

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

Reserved on : 05.09.2022

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Pronounced on : 18.10.2022

+ **MAC.APP. 937/2018**

RINA SINHA & ORS

..... Appellants

Through: Mr. Shyam Singh Sisodia, Advocate.

versus

RAMKESH & ORS (NATIONAL INSURANCE CO LTD)

..... Respondents

Through: Ms. Hetu Arora Sethi and Ms. Kavita Nailmal, Advocate for R-3/NIC.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present appeal under section 173 of the Motor Vehicle Act 1988 has been filed by the appellants against the Impugned Award dated 21.07.2018 passed by the Ld. Tribunal whereby the Ld. Tribunal has dismissed the claim petition.

2. In brief, the facts of the case are that on 13.10.2015, deceased Gaurav Kumar Sinha was travelling in the offending vehicle bearing No. DL 1 YE 1480 and was returning from Pilkhuwa to Ghaziabad. At about 7:00 AM, the offending vehicle reached in front of Pehalwan Hotel, Masuri, U.P. and due to rash and negligent driving on the part of

the driver of the offending vehicle, the accident took place in which Gaurav Kumar Sinha received fatal injuries and subsequently died.

3. Thereafter, the appellants preferred claim petition before the Tribunal. Respondent No. 1 and 2 herein, who were also respondent No. 1 and 2 before the Tribunal filed their written statement denying the averments in the petition and further stating that the appellants herein had no cause of action for filing the claim petition and also denied that the offending vehicle was being driven rashly and negligently by respondent No. 1.

4. Respondent No. 3 insurance company also filed a separate written statement admitting the insurance policy of the vehicle No. DL1 YE 1480 valid from 07.01.2015 to 06.01.2016 in the name of respondent No. 2 Nihal Singh.

5. The Ld. Tribunal on the basis of the pleadings of the parties framed the following issues:

"1. Whether deceased Gaurav Kumar Sinha died on account of injuries sustained in accident taking place on 13.10.2015 at about 7 AM in front of Pehlwan Hotel, Masoori, UP within the jurisdiction of PS Masoori Ghaziabad, UP due to rash and negligent driving of vehicle car bearing No. DL1 YE 1480 by respondent No. 1 ?OPP

2. Whether petitioners are entitled to compensation? If so to what amount and from whom? OPP

3. Relief."

6. The appellant No. 1 appeared as PW 1 before the Tribunal and proved the following documents on record:

- (i) Complaint Cum Representation dt. 11.01.2016 alongwith affixed original postal receipts Ex. PW 1/1.
- (ii) Request letter dated 12.02.2016 alongwith affixed original postal receipt Ex. PW 1/2.
- (iii) Copies of identity proofs Ex. PW 1/3 to Ex. PW 1/5.
- (iv) Copy of FIR Ex. PW 1/6.
- (v) Copy of registration details of offending vehicle Ex. PW 1/7
- (vi) Copy of proceedings U/s 174 Cr.P.C mark A.
- (vii) Copy of postmortem report mark B.
- (viii) Copies of education certificates Ex. PW 1/10.

7. The appellant also examined one Mr. Aditya Sinha, Asstt. Manager, HRA M/s SRS Limited as PW-2 who proved authority letter as Ex. PW 2/1 and appointment letter of deceased Gaurav Kumar Sinha alongwith salary slip and salary sheet for the month of October 2015 as Ex. PW 2/2. He also produced and proved the attendance sheet as Ex.

PW 2/3X and receipt as Ex/. PW 2/4X and the bank statement of the deceased as Ex. PW 2/5X.

8. SI Ashok Kumar Upadhyay was also examined by the appellant as PW-3 and he proved on record the entire record of criminal investigation in crime No. 159/2017 U/s 279/304-A/338 IPC as Ex. PW 3/A.

9. One Manoj Kumar Singh was also got examined by the appellant as PW 4 who is alleged to be the eye witness of the accident.

10. In view of Section 166 of the M.V. Act 1988, it is for the claimant to prove that the vehicle which caused the accident was being driven rashly and negligently. The proof of negligence is sine qua non in a petition U/s 166 of the M.V. Act 1988. Merely because a criminal case is registered against the driver of the offending vehicle, negligence cannot be inferred, even on the touchstone of the preponderance of probabilities. Reliance can be placed upon *New India Assurance Company Limited Vs. Harsh Mishra and Ors. (MAC.App 592/2011) decided on 29.06.2015.* Reliance can also be placed upon the Judgment of this Court in *M.A.C. App. No. 20/2017 decided on 05.07.2017 titled as Reliance General Insurance Company Limited Vs. Nirmala Devi & Ors* and *New Delhi Assurance Company Limited Vs. Devki & Ors. (M.A.C.APP No. 165/13)*, decided by this Court on 29.02.2016.

11. According to the appellants, the eye witness of the accident is Manoj Kumar Singh who has been examined as PW 4. His testimony will be discussed lateron. As far as PW-3 SI Ashok Kumar Upadhayay is concerned, he has exhibited the criminal investigation record as Ex. PW 3/A and in his cross examination he has deposed that as per the conclusion of the investigation, the accident did happen but it was a co-incidence only and the driver of the offending vehicle was not found to be negligent.

12. Now the only witness who is relevant for the purpose of proving rash and negligent driving is PW 4 Manoj Kumar Singh. He has filed his evidence by way of affidavit Ex. PW 4/A and in his affidavit he has stated as follows:

"1. That on 13.10.2015, I was returning by my Vehicle from Hapur to Home. At about 7:00 a.m. I was sitting at Pahalwan Hotel, Masuri, (U.P.), for breakfast then all off a sudden the Offending Vehicle Car bearing No. DL-1 YE-1480, being driven by its Driver rashly and negligently came from Pilkhua Side and due to rash driving the Driver of the Offending Vehicle lost the control over the offending vehicle and struck the Offending Vehicle with the Tree as a result of which accident caused and the Driver and other occupant of the Offending Vehicle received injuries, people gathered there and the Police arrived at the place of

accident, I told Police officials about the accident and police recorded my statement and taken my mobile number thereon, after sometime the relative of Gaurav Sinha came at the place of accident to whom I also told about the accident and they taken my Mobile Number.

2. That the aforesaid accident occurred due to rash and negligence driving on the part of the Driver of Offending Vehicle Car bearing No. DL-1YE-1480 and he is solely responsible for the aforesaid accident."

13. This witness was cross examined on behalf of the counsel for the respondent No. 3 insurance company. In his cross examination he has also claimed himself to be the eye witness of the accident. He has stated in his cross examination that he has not intimated to the police regarding the accident nor he has taken the injured to the hospital but he says that he has accompanied the injured to the hospital who was taken there by the police but nothing has been proved by him on record to show that he has accompanied the injured to the hospital. His conduct of not informing the family members of the deceased about the accident is highly improbable and even in his cross examination he has admitted that he has not intimated the family members of the injured regarding the accident. It is pertinent to mention here that in his affidavit Ex. PW 4/A he has deposed that he was returning by his vehicle from Hapur to home but he has not mentioned in what type of

vehicle he was returning to his home. However, in his cross examination he has stated the vehicle No. but he has not placed any document on record to show that he is the owner of the said vehicle or that he was having a driving licence on the date of the incident.

14. From the testimony of this witness, his presence at the spot is doubtful. In the absence of any material on record to show that the offending vehicle i.e. car bearing No. DL 1 YE 1480 was being driven rashly and negligently by respondent No. 1 as a result of which deceased Gaurav Kumar Sinha sustained injury in the accident which took place on 13.10.2015 at about 7:00 AM in front of Pehalwan Hotel, Masuri, UP and subsequently died as a result of injury sustained by him in the said accident, I find no infirmity in the impugned award dated 21.07.2018 passed by the Motor Accident Claims Tribunal (Pilot Court), Karkardooma Courts, Delhi. The same is, therefore, upheld. Consequently, the present appeal is dismissed.

RAJNISH BHATNAGAR, J

OCTOBER 18, 2022

Sumant