



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

% Judgment delivered on: 08 August,2022

+ **MAC.APP. 79/2018**

THE ORIENTAL INSURANCE CO LTD ... Appellant

versus

KALU RAM & ORS Respondents

AND

+ **MAC.APP. 702/2018**

KALU RAM & ANR. Appellants

versus

WAJID ALI & ORS THE ORIENTAL
INSURANCE CO LTD. Respondents

Advocates who appeared in this case:

Mr.S.P. Jain, Advocate for the insurance Company in MAC.APP. 79/2018 and
MAC.APP. 702/2018.

Mr. Pratap Singh, Advocate for the Claimants/respondent in MAC.APP. 79/2018
and for appellants in MAC.APP. 702/2018

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. These appeals emanate out of the judgment dated 30.11.2017



whereby the detailed accident report regarding injuries sustained by one Nikhil Kumar Jain and a separate claim petition filed by the parents of the deceased Akash Kumar have been disposed of.

2. MAC. APP. 79/2018 is filed by the Insurance Company whereby the driver of the offending vehicle has been held liable and compensation has been awarded. MAC. APP. 702/2018 is filed by the parents of the deceased seeking enhancement of compensation.

3. On 11.06.2013 at about 03.00 am deceased Akash Kumar was going with his roommate Nikhil Kumar Jain in a Wagon-R car being driven by Nikhil Kumar Jain. When they reached Andrews Ganj Bus Stop, they hit a truck which was standing in the middle of the road without any indication. Akash Kumar sustained fatal injuries and Nikhil Kumar Jain sustained serious injuries.

4. The contention on behalf of the claimants is that the offending truck was parked in the middle of the road without any indications and warning signs and the accident occurred because the truck was not visible.

5. On the other hand the contentions of the learned counsel appearing for the insurance company is that the rear left tyre of the offending truck had got punctured and the truck was parked on the extreme left side of the road with indicators and at about 3.00 a.m.,



the car in which the deceased was traveling came at a very high speed and the driver lost control and collided with the truck.

6. To establish the factum of the accident and the manner in which the accident had occurred the claimants had examined Nikhil Kumar Jain who was driving the Wagon-R on the fateful night. In his testimony he had deposed that the car was driven by him and deceased Akash Kumar was sitting on the front seat and when both of them reached on BRT corridor at Andrews Ganj Bus Stop, the offending truck was already standing on the road near the bus stop. The said truck was not having indicator and was not fitted with reflector. The indicators were also not blowing and due to which the car hit the said truck and the deceased Akash Kumar and the deponent sustained serious injuries and subsequently, deceased Akash Kumar expired. He further deposed that had the driver of the offending truck been bit cautious, the said accident could have been avoided.

7. There is no material of cross examination of the said witness. In his cross examination he has stated that mostly there is enough light at BRT corridor but on the date of the accident no street light was working. None of the street lights either on the side or in the middle of the road were working. There is no suggestion given during the cross examination to the said witness that any precaution was taken by the driver of the offending truck or that any indicator or warning sign was



placed to warn the oncoming traffic.

8. No evidence was led by the order and driver of the offending truck or by the Insurance company on that behalf. Further the photographs placed on record clearly show that the truck was not parked on the left side of the road and is parked in the middle of a three lane road.

9. The Tribunal has held that the claimants have made statement in consonance with the FIR and the petition was narrated in the mode and manner of the accident. DAR was also filed with a copy of the FIR and charge-sheet, which was filed by police after investigation under section 279, 337/& 304A of IPC.

10. The tribunal has held that the Driver did not enter the witness box to rebut the evidence of the injured which was also suggestive of negligence of the driver of the truck in causing the accident.

11. Reliance placed by the learned counsel for the Insurance Company 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 motorcycle of the deceased had hit the vehicle from behind, the deceased was not maintaining sufficient distance, is misplaced.



12. Said judgment does not help the case of the Insurance Company. 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.

13. 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.

14. In the present case, there is no such evidence or finding returned that the Wagon-R being driven by the friend of the deceased was being driven in a rash and negligent manner or that he was not maintaining sufficient distance. On the other hand the evidence that has come on record is that the offending truck was parked in the middle of the road without any indicator or warning signals, resulting in the accident.



15. Further, reliance placed by the learned counsel for insurance Company 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.

16. 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.

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

18. As noticed hereinabove, there is no material or evidence on record to disbelieve the testimony of PW6 the driver of the Car in which the deceased was travelling to hold that the accident had not occurred in the manner as deposed by him.

19. It is also pertinent to note that the driver of the Wagon-R in which the deceased was travelling had also filed an independent claim



petition and the Insurance Company has not challenged the award in his favour and satisfied the award.

20. There is thus no infirmity in the impugned award holding the driver of the offending truck to be the cause of accident which occurred on account of his leaving the truck in the middle of the road without sufficient indication or warning lights. The appeal of the insurance company (MAC APP 79/2018) is accordingly dismissed.

21. In the cross-objections (MAC APP 702/2018) claimants have sought enhancement of compensation. It is contended on behalf of the claimants that the deceased was a student of Chartered Accountancy and was doing his articles and as such higher amount of compensation should have been awarded.

22. According to the claimants the deceased was a 20 years old student of CA final year who was working with M/s. ASA & Associates and was earning salary of Rs.8,000/- to Rs.11,000/- per month and was also having tuition income of Rs. 25,000/- per month.

23. The Tribunal found that no proof of tuition income was filed. It was contended that the deceased had potential of earning better salary after completing CA. Reliance was also placed on the salaries of some of the students who after completing CA, got salaries in the range of Rs.1.35 Lakhs per month to Rs.2 Lakhs per month.



24. The Tribunal held that the deceased was earning salary in the range of Rs.3,595/- per month to Rs. 14,410/- from M/s. ASA & Associates as per bank statement Ex. PW2/1 and his salary slips Ex. PW4/1. There was no evidence of any tuition income.

25. The Tribunal held that even if the deceased was a student of CA final year, that in itself is no guarantee that the deceased would have qualified CA and the pay package of a candidate depended upon varied factors.

26. For determining 'just and adequate' compensation the tribunal has relied upon the decision of a coordinate bench of this court in *Reena Bhatia versus Badan Singh 2012 SCC OnLine Del 2879* has held that where it difficult to determine the income of a student after completion of the course, it would be appropriate and reasonable to take the salary at the entry level fixed by the government for such jobs. Consequently, the Tribunal took the gross salary of a Group A officer in Central Government as bench mark to assess the compensation.

27. The method adopted by the tribunal in assessing the compensation is just and reasonable. No infirmity has been pointed out either by the Insurance Company or by the Claimants to the method adopted by the Tribunal in assessing just and adequate compensation.



28. In view of the above there is no merit in the cross appeal seeking enhancement of compensation. Accordingly, the appeal on behalf of the claimants (MAC APP 702/2018) is also dismissed.

AUGUST 08, 2022

SANJEEV SACHDEVA, J

