



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

% Judgment delivered on: 04th July, 2022

+ **MAC.APP. 977/2018 & CM APPL. 39785/2021**

HDFC ERGO GENERAL INSURANCE CO LTD ... Appellant

versus

USHA SHARMA & ORS Respondents

Advocates who appeared in this case:

For the Appellant: Mr. A.K. Soni, Advocate for the insurance company.

For the Respondent: Mr. Pankaj Kr. Deval, Advocate.

+ **MAC.APP. 115/2020**

USHA SHARMA & ORS Appellant

versus

HDFC ERGO GENERAL INSURANCE CO LTD... .. Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Pankaj Kr. Deval, Advocate.

For the Respondent: Mr. A.K. Soni, Advocate for the insurance company.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. MAC Appeal 977/2018 is an appeal filed by the insurance company (insurer of the offending vehicle) impugning judgment dated



03.08.2018, whereby claim petition filed by respondents No.1 and 2 i.e., mother and father of the deceased have been allowed and compensation awarded.

2. MAC Appeal 115/2020 are cross-objections on behalf of the mother and father of deceased, seeking enhancement of the awarded compensation.

3. On 01.04.2012, one Siddharth Sharma (since deceased) was going on his motorcycle to receive his brother, Anubhav Sharma at Atul Kataria Chowk, Sector-14, Gurgaon.

4. At about 9.30 A.M., when he reached Atul Kataria Chowk near Huda Nursery, Sector-14, the offending vehicle, a recovery van, which was being driven by its driver (respondent No.3 herein) at a high speed, rashly and negligently and without following any traffic rules, suddenly applied brakes, due to which the motorcycle of the deceased collided with the offending vehicle and as a result of the impact, he fell down on the road and sustained injuries. He was taken to Max Hospital, Gurgaon, where despite treatment, he expired on 03.04.2012.

5. The Tribunal relying upon the testimony of the brother of the deceased, who had appeared as an eye witness and deposed to the factum of the accident, held the driver of the offending vehicle



responsible for causing the accident on account of the rash and negligent driving and consequently, held the claimants entitled to compensation.

6. The challenge to the award by the insurance company primarily is on the ground that as the deceased riding on his motorcycle had struck the recovery van from behind, he was himself negligent and the cause of the accident and as such, his legal heirs are not entitled to any compensation, other than the statutory compensation.

7. It is further contended on behalf of the appellant that the testimony of the brother, who claims to be an eye witness is not dependable, for the reason that it has not been established that he was present at the site and is an interested witness. His testimony is sought to be impeached on the ground that he is a planted witness as his name is not even mentioned in the medical report of the accident. Reliance is placed on the MLC, wherein it is recorded that the deceased was brought to the hospital by the police. It is contended that as the name of the brother is not mentioned in the case history, it is not believable that he was present at the site and is thus, a planted witness.

8. In support of the claim petition, the claimant i.e., mother of the deceased, examined herself as a witness besides examining the brother of the deceased who appeared as PW-2 as well as the Senior Manager, Administration from the organization where the deceased was



employed.

9. To rebut the claim of the claimants, the insurance company has only examined a Clerk from the Road Transport Authority (RTA).

10. At this juncture, it would be necessary to refer to the testimony of Anubhav Sharma, the brother of the deceased, who has appeared as eye witness. He, in his affidavit by way of evidence, has deposed as under:-

“2. I say that on the most unfortunate morning of 01/04/12, my deceased brother. Siddharth Sharma was coming on his motorcycle- No. HR-26AZ-8107 driving vigilantly and correct side of the road, to receive me. I was waiting for him at Atul Katariya Chowk, Sec. 14, Gurgaon. At about 09:30 am when he reached Near Atul Kataria Chowk near Hudda Nursery, Sec.14, Gurgaon in the meanwhile the offending vehicle No. HR-550-8043 (Recovery Van), which was being driven by the driver I respondent No. 1 at a very high speed, rashly, negligently, without giving any indication, neglecting the traffic rules ahead of the deceased and suddenly applied- the break due to this the motorcycle of deceased collided with the offending vehicle. As a result of this violent impact he fell down on the road and sustained fatal injuries.

3. I say that the police came on the spot and the deceased was taken to Max Hospital, Gurgaon by the police. I was accompanied the police when my brother was taken to the Max Hospital. He was admitted in the Max Hospital, where during the treatment the deceased was expired on 03/04/12 and his post-mortem was



conducted at mortuary of the General Hospital, Gurgaon, Haryana. The dead body of the deceased has been taken by the petitioners and his relatives after post-mortem.

4. I say that after the accident the driver of the offending vehicle No. HR-55G-8043 (Recovery Van) stopped his vehicle near the place of accident and fled from the spot, offending vehicle No. F.I.R.-55G-8043 (Recovery Van) was stationary near the spot.

5. I say that the Police recorded my statement at the Max Hospital, Gurgaon regarding the accident. The offending vehicle was seized stationary near the place of incident in my presence. I can identify the driver of the offending vehicle who caused the above said accident.

6. I say that the accident took place due to the rash and negligent driving of the offending vehicle No. HR-55 G-8043 (Recovery Van) which came ahead of the motorcycle of the deceased and suddenly applied the brakes. Case F.I.R. No.173/12, U/S- 279/337/338 IPC has been registered at P.S. Civil Line Gurgaon against the driver on my statement."

11. It may be noticed that in his examination-in-chief, the witness has categorically stated that he was waiting for his brother at Atul Kataria Chowk and had noticed that the offending vehicle was being driven at a very high speed, rashly and negligently and neglecting traffic rules and had suddenly applied the brakes. Witness has further deposed that the driver of the offending vehicle had fled from the spot.



12. Reference may also be had to the cross-examination done on behalf of the insurance company, which is very brief and is as under:-

“XXXXX by Shri M.P. Shahi, counsel for insurance company.

I am working in I Yogi Company for the last about two years. The width of the single road is about 30-35 feet and two trucks and one car can easily move on that road. It was a double road having divider in between.

I was waiting near Hooda Nursery. I am eye witness to the accident and same has happened in my presence. Truck was moving on left side of the road. It is correct that my brother hit the truck from behind. Vol. The truck had applied sudden brakes. My brother sustained injuries on the head and 9rms. My brother was wearing helmet at that time. Police had seized the helmet. It is wrong to suggest that my brother was not wearing any helmet at the time of accident. There were 2-3 vehicles on the road. It is wrong to suggest that accident had occurred due to negligence of my brother. It is wrong to suggest that truck driver had not applied brakes suddenly. There was sufficient space from the right side of the truck for passing of vehicle. It is wrong to suggest that there was no fault of driver of the truck in the accident. It is wrong to suggest that I have filed wrong affidavit or I have deposed falsely.”

13. It may be noticed from the above cross-examination that apart from putting general questions, there is no specific cross-examination of the said witness. The cross-examination does not in any manner



shake the evidence given in affirmative by the said witness. It does not contradict the assertions made in the examination-in-chief that the driver of the offending vehicle was driving the vehicle in a rash and negligent manner, disregarding the traffic rules and had suddenly applied brakes.

14. The only evidence led by the insurance company is that of a Clerk of the RTA with regard to the permit of the offending vehicle.

15. There is consequently no material on record to contradict the testimony of the brother of the deceased, who had appeared as an eye witness and deposed as to the manner in which the offending vehicle was being driven and the manner in which accident occurred. There is no other ground to disbelieve the testimony of the said witness.

16. The contention of learned counsel for appellant/insurance company to the effect that the name of the brother is not mentioned in the MLC form as having taken the brother to the hospital is of no consequence for the reason that the admitted position is that the officers of the police had reached the spot and had taken the deceased to the hospital.

17. The fact that a police officer had taken the deceased (then injured) to the hospital and his name is mentioned in the MLC does not in any manner establish that the brother of the deceased had not



accompanied the police officers to the hospital.

18. It is obvious that when a police officer had taken the injured to the hospital, the attending staff and doctors at the hospital would give more credence to the presence of the police officer and record his presence in the MLC rather than recording the names and details of the family members who may be accompanying the injured to the hospital.

19. This fact alone is not sufficient to return a finding that the brother of the deceased was not present at the spot and had not witnessed the accident, particularly, when there is no credible cross-examination of the brother to shake his testimony.

20. The presence of the brother is also established from the fact that the FIR of the accident was registered on the complaint of the brother and he has been shown as eye witness in the said FIR.

21. The FIR as well as the proceedings thereon corroborate the testimony of the brother that he was an eye witness and had witnessed the accident and the manner in which the accident occurred.

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 motorcycle of the deceased had hit the vehicle 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 motorcycle being ridden by the deceased was being ridden 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 vehicle i.e., recovery van was being driven in a rash and negligent manner, disregarding the rules of traffic and



the driver of the offending vehicle had suddenly applied brakes, resulting in the accident and thereafter had fled from the spot leaving the vehicle.

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. As noticed hereinabove, there is no material or evidence on record to disbelieve the testimony of the brother or to hold that the brother was not present at the site and accident had not occurred in the



manner as deposed by him. Consequently, there is no infirmity in the impugned award holding the driver of the offending to be the cause of accident which occurred on account of his rash and negligent driving. The appeal of the insurance company (MAC APP 977/2018) is accordingly dismissed.

30. In the cross-objections (MAC APP 115/2020) claimants have sought enhancement of compensation. It is contended on behalf of the claimants that the Tribunal has erred in awarding 'future prospects' at only 50%, whereas the 'future prospects' should be enhanced to 100%.

31. Reliance is placed on the judgment of the Supreme Court in *Sureshchandra Bagmal Doshi Vs. The New India Assurance Company Ltd. & Ors.*, (2018) 15 SCC 649.

32. It may be noticed that the Tribunal has relied upon the judgment of the Supreme Court in *Sarla Varma & Ors. Vs. DTC & Anr.*, (2009) 6 SCC 649.

33. The Constitution Bench of the Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680 approved the view taken in *Sarla Varma (supra)* that 50% of the salary of the deceased should be taken towards future prospects.



34. In *Sureshchandra Bagmal Doshi (supra)*, the Court had taken a view that there was no bar to future prospects being taken at a higher level than 50%. This observation, however, is qualified and the Supreme Court has held that there is no bar in taking the future prospects at a higher level where the assessment is based on actual evidence led to the satisfaction of the Tribunal or the Court that the future prospects were higher than the standard percentage.

35. In *Sureshchandra Bagmal Doshi (supra)*, the Court had taken a higher percentage in a case where there was actual evidence led to show that future prospects in fact were higher than the standard percentage. It is only in those circumstances where such material is made available to the Tribunal or the Court that future prospects may be taken at a higher level.

36. In the present case, there is no evidence on record that the future prospects in fact were higher than the standard percentage of 50%. In the absence any evidence being placed on record to show that future prospects in fact were higher than 50%, no infirmity can be found in the impugned award, taking future prospects only at 50%.

37. In view of the above there is no merit in the cross-objection seeking enhancement of compensation under the head of '*loss of income*'.



38. However, perusal of the impugned award shows that no amount has been granted under the head of '*loss of consortium*'. Consequently, applying the ratio of the judgment of the Supreme Court in *United India Insurance Company Ltd. Vs. Satinder Kaur @Satwinder Kaur, (2021) 11 SCC 780*, a sum of Rs. 40,000/- each is awarded to each of the claimants.

39. Consequently, while upholding the award on merits as well as on assessment of compensation towards '*loss of income*', the award is modified to the limited extent that a sum of Rs.40,000/- each in addition, shall be awarded to the claimants i.e., respondents No.1 and 2 under the head of '*loss of consortium*'. The appeal of the claims is disposed of accordingly.

40. The amount deposited with the Registry be disbursed to the claimants as per the scheme of disbursement mentioned in the impugned award. The enhanced amount along with interest @ 9% per annum from the date of filing of the petition be deposited with the Tribunal within four weeks. On deposit of the enhanced amount, the same shall be disbursed by the Tribunal along with interest accrued thereon to the claimants.

SANJEEV SACHDEVA, J

JULY 04, 2022/NA