



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

% Judgment delivered on: 04th July, 2022

+ **MAC.APP. 81/2021 & CM APPL. 5490/2021**

SBI GENERAL INSURANCE CO LTDAppellant

versus

SURENDRA KUMAR SINGH & ORS Respondents

AND

+ **MAC.APP. 285/2021**

SURENDRA KUMAR SINGH AND ORSAppellant

versus

SBI GENERAL INSURANCE CO LTD AND ORS..... Respondents

Advocates who appeared in this case:

Advocate for : Mr. Amit Kumar Maihan, Advocates for SBI General Insurance Co. Ltd.

Advocate for: Mr. Pankaj Kr. Deval, Advocate for respondent in MAC.APP. 81/2021 and for appellants in MAC.APP. 285/2021

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. These appeals emanate out of an award dated 21.07.2020 whereby the claim petition filed by the wife, daughter, father and



mother of the deceased have been allowed.

2. MAC. APP. 81/2021 is an appeal by the insurance company of the offending vehicle impugning the award whereas MAC. APP. 285/2021 is an appeal by the claimants seeking enhancement of compensation.

3. As per the claim petition, the deceased Mantu Kumar Singh, along with one Ashish was going to Haridwar from his home in an Innova car. The Innova car was being driven by the deceased Mantu Kumar Singh and at about 4.30 a.m. when the Innova car reached near Mool Chand Hotel, Mansoor Pur, U.P., the offending vehicle a tractor trolley being driven by his driver at a very high speed, rashly and negligently without blowing any horn and neglecting the traffic rules suddenly stopped in the middle of the road whereby the Innova car smashed into the said tractor-trolley. As a result of the impact, the deceased was sandwiched in the said car and sustained fatal injuries.

4. The contention of learned counsel for the appellant-insurance company is that the offending vehicle – a tractor-trolley was stationary on the road due to puncture and the deceased rammed his Innova car and as such the deceased contributed to the accident and was himself grossly negligent.

5. It is further contended on behalf of the appellant-insurance



company that the tractor was not being used for agricultural purposes but was being used for commercial purposes and as such the same was being used in contravention to the terms of the insurance policy and thus the insurance company is absolved of its liability.

6. Learned counsel for the appellant-insurance company further contends that the manner in which the accident had taken place clearly establishes that the Innova car was being driven at a very high speed.

7. Per contra, learned counsel appearing for the claimants submits that there is no material on record to show any negligence on the part of the deceased. It is further contended that the vehicle had suddenly stopped on the road and there was no indication or warning sign placed to show that the vehicle had broken down.

8. It is contended by learned counsel for the claimants that the accident had taken place on a highway where the vehicles are expected to be driven at reasonably fast speed. He further submits that there is no material on record to show that the speed of the Innova car was excessive.

9. In support of the claim petition, claimants had produced Ashish who was in the Innova car with the deceased as an eye-witness. In his evidence, Ashish had deposed that the Innova car was being driven by the deceased Mantu Kumar Singh slowly and vigilantly and on the



correct side of the road. He has further deposed that the offending vehicle i.e. tractor-trolley had stopped in the middle of the road without any indication.

10. In his cross-examination, he has deposed that the Innova car was being run at about 40-45 kms at the time of the accident. He has deposed that the tractor-trolley was standing in the middle of the road without any blinkers.

11. There is no cross-examination of the said witness Ashish to establish that the Innova car being driven by the deceased was being driven at a very high speed. Rather the evidence has come on record that the Innova car was being driven at a speed of about 45-50 km per hour and that the offending tractor-trolley had suddenly stopped in the middle of the road without any indication and there were no blinkers or precautionary lights affixed on the same.

12. The driver of the offending vehicle – Vikas Kumar has also stepped into the witness box, in his examination-in-chief, has not stated anything about the manner in which the accident had taken place rather he has stated that he always drives the vehicle in a normal speed obeying all traffic rules. He has merely stated that the vehicle of the deceased had hit the stationary tractor trolley from the rear side and since the vehicle of the deceased had hit the offending vehicle from the rear side, he had stated that, he cannot be held liable for



negligence.

13. Apart from stating his opinion, he has not made any factual averments about the manner in which the accident had taken place. However, in his cross-examination, he stated that the reflectors were pasted on the rear side of the trolley. He has deposed whenever they carry sugarcane, they affix reflectors on the rear side.

14. In his cross-examination, he stated that he had mentioned to his Advocate that his trolley had been punctured and thus he was standing on the road.

15. A perusal of the affidavit shows that there is no such mention in the affidavit either of the owner or the driver of the offending vehicle to establish that the tractor-trolley was punctured and was stationary on the road because of the same.

16. Further perusal of the mechanical inspection report of the tractor-trolley does not show any mention of any light or indicator having been affixed on the trolley.

17. Even if assuming the vehicle had broken down, it was obligatory on the part of the driver of the vehicle to ensure that the vehicle is moved to a safe location and is not permitted to stand in the middle of the road. Further, if the vehicle could not have been moved then it was obligatory on the part of the driver of the vehicle that had



broken down, to ensure that there are sufficient safeguards and indications in place to warn other drivers so as to ensure that no accident happens.

18. In case, no precaution is taken, as has come on record in this case, negligence would lie with the offending vehicle particularly when the accident occurs on a national highway.

19. The Tribunal in the impugned award has gone on the basis of preponderance of probabilities and has also noticed that an FIR has been registered under Section 279/338/304-A IPC against the driver of the offending vehicle and chargesheet has also been filed after an investigation.

20. Involvement of the two vehicles is not in dispute. Particularly in view of the fact that no contra material has been placed on record to show that there was any negligence on the part of the deceased, it cannot be held that there is any infirmity in the view taken by the Tribunal that the accident occurred solely on account of the negligence on the part of the driver of the offending vehicle.

21. Further as noticed hereinabove, no material has come on record to show that the deceased had contributed to the accident or was contributorily negligent.



22. Reliance placed by the learned counsel for appellant on the judgment of the Supreme Court in *Nishan Singh & Ors. Vs. The Oriental Insurance company Ltd.*, (2018) 6 SCC 765 to contend that as the vehicle being drive by the deceased had hit the tractor trolley from behind, the deceased was not maintaining sufficient distance, is misplaced.

23. Said judgment does not help the case of the appellant. In *Nishan Singh (supra)*, the Maruti car had hit a truck from behind. The findings recorded by the Tribunal, as affirmed by the High Court, were that evidence had established that the Maruti car was being driven in a rash and negligent manner and was the cause of accident, resulting in the death of the one of the passengers in the in the Maruti car.

24. It had also come on record that the driver of the Maruti car was not maintaining sufficient distance between the truck as well as the car. It was in those circumstances that the Supreme Court referring to Regulation 23 of the Rules of the Road Regulations, 1989 that maintaining a distance of 10 to 15 feet was not a safe distance. It was in those circumstances that the Supreme Court held that the driver of the Maruti car must take the blame.

25. In the present case, there is no such evidence or finding returned that the car being driven by the deceased was being driven in



a rash and negligent manner. On the other hand the evidence that has come on record is that the offending vehicle i.e., tractor trolley was stopped in the middle of the road without sufficient indications or blinkers, resulting in the accident.

26. Further, reliance placed by the learned counsel for appellant on the judgment of the Supreme Court in *Raj Rani Vs. Oriental Insurance Co. Ltd.*, (2009) 13 SCC 654 to contend that where the deceased dashed against a stationery truck, some amount of negligence on the part of the deceased could not be ruled out, is also misplaced.

27. In *Raj Rani (supra)*, there was a categorical finding by the Tribunal holding the deceased to be contributory negligent and the Tribunal had deducted 1/3rd from the total compensation on the ground that the deceased had contributed to the accident.

28. However, as noticed hereinabove, in the present case, there is no finding or evidence on record to show that deceased was negligent in any manner so as to reduce the compensation on the ground of contributory negligence. Said judgment also does not help the case of the appellant.

29. Coming to the argument of learned counsel for the insurance company that the insurance company is absolved of its liability



because the tractor trolley was being used for commercial purposes, it may be noticed that there is no material on record to show that the vehicle i.e. tractor-trolley was being used for commercial purposes.

30. The categorical evidence as well as the testimony of the witnesses on record shows that the tractor-trolley was being used for transportation by the insured for his personal agricultural purposes.

31. With regard to the appeal of the claimant seeking enhancement, it may be noticed that the deceased was born on 25.07.1985 and the accident took place on 07.02.2016. The age of the deceased on the date of the accident was 30 years and six months i.e. less than 31 years.

32. The Supreme Court, in *Salra Verma & Ors. Vs. Delhi Transport Corporation & Anr.* 2009 6 SCC 121, has held that a multiplier of 17 is to be used for the age group 26 – 30 years and a multiplier of 16 has to be used for the age group 31 – 35 years.

33. For persons below the age of 31 i.e. upto the age of 26, a multiplier of 17 is to be used. In the present case, the Tribunal has used the multiplier of 16 which is to be used in cases where the age is above 31 years. As noticed herein above, the deceased was less than 31 years of age and consequently the multiplier of 17 should have been used.



34. Further, the Tribunal has taken the wages of an unskilled worker. Admittedly, the deceased was holding a driving licence and as such is to be treated as skilled work and the wages of skilled worker have to be taken. Consequently, the wage of a skilled worker i.e. Rs. 10,795/- per month has to be taken instead of Rs. 9,178/- per month as taken by the Tribunal.

35. Further, it may be noticed that the Tribunal has not awarded Loss of Consortium in accordance with the judgment of the Supreme Court in *United India Insurance Company Ltd. Vs. Satinder Kaur @ Satwinder Kaur (2021) 11 SCC 780*. Consequently, each of the claimants are entitled to a sum of Rs. 40,000/- each under the head '*Loss of Consortium*'.

36. In view of the above, the appeal being MAC. APP. 81/2021 filed by the insurance company is dismissed and the appeal of the claimants being MAC. APP. 285/2021 is allowed to the extent above i.e. multiplier to be taken as 17, the wages to be computed at Rs. 10,795/- per month and Loss of Consortium at Rs. 40,000/- per claimant.

37. The matter shall be listed before the concerned Tribunal on 25.07.2022 for making a fresh computation in accordance with the judgment herein. Insurance company shall thereafter deposit the remaining amount with the Tribunal within four weeks. Tribunal shall



disburse the awarded amount along with the enhanced amount as per the scheme of disbursal contained in the impugned award dated 21.07.2020.

38. The appeals are disposed of in the above terms.

JULY 04, 2022
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SANJEEV SACHDEVA, J

