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

% Judgment delivered on: 04th July, 2022

\+ MAC.APP. 249/2020 & CM APPL. 39784/2021

TATA AIG GENERAL INSURANCE CO. LTD. .... Appellant

versus

VANDNA & ORS. ..... Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Sunder Prakash Jain, Advocate

For the Respondents: Mr. Pankaj Kumar Deval, Advocate for R-1 to R-6.

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Appellant impugns judgment dated 29.02.2020 whereby the claim petition filed by the wife, daughter, two sons, and mother and father of the deceased has been allowed and compensation awarded.

2. Subject accident took place on the night of 04.04.2018 when as per the claimants the deceased was going from Khandsa Road Sabji Mandi via the service road of Rajiv Chowk in a goods carrier three-wheeler.

3. At about 9.00 p.m. when he reached near Om Nagar Mor, Shanti Nagar, Gurugram, the offending vehicle, a Maruti WagonR being driven in a rash and negligent manner approached from the opposite direction/wrong side and hit the vehicle of the deceased from the front side with a great force. Due to the forceful impact, the deceased sustained grievous injuries. He succumbed to his injuries on 11.04.2018.

4. Learned counsel for the appellant-Insurance Company contends that this is not a case of an accident but a murder which has been given the colour of an accident. He submits that the brother of the deceased had himself made a complaint to the police that it is not a case of an accident but his brother has been murdered. Reliance is also placed on the MLC history wherein it is recorded that the deceased has been assaulted.

5. Learned counsel submits that since it is not a case of an accident but a case of murder, the insurance company is not liable to pay any amount as compensation.

6. This is disputed by the Claimants. It is contended that there is no material to show that the deceased has been murdered. Learned Counsel for the claimants relies upon the testimony of the police officer as well as the doctor who conducted the post-mortem to contend that even the police had registered a case of death by road

accident and that the examining doctor has opined that the injuries sustained are on account of an accident.

7. Trial Court has held that there is overwhelming evidence to establish that the accident was caused due to rash and negligent driving of the offending vehicle.

8. In support of the claim, the claimant had examined the wife of the deceased as PW-1 and one Harish Kumar as PW-2 who is an eyewitness to the accident. He has deposed that on 04.04.2018 at about 9 pm, a WagonR car and blue colour Tempo collided with each other on the service road of Om Nagar, Gurugram. He had deposed that the accident had taken place on account of the negligence of the driver of the WagonR car.

9. In the cross-examination Harish Kumar has stated that he runs a sweet shop at the spot of the accident and he was present in his shop and had witnessed the accident. He had deposed that the injured had suffered head injury and blood was oozing out of his head after the accident.

10. Claimants also examined Dr. Vinay Kumar, Specialist Forensic Medicine, BJRM Hospital, Delhi as PW-3. Said witness had conducted the post-mortem of the deceased. He has deposed that as per his opinion the cause of death was *'Cranio cerebral damage*

consequent upon blunt force impact'. He stated that all injuries were ante mortem in nature. In his cross-examination he has stated that the injuries mentioned in his report were suggestive of the history of accident. He had stated that as per his Post Mortem report, there was no injury on the person of the deceased which could suggest that the death could have been on account of assault.

11. The insurance company has examined HC Dham Singh from PS Shivaji Nagar, Gurugram, Haryana as R2W2. Said witness has deposed that he was the first IO of the case and he had come to know about the accident only and the alleged factum of the attack was not brought to his notice.

12. Said witness stated that he had recorded the statement of one Sh. Harish who was a public person in respect of the accident in question and also recorded the statement of the father of the deceased and that the offending vehicle was taken into custody on 04.04.2018 but the seizure memo was prepared on 07.04.2018 as the FIR was lodged on 07.04.2018 only.

13. One Surender Pal brother of the deceased was examined by the Insurance Company as R2W3. Said witness had deposed that he reached the spot of the incident after about 2 hours. He had stated that his sister-in-law Ms. Vandana and her family members from the parental side had struck a deal with the opposite party for

compromising the matter for the amount of Rs. 3 Lakhs. He deposed that he had told the police that his deceased brother was attacked and that he had not met with any accident.

14. The Tribunal in the impugned award has noticed that the allegation of the Insurance Company was with regard to manipulation by the Police of converting a case of murder into a case of accident.

15. The Tribunal has noticed that the alleged manipulation by the police officials revolves around the statement of Sh. Surender Pal the brother of the deceased, which was recorded by the Investigator appointed by the insurance company. On the other hand the claimants had examined Sh. Harish Kumar and eye witness of the accident whose statement was also recorded by the Investigating Officer under section 161 Cr.PC.

16. The Tribunal has noticed that the eye witness had been cross examined at length by the Counsel for the insurance company and even in his cross-examination, he had categorically stated that he had witnessed the accident when he was sitting in his shop at the spot.

17. The Tribunal has thereafter relied upon the evidence of Dr. Vijay Kumar Singh, who had carried out the post mortem upon the body of the deceased and his opinion that the cause of death was cranio cerebral damage consequent upon blunt force impact and all

the injuries were ante mortem in nature. In the cross-examination the said witness had categorically stated that there was fracture of skull suggestive of trauma to head and the injuries mentioned in the post-mortem report were suggestive of history of accident. He had further deposed that there was no injury on the person of the deceased which could suggest that the death could have been on account of assault.

18. Even the Investigating Officer in his testimony has stated that as per him, the accident in question was caused on account of rash and negligent driving of the driver of the offending vehicle.

19. The Tribunal has also noticed that the factum of the seizure of the vehicle on 04.04.2018 was corroborated by the brother of the deceased namely Sh. Surender Pal, who, in his cross-examination had stated that he had reached at the spot of the accident after two hours and he did not find the offending vehicle at the spot of the accident. He had stated that the offending vehicle was stationary in the police station when he reached the police station after his visit to the spot of the accident.

20. The Tribunal has opined that the brother of the deceased was not a reliable witness and his testimony is not trustworthy.

21. The Tribunal has also noticed that the insurance company had lodged a complaint with Commissioner of Police, pursuant thereto a

report was called for by the Tribunal and in the said report it was categorically stated that the accident in question was caused by rash and negligent driving of the offending vehicle and there was no truth in the statement given by Sh. Surender Pal to the investigator of the insurance company.

22. The Tribunal has thus rightly concluded that there is overwhelming evidence on record to conclude that the accident in question was caused by the rash and negligent driving of the offending vehicle and the mere statement of Sh. Surender Pal, recorded allegedly by the Investigator of the insurance company could not be relied upon.

23. There is no material on record except the said statement of Sh. Surender Pal that the death did not occur on account of the accident but is a case of murder. Further, the reliance placed by the insurance company on the complaint given by the brother is not sustainable for the reason that the brother admittedly is not an eye-witness to the incident and had reached the spot after two hours.

24. On the other hand there is substantial evidence in the form of the statements of the eye witness, the doctor who had conducted the post mortem as also the police officers and the police report to substantiate that the death occurred on account of the rash and negligent driving of the offending vehicle.

25. It may further be noticed that there is no reason to doubt the statement of Harish Kumar who has categorically deposed that he had witnessed the accident. His statement has also been recorded under Section 161 Cr.P.C. by the Investigating Officer. The presence of Harish Kumar, the eye-witness cannot be doubted as he runs a sweet shop in front of the place where the accident had taken place.

26. Further, the recording in the MLC that someone reported to the attending doctors that it is a case of the assault stands disproved by the testimony of the doctor who was conducted the post mortem and he in his evidence who has categorically stated that the injuries on the body as noticed at the time of the post-mortem do not suggest any assault but are indicative of injuries sustained by blunt force which could be the result of an accident.

27. Further, the Investigating Officer, as well as the doctor who conducted the post-mortem has confirmed that an accident had taken place. Consequently, applying the doctrine of the preponderance of probabilities, it can safely be concluded that the death occurred on account of an accident and consequently the insurance company cannot escape its liability.

28. The Tribunal has thus rightly concluded that the factum of negligence has to be decided on the touchstone of preponderance of probabilities and a holistic view has to be taken.

29. In view of the above, there is no merit in the appeal. The appeal is consequently dismissed.

SANJEEV SACHDEVA, J

JULY 04, 2022
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