

Neutral Citation Number : 2022/DHC/004472

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

% Judgment delivered on: 27th October, 2022

+ MAC.APP. 24/2021 & CM. APPL. 1594/2021

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD. ... Appellant

versus

JAGJIT SINGH & ANR. Respondents

AND

+ MAC.APP. 29/2021 & CM. APPLS. 1869/2021, 41047/2021

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD...Appellant

versus

SHEELA DEVI & ORS Respondents

Advocates who appeared in this case:

For the Appellants : Mr. S.P. Jain, Advocate for the insurance company.

For the Respondents/

Claimants : Mr. Varun Sarin and Ms. Khushboo, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Both these appeals filed by the insurance company emanate out of a common impugned award dated 12.03.2020 whereby Detailed

Accident Reports (hereinafter referred to as DAR) have been disposed of and compensation awarded.

2. The brief facts leading to the filing of the Reports are that on 06.05.2018 at about 11.30 AM, Jagjit Singh (respondent in MAC APP 24/2021) was riding a motorcycle and was going to Patel Chowk Delhi from Faridabad and Dev Singh Negi (deceased –predecessor of the Respondent in MAC APP 29/2021) was sitting as a pillion rider. It is alleged that when they reached the main Mathura Road towards Sarita Vihar, all of sudden a pig came in front of their motorcycle and Jagjit Singh applied break and stopped the motorcycle and in the meantime a Three Seater Auto Rikshaw (Auto–TSR) being driven by its driver (Jagat Pal) in rash and negligent manner and at a high speed, without following the traffic rules came from behind and hit the motorcycle. Due to the impact both the riders of the motorcycle fell down on the road and sustained injuries. Thereafter, Dev Singh Negi was initially taken to NTPC Hospital and then to JPN Trauma Centre, AIIMS, New Delhi where he was admitted but he could not survive and succumbed on the same day.

3. The police after investigation in the FIR filed charge sheet u/s 279/337/304A Indian Penal Code against Jagat Pal, the driver of the Auto–TSR. DAR was filed by the Investigation Officer before the Tribunal.

4. In response to DAR, the driver of the offending Auto-TSR contended that one of the eye witnesses (Deepak Kumar) who was a passenger in the said Auto-TSR, in his statement before the police officials stated that one big pig came across the road in front of the motorcycle and the motorcycle driver in order to save the life of the said pig, hit his motorcycle on the Auto-TSR.

5. The Appellant - Insurance Company also alleged negligence on the part of the rider of the motorcycle. It contended that the rider of the motorcycle was concocting a story to impute negligence on the part of the driver of the alleged offending Auto-TSR.

6. The injured Jagjit Singh (driver of the motorcycle), entered the witness box and *inter alia* deposed that he was riding the motorcycle and going to Patel Chowk Delhi from Faridabad and Dev Singh Negi (deceased) was sitting as pillion rider and when they reached at Main Mathura Road towards Sarita Vihar, then all of sudden a pig came in front of the motorcycle and he applied brake and stopped his motorcycle. He thereafter stated that in the mean time a Auto-TSR which was being driven by Jagat Pal in a very high speed and negligent manner came from behind and hit his motorcycle and both the riders fell down.

7. Said witness was not cross examined on behalf of the driver and owner of the offending Auto–TSR but was cross examined only by Advocate for the Insurance Company.

8. During cross examination, Jagjit Singh *inter alia* deposed that he saw the pig crossing the road from a distance of about 15ft. and the pig had crossed the road when there was a distance of about 4-5 ft. between the pig and him and that he had stopped the motorcycle for the purpose of safety. He further deposed that the Auto–TSR had hit his motorcycle before they fell down on the road.

9. It may be noted that though in response to the DAR, the Driver cum owner of the offending Auto–TSR had taken a stand that the motorcycle driver in order to save the life of the said pig, hit his motorcycle on the Auto–TSR, however there was no cross examination of the said witness by him and not even a suggestion given to dispute the version of the said witness. Even in the cross examination on behalf of the Insurance company there is no case set up to establish that it was the motorcycle that hit the Auto–TSR and not *vice – versa* as deposed by the said witness.

10. No evidence was led by the driver cum owner of the offending Auto–TSR.

11. The Appellant, Insurance company examined Deepak Kumar

who deposed that he was a passenger in the offending Auto-TSR and deposed that when he reached near thermal plant, Badarpur, suddenly a pig came on the road, the biker who was on their right side slowed down his speed and came towards them and they were at the left side of the bike. He further deposed that in order to save the biker, their auto turned turtled towards left then the biker collided with their auto and accident took place and the auto did not hit any vehicle including the biker. In his cross examination, he deposed that the distance between Auto-TSR and the biker was approx. 80 – 100 meters when the accident took place.

12. First of all, it may be noticed that the Owner-Driver of the offending Auto-TSR did not appear in the witness box or produce any evidence. Secondly, he did not cross examine the driver of the motor cycle and thirdly, the testimony of Deepak Kumar (passenger in the Auto-TSR) contradicts the versions put forth by the Owner-Driver of the offending Auto-TSR and the insurance company in their replies to the DAR.

13. The Supreme Court of India in *Bimla Devi v. Himachal RTC*, (2009) 13 SCC 530 has held that the Tribunal has to take a holistic view of the matter. Claimants have to merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt is not to be applied.

14. In *Sunita v. Rajasthan SRTC*, (2020) 13 SCC 486, the Supreme Court of India has held that *“in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal’s role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.”*

15. Further, in *Anita Sharma v. New India Assurance Co. Ltd.*, (2021) 1 SCC 171, the Supreme Court of India further held *“that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyse the material placed on record by the parties to ascertain whether the claimant’s version is more likely than not true.”*

16. To determine the negligence on the part of the driver of the offending vehicle, the Supreme Court of India in *Mangla Ram v. Oriental Insurance Co. Ltd.*, (2018) 5 SCC 656 held that the key of negligence on the part of the driver of the offending vehicle was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt.

17. In *Mangla Ram (supra)* the Supreme Court further held that filing of charge-sheet against the driver of the offending vehicle *prima facie* points towards his complicity in driving the vehicle negligently and rashly. Even when the accused were to be acquitted in the criminal case, it may be of no effect on the assessment of the liability required in respect of motor accident cases by the Tribunal.

18. As noticed above, there is no dispute of the involvement of the offending Auto-TSR in the accident. The injury to the driver of the Motorcycle and the death of the pillion rider of the motorcycle on account of the accident is not in dispute. Pursuant to the accident an FIR was registered against the driver of the offending Auto-TSR and post investigation a Charge – sheet under section 279/337/304A Indian Penal Code was filed against him.

19. The above facts coupled with the factum of the driver and owner of the offending Auto-TSR not leading any evidence and also

not stepping into the witness box and further failing to cross examine the driver of the motorcycle and also the testimony of the passenger of the Auto-TSR contradicting the defence of the driver – owner of the Auto-TSR and the Insurance company taken in their respective replies, shows that the tribunal has taken a holistic view of the matter and correctly applied the principle laid down by the Supreme Court of determining the negligence on the touchstone of preponderance of probabilities.

20. The contention of learned counsel for the Appellant Insurance Company that there are discrepancies in the MLC wherein it is alleged that the driver of the motorcycle is alleged to have told the attending doctors that he was trying to save an animal on road and hit with auto and then slide on road is of no consequence for the reason that the alleged statement in the MLC is the recording by the attending doctor of what was allegedly told to them and is not a signed statement by the attendant. The relative's name mentioned in the MLC is "Mahendra" and not the witness Jagjit Singh. Further, it may be noticed that no such suggestion was given to the said witness when he was being cross examined. He was not even confronted with the alleged noting in the MLC.

21. Further reference by learned counsel for the appellant to the site plan and the mechanical inspection report to try and contradict the

version of the claimant of the manner if the accident is also of no consequence because no such effort was made to contradict the same when the witness was in the witness box. He was not confronted with the said documents to displace his testimony.

22. Another submission was made by learned counsel for the Appellant that the Tribunal has erred in not correctly assessing the income of the deceased as no deduction has been made towards conveyance and amount of medical expenses and further no deduction on account of income tax has been made.

23. Said submission of learned counsel for the appellant also merits rejection for the reason that there is no cross examination of PW3 – Shri Dharam Pal Malik, the employer of the deceased, who had appeared as a witness for the claimant.

24. Further reference may be had to the judgment of the Supreme Court of India in *Vimal Kanwar v. Kishore Dan*, (2013) 7 SCC 476 wherein the Supreme Court held that “*if the annual income comes within the taxable range, income tax is required to be deducted for determination of the actual salary. But while deducting income tax from the salary, it is necessary to notice the nature of the income of the victim. If the victim is receiving income chargeable under the head “salaries” one should keep in mind that under Section 192(1) of the Income Tax Act, 1961 any person responsible for paying any income*

chargeable under the head “salaries” shall at the time of payment, deduct income tax on estimated income of the employee from “salaries” for that financial year. Such deduction is commonly known as tax deducted at source (“TDS”, for short). When the employer fails in default to deduct the TDS from the employee's salary, as it is his duty to deduct the TDS, then the penalty for non-deduction of TDS is prescribed under Section 201(1-A) of the Income Tax Act, 1961. Therefore, in case the income of the victim is only from “salary”, the presumption would be that the employer under Section 192(1) of the Income Tax Act, 1961 has deducted the tax at source from the employee's salary. In case if an objection is raised by any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee.....”

25. In the present case, no evidence has been led by the objector to show that the tax was not deducted at source and thus as the income of the deceased was only salary income there would be a presumption that the salary being received by him and as proved by his employer was not of tax. Accordingly, on this count also there is no error in the assessment of the income of the deceased.

26. In view of the above, there is no infirmity in the impugned award or any merit in the appeals. Accordingly, the appeals are

dismissed.

27. The Tribunal is directed to disburse the awarded amount as per the scheme of disbursal stipulated in the award.

28. Order *Dasti* under the signatures of Court Master.

October 27, 2022
HJ

SANJEEV SACHDEVA, J

