



2023:DHC:7309



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 05.10.2023***+ **MAC.APP. 222/2019 & CM APPL. 6197/2019, CM APPL. 6199/2019****THE ORIENTAL INSURANCE CO LTD Appellant**

Through: Mr.Pankaj Seth, Adv.(through VC)

versus

RAJNI DEVI & ORS Respondents

Through: Mr.S.N. Parashar, Mr.Palvinder Singh and Mr.S.W. Nomani, Advs. for R-1 to 6.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This appeal has been filed challenging the Award dated 17.12.2018 (hereinafter referred to as 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, North West District, Rohini Courts, Delhi (hereinafter referred to as 'Tribunal') in MACT Petition No. 310 of 2013 (New No.49207-16) titled as ***Smt. Rajni Devi & Ors. v. Sh. Ram Prasad & Ors..***
2. It was the case of the claimants/respondent nos.1 to 6 herein before the learned Tribunal that on 15.09.2012 at about 3.18 PM, Sh.Pramod Chauhan (hereinafter referred to as 'deceased') along with other persons was travelling in a vehicle bearing registration no. UKD 7742 (hereinafter referred to as 'offending vehicle')

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which was being driven by the respondent no.7 herein in a rash and negligent manner and at a very high speed. When the offending vehicle reached between Baajpur and Kashipur, K.M No. 5018-9, Phatak, District Udham Singh Nagar, Uttarakhand, the respondent no.7 lost control over the offending vehicle and hit it against the Train bearing no. 55317. As a result of the accident, the deceased received fatal injuries whereas the other persons in the car were grievously injured.

CHALLENGE TO THE JURISDICTION OF THE TRIBUNAL

3. The learned counsel for the appellant submits that as the accident had taken place between the car and the train, only the Railway Claims Tribunal shall have jurisdiction to entertain such a claim.
4. On the other hand, the learned counsel for the respondent nos.1 to 6, placing reliance on the judgment of the Supreme Court in *Union of India v. Bhagwati Prasad (Dead) and Others*, (2002) 3 SCC 661, submits that the Motor Accident Claims Tribunal will have the jurisdiction to entertain and adjudicate on the claim petition inasmuch as the accident involved a motor vehicle.
5. I have considered the submissions made.
6. In *Bhagwati Prasad* (Supra), the Supreme Court considering a similar plea as raised by the appellant herein, and while rejecting the same, has observed as under:

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"3.....The crucial expression conferring jurisdiction upon the Claims Tribunal constituted under the Motor- Vehicles Act is the accident arising out of use of Motor Vehicle, and therefore, if there has been a collision between the motor Vehicle and Railway train then all those persons injured or died could make application for compensation before the Claims Tribunal not only against the owner, driver or insurer of the Motor Vehicle but also against the Railway Administration. Once such an application is held to be maintainable and the Tribunal entertains such an application, if in course of enquiry the Tribunal comes to a finding that it is the other joint tortfeasor connected with the accident who was responsible and not the owner or driver of the Motor Vehicle then the Tribunal cannot be held to be denuded of its jurisdiction which it had initially. In other words, in such a case also the Motor Vehicle Claims Tribunal would be entitled to award compensation against the other joint tortfeasor, and in the case in hand, it would be fully justified to award compensation against the Railway Administration if ultimately it is held that it was the sole negligence on the part of the Railway Administration....."

7. In view of the above, I find no merit in the challenge to the Impugned Award on the above submission.

CONTRIBUTORY NEGLIGENCE

8. The learned counsel for the appellant submits that the learned Tribunal has failed to attribute contributory negligence of the accident on the Railways.
9. I am unable to appreciate the said submission. As has been proved before the learned Tribunal and not disputed before this





Court, the offending vehicle was being driven by the respondent no.7 in a rash and negligent manner and had hit the Train. Therefore, contributory negligence cannot be attributed on the Railways for the same.

PLEA OF EXONERATION FROM PAYING THE COMPENSATION

10. The appellant also seeks exoneration from paying the compensation to the Claimants and/or a right to recover the same from the owner of the offending vehicle.
11. The learned counsel for the appellant submits that Mr.Ramesh Singh Rawat (PW-2), who was an eye-witness to the accident, had, in his cross-examination, stated that the offending vehicle was plying on hire basis at the time of the accident. The learned counsel for the appellant submits that as the insurance policy for the offending vehicle was for a private car, the liability to pay the compensation to the respondent nos.1 to 6 could not have been fastened on the appellant. He submits that, in any case, a right to recover the compensation from the owner of the offending vehicle, respondent no. 8 herein, should have been granted to the appellant.
12. I am unable to agree with the submission made by the learned counsel for the appellant.
13. As is recorded by the learned Tribunal in its Impugned Award, the appellant did not lead any evidence before the learned



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Tribunal. It is also recorded by the learned Tribunal that the only plea taken by the appellant before the learned Tribunal to deny its liability to pay the compensation to the claimants, was on the ground that the respondent no.7 was not holding a valid driving license. In absence of any evidence in support of this plea, the learned Tribunal rejected the said plea, making the appellant liable to pay the compensation to the respondent nos.1 to 6. Before the learned Tribunal, the ground of the offending vehicle being used on hire basis, thereby in any manner exonerating the appellant from paying the compensation to the respondent nos.1 to 6, was not even pleaded, leave alone proved by the appellant. The said ground cannot be allowed to be urged in the appeal based on a stray statement of PW-2. Accordingly, the same is rejected.

RATE OF INTEREST

14. The learned counsel for the appellant further submits that the learned Tribunal has erred in awarding interest in favour of the respondent nos.1 to 6 at the rate of 9% per annum. He submits that, keeping in view the date of the accident, the rate of interest is excessive.
15. I am unable to agree with the said submission. Apart from the fact that the appellant has not placed on record any material to show that the rate of interest awarded by the learned Tribunal is excessive, even otherwise, the learned Tribunal has placed

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reliance on the judgment of the Supreme Court in *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy*, (2011) 14 SCC 481, for determining the rate of interest. Accordingly, this challenge of the appellant also fails.

CONCLUSION

16. In view of the above, I find no merit in the present appeal. The appeal and the pending applications are accordingly dismissed.
17. There shall be no order as to costs.
18. The appellant has deposited the entire compensation amount payable along with the interest with the learned Tribunal, pursuant to the order dated 08.02.2019 of this Court. 50% thereof was directed to be released in favour of the respondent nos.1 to 6, vide order dated 12.07.2019 of this Court. The remaining amount shall now be released in favour of the respondent nos.1 to 6 in terms of the schedule of disbursement prescribed by the learned Tribunal in the Impugned Award.
19. The statutory amount deposited by the appellant be released in favour of the appellant along with the interest accrued thereon.

NAVIN CHAWLA, J

OCTOBER 5, 2023/ns/rp

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