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

% *Decided on: 23.01.2020*

\+ CM APPL. 108/2019, 52928/2019 & MAC.APP. 11/2019

BHARTI AXA GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. Ved Vyas Tripathi, Adv. with Mr. Vaibhav Verma, Adv.

versus

KAVITA & ORS ..... Respondents

Through: Ms. Shantha Devi Raman, Adv. (Amicus Curiae) Mr. Pratap Singh and Ms. Aishna Jain, Advs.

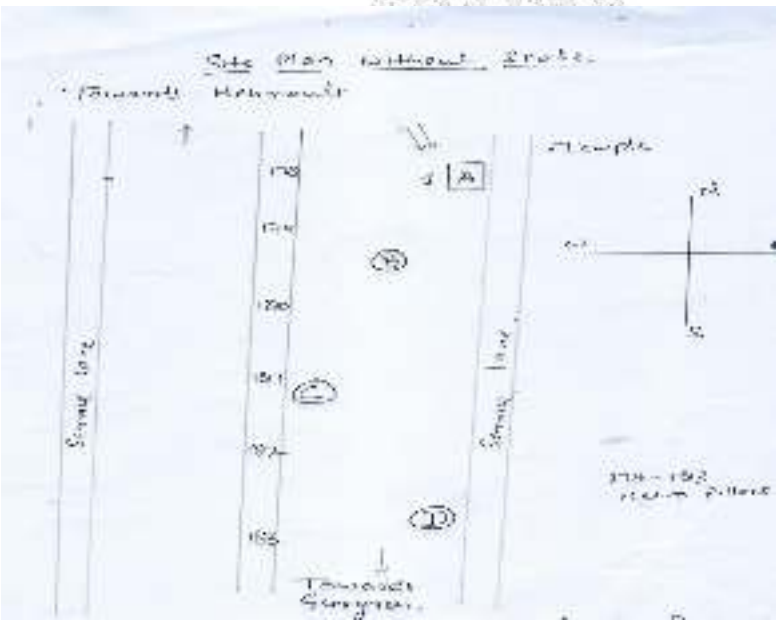
CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. On 15.01.2020 the appellant was directed to deposit an amount of Rs. 5000/- towards costs to respondent no. 1. The same has not been paid. Accordingly, let further costs of Rs. 5000/- be paid to respondent no. 1 within two days.

2. This appeal impugns the award of compensation dated 24.08.2018 passed by the learned MACT in Claim Petition No. 75443/2016, fastening liability upon the insurer. Apropos a fatal motor-vehicular accident, a Detailed Accident Report (DAR) was filed on 18.7.2014; the aforesaid award was passed claim petition dated 14.10.2014 by the LRs of the

deceased in a common DAR. The facts of the case are that at about 2.10 am on 21.02.2014 at MG Road near Metro pillar Nos. 178-183 the husband of Respondent No.1 viz. Mr. Anil Kumar lost his life, while one Mr. Abhishek Joshi sustained simple injuries. The DAR has recorded that the accident occurred on account of rash and negligent driving of a vehicle bearing No. HR 26B X 8991 a Toyota Fortuner. It was being driven in a high speed. It first struck Mr. Anil Kumar, who was trying to board his motor vehicle, a Tata Safari at such speed that his right leg got severely injured, his body hurled away from the spot. He perhaps passed away instantly. The offending vehicle then swerved towards its right and hit a motorcyclist whose body was found at a distance on the right side of the road near the divider. The motorcycle, was found on the left side of the road, where it landed, perhaps after striking against the road divider at point D, as shown in the site map, which is reproduced hereunder:-



3. The tyre marks of the offending vehicle showed that it was not under control because it first swerved from the right side towards the left of the road when it hit Mr. Anil Kumar, then swerved towards the right struck the motorcyclist and then speed-off. The claimant has examined three witnesses (i) PW-1 Ms. Kavita, widow of the deceased, (ii) PW-3 Mr. Abhishekh Joshi and (iii) PW-4 Mr Navin Choudhary, the latter came at the instance of the petitioner. PW-1 was not an eye-witness to the accident. Mr. Abhishekh Joshi has admitted that he has not seen the offending vehicle apart from deposing that he was hurt in an accident by a vehicle which hit from the rear side. Therefore, he could not identify whether vehicle bearing no. 8991 was the offending vehicle.

4. Mr. Navin Choudhary, claims to have seen the entire accident when he was passing through the area. He claims that he saw the police come to the spot, examine the course of the accident, etc. but he did not speak a word about it to the police or step forward to assist the police in any manner. He states that three years later, he saw a notice put up on one of the Metro pillars, near the site of the accident, exhorting the public to come forward with information if they possessed any, apropos the accident. Therefore, as a responsible citizen, he came to the Court at the instance of the claimant lady. He had also given a statement to the police under section 161 Cr.P.C. apropos the nature of the accident. According to the counsel for the insurer this witness is unreliable because the accident occurred on 21.02.2014, and his statement was recorded on 29.09.2017.

5. The Court has appointed Ms. Shantha Devi Raman, Advocate as Amicus Curiae in the matter. She states that *de hors* the above testimony,

clinching evidence, apropos the involvement of the offending vehicle, is established by the fact that the DAR has been filed and a FIR was registered on the date of the unfortunate accident. The police, after meticulous examination of evidence, has filed a chargesheet before the Court concerned, showing the offending vehicle to have caused the accident, in a rash and negligent manner. She submits that shard of glass was found at the site by Police Constable who was on patrolling duty. The same was matched with the shattered rear-view mirror of the offending vehicle, which was replaced anew, at a service center at MG Centre in Gurgaon. The said vehicle was repaired extensively for damages to its front side including the radiator assembly, front fender assembly, headlights, etc for a total bill of Rs. 5,38,349/-. The vehicle was got repaired on 03.03.2014, roughly 12 days after the accident. The driver has denied the accident. Nevertheless, there is no explanation as to how the extensive damage to the vehicle was caused which warranted the costly repairs.

6. The learned Amicus Curiae submits that the Pre-Mechanical Inspecting Record could not be done, because the vehicle was traced out only on account of the repair centre responding to a notice by the Investigating Officer that a black colour Toyota Fortuner with the last registration digits No. 8891, be notified, in case it came in for any repairs. She submits that the nature of the repairs shows that the vehicle had been impacted from its side and front. Its front grill, radiator, front head light and front fender and all other related machinery had to be repaired. This would clearly corroborate with the nature of the accident i.e. first hitting the door of the Tata Safari which caused the unfortunate demise of Mr. Anil Kumar and

then hitting the motorcyclist and speeding away. Therefore, the impact to the left side of Fortuner when it hit the deceased and to the radiator which is normally in the centre of the vehicle, by the impact with the motorcycle is clearly established. She further submits, that the Chargesheet lays out in detail, the other aspects of the investigation and the criminal culpability would be the matter of criminal trial. Relying upon the dicta of this Court in *National Insurance Co. vs. Pushpa Rana (2008) 101 DRJ 645,* for the purposes of identifying the offending vehicle, the filing of a FIR, Chargesheet, etc. would be sufficient. That being the position, there would be no doubt apropos the involvement of the offending vehicle and of the negligence of its driver. The impugned order dealt with the issue as under:-

> *".....Site plan corroborates the testimony of PW-4. As per the mechanical inspection report, the offending vehicle Toyota Fortuner was in fully repaired condition as on the date of its mechanical inspection. There were fresh damages on the rear part of the motorcycle and its chasis and petrol tank was also dented. The front Bumper and front Bonnet of the Safari car was also damaged. Its right front fender was dented, right front door outside mirror was broken and right side second door dented. As per the deposition of PW-4 due to ^ the impact the deceased came on the window of driver side of Tata ,U j'lii Safari and due to which his leg flung off at some distance and he also ,>A A^/" fell near Metro Pillar no. 181. No other version of accident has come on record except the one as narrated by the PW-4. Charge sheet was filed against the respondent no.1. Therefore, it is established on record that Abhishek sustained injuries and Anil Kumar succumbed to the injuries sustained in the accident in question on 21.02.2014 due to rash and negligent driving of vehicle bearing no. HR 26 BX 8991 by the respondent no.1. Documents tiled on record shows that the vehicle was owned by respondent no.2 and it was*

insured with respondent no.3. Hence, this issue is decided in favour of the petitioners and against the respondents.

In view of the above, the appellant's contention about the non-involvement of the offending insured vehicle is untenable and is accordingly rejected.

7. The appellant objects to the ITR filed on 26.07.2013 being taken into consideration. The accident had occurred on 21st February, 2014. The appellant contends that the average income of the previous years be taken into consideration. The Court finds no justification for the said contention because the loss of dependency has to be seen from the earnings nearest the point of loss. If the earning of the deceased had increased at the time of his demise then such increase should not be denied to the dependents. It is not a case that ITR was of a lesser amount than the previous year, which could possibly call for an aggregate to be considered. Furthermore, it is not that subsequent ITR was not filed after the demise of the victim. Therefore, this contention is also rejected.

8. There is no merit in the appeal, it is accordingly dismissed.

9. Ms. Raman the learned amicus curiae, points out that compensation for loss of dependency and loss of consortium has not been granted to the children in terms of *Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.*, 2018 SCC OnLine SC 1546. She submits that loss of "love and affection" @ Rs. 50,000/- and "loss of consortium"@ Rs. 40,000/- has not been granted to each of the claimants who are the widow, daughter and the parents of the deceased. This loss would be felt by each of the

aforesaid relatives/claimants. Accordingly, the aforesaid compensation is granted to them. The amount payable on two heads account shall be:

Rs. 50,000 x 4 = Rs. 2,00,000/-

Rs. 40,000 x 4 = Rs. 1,60,000/-

(-) Rs. 40,000/-= Rs. 40,000/-

Rs. 3,20,000

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10. The learned Amicus Curiae submits that: (i) the claimant widow has not received any monies thus far to take care of herself and her family she is in dire need of some money urgently. R-1's daughter's arrears of school fees is about Rs. 26,000/- and the annual fees is roughly Rs. 2,40,000/-. In the circumstances, it is directed that an amount of Rs. 2,70,000/- be paid directly to the school where the minor daughter is studying. (ii) The widow further states that she has taken a loan of Rs. 3,50,000/- by mortgaging her jewelleries and she needs the said amount for redeeming the mortgage. Therefore, let a cheque of Rs. 3,50,000/- be issued in the name of agency/person with whom she has mortgaged her jewellary. (iii) She also states that she has taken a friendly loan from her sisters. Accordingly let a cheque of Rs. 2,50,000/- be issued to her for such repayment of loan. (iv) She needs some monies to expend on herself. In the circumstances, let Rs. 5,00,000/- be released to R-1, right away. (v) Additionally, let Rs. 1,50,000/- be released to the parents of the deceased. (iv) The remaining amounts shall be kept in FDRs and shall be released in terms of the scheme

of disbursement specified in the Award to the beneficiaries of the award directly into their bank accounts. Details of the same are as under:

1. Dhani Jainwal (Daughter)
Bank- SBI
Saving Account
CIF No. 87343464445
Account No. 33773065260
IFSC: SBIN 0004463

2. Mrs. Kavita (Widow)
Bank- SBI
Saving Account
CIF No. 87343463984
Account No. 37641782597
IFSC: SBIN 0004463

3. Mrs. Geeta Rani (Mother)
Bank- SBI
Saving Account
CIF No. 90082157343
Account No. 37580676233
IFSC: SBIN 0017891

4. Kishan Pal (Father)
Bank- SBI
Saving Account
CIF No. 90085784531
Account No. 37591613736
IFSC: SBIN 0017891

5. Ms. Bhawana Tamang (Sister of Widow)
Bank- ICICI
PPF Account No. 664201506305
IFSC: ICIC0006642
MICR CODE: 110229174

6. Mr. Karan Singh Yadav (Mortgage)
Bank- SBI

Bank: ICICI
Account No. 061001530132
IFSC Code: ICICI 0000610

7. School Details of Daughter
Name: Hilton Hostel
(Cheque to be prepared in favour of Hilton Hostel)
Saving Account
Bank: Canara Bank
IFSC: CNRB 0002444
Account No.: 2444101000723

11. The additional amount shall be paid along with interest accrued thereon @ 9% interest from the date of filing of the petition till date of realization.

12. The Court records its appreciation of the services rendered by Ms. Shantha Devi Raman, the learned Amicus Curiae.

13. The petition is disposed off in the above terms.

NAJMI WAZIRI, J

JANUARY 23, 2020
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