

\$~26

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

%

Decided on: 22.01.2020

+ **MAC.APP. 758/2015 & CM APPL. 22387/2015**

THE ORIENTAL INSURANCE CO LTD Appellant
Through: Mr. A.K. Soni, Adv.

versus

SOM DUTT SHARMA & ORS Respondents
Through: Mr. Mukesh Anand, Adv. with
Mr. Naresh Kumar Sharma, Adv. for R-1,2&3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 23.07.2015 passed by the learned MACT in MACT No. 21/2011 on two grounds (i) that there was contributory negligence on the part of the deceased which ought to have been apportioned while computing amount of compensation payable (ii) that the compensation awarded is on the higher side.

2. Apropos the first ground, it is contended that the motor accident occurred at noon, in the middle of the road, as seen from the Site Plan prepared by the Investigating Officer. A perusal of the rough sketch of the Site Plan shows that the offending truck bearing registration no. HR-38M-9282 loaded with bricks was coming from the opposite side of the road. It evidently had no business to be driven in the middle of the road, it should

have been driven in its left side of the road. Albeit, there was no eye-witness to the accident but the police has recorded and formed an opinion that the accident occurred due to the rash and negligent driving of the offending truck. An FIR was registered under Section 279/304-A/427 IPC at P.S. Loni, Ghaziabad, Uttar Pradesh and criminal proceedings were initiated. The impugned order has found the offending truck guilty of rash and negligent driving on the principle of preponderance of probabilities. It held as under:-

“Petitioner no. 1 has examined herself as PW1 and Sh. Deepak as PW2 however, they were not an eye witness to the accident. No evidence has been led on behalf of respondents on this aspect. Respondent driver has not stepped into the witness box to state as to how accident occurred and to depose that he was not at fault and was not driving the vehicle in rash and negligent manner.

In the present case criminal case record was filed which includes the copy of FIR, charge sheet, site plan and postmortem report.

To determine the negligence, I am being guided by the judgment of Hon'ble High Court of Delhi in 2009 ACJ 287, National Insurance Company Limited Vs. Pushpa Rana wherein in the Hon'ble High Court held that in case the petitioner files the certified copy of the criminal record or the criminal record showing the completion of the investigation by the police or the issuance of charge sheet under section 279/304 A IPC or the certified copy of the FIR or in addition the recovery memo and the mechanical inspection report of the offending vehicle, these documents are sufficient proof to reach to the conclusion that the driver was negligent. It was further held that the proceedings under the Motor Vehicles Act are not akin to the proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. Further, in Kaushnumma Begum and others v/s New India Assurance Company Limited, 2001 ACJ 421 SC, the issue of wrongful act or omission on the part of driver of the motor vehicle

involved in the accident has been left to a secondary importance and it was held that, mere use or involvement of motor vehicle in causing bodily injuries or death to a human being or damage to property would made the petition maintainable under section 166 and 140 of the Act. It is also settled law that the term rashness and negligence has to be construed lightly while making a decision on a petition for claim for the same as compared to the word rashness and negligence as finds mention in the Indian Penal Code. This is because the chapter in the Motor Vehicle Act dealing with compensation is a benevolent legislation and not a penal one.

....
....

Therefore, in view of the criminal case record, it is proved that the deceased Rishi Dutta Sharma sustained fatal injuries in the accident which occurred on 02/06/2010 due to rash and negligent driving of offending vehicle bearing no. HR 38M 9282 driven by its driver i.e Respondent no. 1. The issue is decided accordingly.”

3. What emanates from the above is that in law and in fact there was sufficient reason and evidence for the learned Tribunal to conclude that the offending truck was at fault. Furthermore, neither the driver of the offending truck nor the owner stepped into the witness box to refute the contention of the claimant, as well as of the police, that the offending truck was being driven in a rash and negligent manner. The appellant's contention to the contrary is untenable and is accordingly rejected.

4. The second argument of the learned counsel for the appellant is that the quantum of compensation awarded is on the higher side. He submits that the mother of the deceased died during the pendency of the claim petition, therefore, there will be no liability apropos her. The aforesaid contention is untenable because the right of the mother to receive compensation

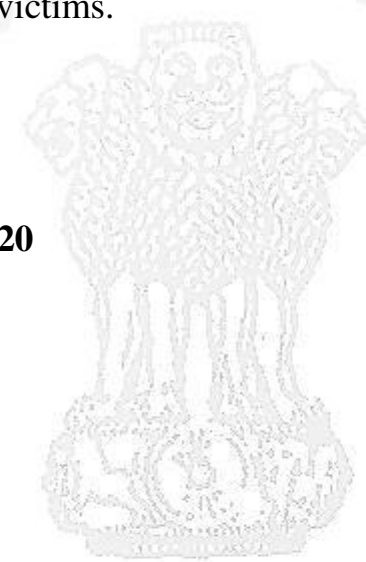
crystallized on the day her son died, upon whom she was dependent. In due course what may be adjudicated is that the compensation granted to her in the claim petition, be shared between her successors. Accordingly, this contention too, is rejected.

5. There is no merit in the appeal. It is accordingly, dismissed.

6. The statutory amount, along with interest accrued thereon, be deposited into the 'AASRA' Fund created by this Court for the treatment and rehabilitation of burn victims.

JANUARY, 22, 2020
kb

NAJMI WAZIRI, J



सत्यमेव जयते