The transfer document in favour of the respondent no. 3 bears the date of 23.07.2013, that is, after the accident. The same cannot absolve the appellants of their liability to pay the compensation amount as the vehicle was not insured. Clearly therefore, the appellants tried to mislead this Court on this aspect.

7. It is also important to note here that the driver of the offending vehicle had filed a common written statement alongwith the appellants herein. Even the address in the memo of parties would show that the driver of the offending vehicle resides at the same place as the appellants. It appears that a false and concocted story was presented by the appellants in order to avoid their liability. The learned counsel for the respondent no.1 has also pointed out that a charge sheet has been filed against the driver of the offending vehicle, that is, the respondent no.2 herein and he is facing a criminal trial.

8. Even otherwise, as held by the Supreme Court in ***Naveen Kumar v. Vijay Kumar & Ors.***, (2018) 3 SCC 1, 'owner' under Section 2(30) of the Motor Vehicles Act, 1988 is the person in whose name the vehicle stands registered with the registering authority; even if the vehicle is sold prior to the date of the accident, the registered owner shall remain liable to pay the compensation to the injured/deceased in the motor accident.

9. I therefore, find no merit in the submission of the learned counsel for the appellants that the liability to pay the compensation cannot be fastened on the appellants on the ground of the alleged



transfer of the vehicle to the respondent no. 3.

10. The learned counsel for the appellants next submits that even otherwise, the appellants were never made a party to the claim petition nor were formally served by the learned Tribunal with the summons of the claim petition. He submits that, therefore, the Impugned Award, inasmuch as it fastened the liability to pay the compensation to the claimant, that is, the respondent no.1 herein, on the appellants, cannot be sustained and is liable to be set aside.

11. I find no merit in the above contention of the learned counsel for the appellants. It is evident from the record of the learned Tribunal that the appellants had appeared before the learned Tribunal as legal representatives of Mr.Irshad Ahmed. They fully defended the claim petition, not only by filing the reply thereto, but also by cross examining the witnesses who appeared before the learned Tribunal on behalf of the claimant.

12. Faced with the above, the learned counsel for the appellants contended that only Mr.Mohd. Arafat and Mr.Makki Ahmed, that is, the appellant no.1 and appellant no.2, had entered appearance before the learned Tribunal, and not other appellants. This statement of the appellants is contrary to the record. Reply before the learned Tribunal was filed by all the appellants. The *vakalatnama* of the learned counsel appearing before the learned Tribunal is also on behalf of all the appellants and is executed by them. Clearly, a false plea is being taken before this Court in order to misguide this Court. I take strong exception to the same.



13. In view of the above facts, and taking note that the appellants were duly represented before the learned Tribunal and participated in the proceedings before the learned Tribunal, I find absolutely no merit in the objection of the learned counsel for the appellants that the Impugned Award is liable to be set aside as the appellants were neither served with due notice of the claim petition nor properly impleaded therein.

14. The learned counsel for the appellants further challenges the attribution of only 25% of the contributory negligence in the accident on the respondent no.1. He submits that the Impugned Award does not record a finding that the driver of the offending vehicle was driving the same in a rash or negligent manner. It had also come on record that the respondent no.1 was crossing the road at a place which did not have the zebra crossing. It has also not been claimed on record that the driver of the offending vehicle had crossed the intersection when there was a stop sign for the side from which he was coming. He submits that, therefore, it could not be said that the driver of the offending vehicle was driving the vehicle in a rash and negligent manner; in any case, the attribution of only 25% of contributory negligence on the respondent no.1 was inadequate and is liable to be enhanced. I find no merit in the above submission of the learned counsel for the appellants. It had come on record that the accident occurred at around 10 p.m., when the respondent no.1 alongwith his brother-in-law, which is PW2-Sh.Krishan Sharma, was crossing the Jawahar Lal Nehru Marg from the front of gate no.7 of the Lok Nayak Jai Prakash



Hospital. PW2 in his statement stated that the offending vehicle was being driven at a high speed and in a rash and negligent manner, hitting the respondent no.1, and injuring him in the process. It was not put to this witness by the appellants or the driver of the vehicle that the offending vehicle was not being driven at a high speed or in a rash and negligent manner. In fact, the Impugned Order also suggests that the only submission made by the appellants before the learned Tribunal was on the attribution of contributory negligence on the respondent no.1 and not on the fact that the offending vehicle was not being driven at a high speed or in a rash and negligent manner.

15. In fact, the driver of the offending vehicle did not even enter the witness box, though he had filed a common written statement to the claim petition alongwith the appellants. The factum of the offending vehicle being driven in a rash and negligent manner, therefore, stood proved, with no contrary evidence being led by the driver of the offending vehicle or the appellants.

16. On the question of contributory negligence, though it is correct that the respondent no.1 was crossing the road at a place where there was no zebra crossing, however, once it is established that the driver of the offending vehicle was driving the same at a high speed and in a rash and negligent manner, attribution of 25% contributory negligence on the respondent no.1 cannot be faulted. The learned Tribunal has also considered the facts leading to the accident in attributing the contributory negligence on the respondent no.1. I find no infirmity in the said finding.



17. The next challenge of the appellants is to the functional disability of the respondent no.1 being assessed at 50% for the award of compensation. The learned counsel for the appellants submits that the respondent no.1 suffered only temporary disability. He submits that even the doctor, that is, PW5-Dr.P.N. Pandey, Head of Department, Department of Neuro Surgery, Lok Nayak Hospital, Delhi, had assessed the permanent physical disability of the Claimant at 33.75%. He submits that, therefore, there was no cause for the learned Tribunal to have assessed the functional disability of the respondent no.1 at 50% for determining the loss of income and other heads of compensation.

18. I find no merit in the said submission of the learned counsel for the appellants.

19. PW5-Dr. P.N.Pandey, in his statement recorded on 30.03.2017 before the learned Tribunal, has stated as under:

“Upon the directions of the Hon'ble Court, the DMS of LNJP Hospital constituted a medical board and examined patient Dheeraj and was found to have permanent physical disability at 33.75% which is permanent in nature and neuro psychological assessment was also done which indicated severe impairment in the area of recent memory attention, concentration, delayed recall and recognition. Copy of disability certificate lying in judicial file is Ex.PW5/A bearing my signatures at point A and the said certificate was countersigned by DMS at point B. The copy of assessment chart lying in the judicial file is Ex.PW5/2 (OSR). The patient has loss of smell from his both nose and loss of taste sensation and hearing deficit. On his neuro psychological examination, he is having gross impairment of



his intellectual behaviour (impairment of attention, concentration and memory in the form of retention, registration and recall).

Court Qn. Can you explain the extent/percentage of the functional disability arising out of the neurological disability as explained above?

Ans. The neurological is difficult to explain in the terms of numerical percentage. However, in the present case there was loss of retention, attention, concentration and memory which could mean that the person would not be able to lead a normal social interactive life and due to said loss it would be very difficult for him to perform any vocation. However, the said person will be able to perform his daily routine works. The said person will also not be able to perform complex mathematical calculation or skilled work.”

(Emphasis supplied)

20. PW5 has, therefore, certified that, although the respondent no.1 has suffered permanent physical disability assessed at 33.75%, the same is permanent in nature, and due to the injury, there would be a loss of retention, attention, concentration, and memory suffered by the respondent no.1, and he would not be able to lead a normal, social, interactive life; he would also not be able to perform any vocation; though he may be able to perform his daily routine works, he would also not be able to perform complex mathematical calculation or skilled work.

21. It had been established on record that at the time of the accident, the respondent no.1 was working as an Electric Engineer with Benjamin Benajmin & Vats, Architects Engineers & Urban



Planners (hereinafter referred to as the 'employer'). Immediately on the happening of the accident, he had to leave his job. Clearly, from the above evidence, it becomes apparent that the assessment of functional disability suffered by the respondent no.1, being assessed only at 50%, is, in fact, on the lower side. As no claim for enhancement of compensation has been made by the respondent no.1, I need not discuss this issue further, but hold that I find no infirmity in the assessment of functional disability of the Claimant by the Impugned Award.

22. The next challenge of the appellants is on the quantum of compensation awarded for the loss of income to the respondent no.1. The learned counsel for the appellants submits that the respondent no.1 had failed to prove his salary; his appointment letter from the employer was not placed on record, and in absence thereof, the learned Tribunal had erred in taking the income of the respondent no.1 at Rs.25,000/- per month for the assessment of the compensation towards the loss of income.

23. I find no merit in the said submission of the learned counsel for the appellants. As pointed out by the learned counsel for the respondent no.1, Mr.Lokesh Kumar Sharma, Assistant Accountant of the employer, had proved on record the details of the salary paid to the respondent no.1 by the employer for the months of March, April and May, 2013 as Ex-PW4/2. The salary vouchers for the month of March, April and May, 2013 were exhibited as Ex-PW4/3. The witness stated that the employer does not issue any appointment letter to its



employees, therefore, the same could not be produced. Therefore, mere non-production of the appointment letter cannot discredit the claim of the Claimant.

24. In my view, therefore, the respondent no.1 had been able to prove his salary of Rs.25,000/- per month drawn from the employer, and same has been rightly relied upon by the learned Tribunal for awarding the compensation under the head of loss of income to the respondent no.1.

25. The learned counsel for the appellants lastly challenged the award of Rs.33,684/- towards 'expenditure on medical treatment'. He submits that the said amount has been awarded without the bills for the medical expenditure being proved through the testimony of any doctor.

26. I find no merit in the said submission. The respondent no.1 had placed on record not only the medical prescriptions, from including Lok Nayak Jai Prakash Hospital, but also the bills for the expenditure incurred on the medical treatment. The original bills had been proved on record as Ex.PW1/3. No infirmity can, therefore, be found on the award of the compensation on the above head.

27. In view of the above, I find no merit in the appeal.

28. As noted hereinabove, the appellants had made an attempt, in fact, to mislead the Court. In fact, based on such misleading statements, the appellants were able to obtain *interim* order staying the operation of the Impugned Award, thereby causing further agony to the respondent no.1.



29. In case the appellants have not deposited the statutory amount, the same shall be deposited within a period of four weeks from today with the Registrar General of this Court. The amount shall, on deposit, stand forfeited, and shall thereafter be deposited in the Prime Minister's National Relief Fund.

30. The appellants shall deposit with the learned Tribunal, the awarded amount alongwith interest upto the date of deposit, in terms of the Impugned Award, within a period of four weeks from today. The amount so deposited shall be released in favour of the respondent no.1 in terms of the schedule prescribed in the Impugned Award, with the amount as may have become due to be released to the Claimant as on today, being released immediately, and the balance amount to be released in terms of the schedule.

31. Accordingly, and with the above directions, the present appeal is dismissed, with costs quantified at Rs.50,000/- to be paid by the appellants to the respondent no.1. The pending applications also stand disposed of.

NAVIN CHAWLA, J

JULY 31, 2023/Arya/am

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 04.08.2023

16:27:22

MAC.APP.195/2019