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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 01.11.2023*+ **MAC.APP. 209/2021 & CM APPL. 20924/2021**
NATIONAL INSURANCE COMPANY LIMITED

..... Appellant

Through: Mr.Manoj Ranjan Sinha, Adv.

versus

SMT. SEEMA SINGH AND ORS. RespondentsThrough: Mr.Shashi Pratap Singh,
Mr.Sparsh Agarwal, Ms.Shreya
& Ms.Urvashi, Advs. for R-1 to
R-3.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This appeal has been filed by the appellant challenging the Award dated 24.12.2020 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, North District, Rohini Courts, Delhi (hereinafter referred to as the 'Tribunal') in MAC Petition No. 574/2018 titled *Smt.Seema Singh & Ors. v. Sh.Sunil Kumar & Ors.*

2. Before the learned Tribunal, it was the case of the claimants, that is, the respondent nos.1 to 3 herein, that on 19.02.2018 at about 8:00 AM, the deceased, that is, Sh.Alok Kumar Singh, along with his sister -Ms.Reeta Singh and sister-in-law- Ms.Medhawi Singh was travelling in his Vento Car



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bearing registration no. UP-16AN-4253. When they reached near village Nagla Jawahar, District Firozabad, Uttar Pradesh, the said car collided with an ambulance bearing registration no. UP-32T-4683. It was the case of the claimants that the said ambulance was being driven in a rash and negligent manner by the respondent no.4 herein. It was further claimed that the ambulance, which was being driven in the middle of the road, suddenly turned towards the right side of the expressway and the car in which the deceased was travelling collided with the back side of the ambulance leading to fatal injuries to the deceased.

3. The learned Tribunal in its Impugned Award has held that as the FIR and later a Charge-Sheet for offences under Sections 279/304A of the Indian Penal Code, 1860 have been registered against the respondent no.4 herein; the respondent no.4 herein has not preferred any complaint to any higher authorities alleging his false implication in the accident; and coupled with the fact that there was nothing on record to support the ocular deposition of the respondent no.4 or the respondent no.5, the owner of the ambulance, that the accident had taken place when the ambulance was parked on the left side of the highway and it was the car that rammed into it from behind, there was sufficient evidence on record to conclude that the accident had taken place due to the negligence of the respondent no.4.



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4. Being aggrieved of the above finding of the learned Tribunal, the appellant has filed the present appeal.

5. The learned counsel for the appellant submits that it was the categorical case of the respondent no.4 herein that the ambulance had developed a certain mechanical problem, because of which he had parked the same on the left side of the road and had gone to get a mechanic. When he came back, the accident had already taken place and in the said accident even the owner of the ambulance, that is, the respondent no.5 herein, had been injured. He submits that, therefore, the story of the respondent nos.1 to 3 herein, that the ambulance was being driven in the middle of the road and had suddenly turned towards the right side leading to the accident in question, cannot be believed. In support, he draws my attention to the site plan prepared by the police after the accident, which shows the place of the accident as being on the left side of the road.

6. He also draws my attention to the photographs of the ambulance that were produced by the respondent no.4 in his evidence as Ex.R1W1/1 (colly). He submits that even the photographs would show that the damage to the ambulance was on the back side, which could have occurred only with the car hitting the ambulance on the right back side, while the ambulance was in a stationary position on the left side of the road.

7. He further submits that the driver of the Vento Car, that is, Sh. Sanjay Malan, had appeared as PW-2 before the learned



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Tribunal. In paragraph 4 of his evidence by way of an affidavit, he admitted that the ambulance was standing in the middle of the road. He submits that, therefore, even as per the evidence of PW-2, he had hit a standing/stationary vehicle. He submits that it has been wrongly held by the learned Tribunal that the accident had taken place due to the ambulance being driven in a rash and negligent manner.

8. On the other hand, the learned counsel for the respondent nos.1 to 3 submits that the manner of the accident has been duly proved through the testimony of PW-2. He submits that the Evidence by way of an Affidavit of PW2 has to be read as a whole. He submits that PW-2 in his evidence by way of an affidavit had clearly stated that the ambulance was in the middle of the road and had suddenly turned towards the right side, because of which, in spite of PW-2 applying brakes, he had hit the ambulance from behind.

9. He further submits that the photographs produced by the respondent no.4 themselves show that the ambulance was damaged from the back side and the right back side. The same could have taken place only with the ambulance moving towards the right side in a sudden manner.

10. He further submits that the story of the respondent no.4 that the ambulance had broken down because of which he had gone to get a mechanic cannot be believed, as there are material contradictions in this regard in the testimony of the respondent no.4 and the respondent no.5. He further relies on the



mechanical inspection of the ambulance to submit that there is no report of any problem with the engine of the ambulance.

11. He submits that merely because the position of the accident has been shown to be on the left side of the road in the Site Plan, the same cannot cast a doubt on the testimony of the PW2. He submits that the appellant did not confront the PW2 with the Site Plan. He submits that it could also be that the site plan was prepared on basis of the position where the ambulance was parked post the accident.

12. I have considered the submissions made by the learned counsels for the parties.

13. At the outset, it is to be remembered that in a Claim Petition seeking compensation on account the death or injury suffered due to a motor accident, the claimants are not to prove their case beyond reasonable doubt; it has to be proved only on the touchstone of preponderance of probabilities.

14. In the present case, PW-2 in his evidence by way of an affidavit has stated as under: -

“4. That the deponent was the driving the vehicle at the speed of 90 km./h and was wearing the seat belt and the seating co-passenger(deceased) was also wearing the seat belt. The above said accident was caused due to rash and negligent driving of the driver of the offending vehicle ambulance driven by the respondent no-1. The driver of the offending vehicle was standing on the middle of the road in a negligent manner and the deponent was driving his vehicle on the right side of the road. The driver of the offending vehicle



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suddenly moved his vehicle on the right side of the road due to which the deponent (driver) despite applying his brake could not avert the collision from the backside of the ambulance. The ambulance's driver was driving in a negligent and rash manner due to which the deponent's car hit the ambulance from behind in which the occupants of the Vento car suffered serious injuries and (deceased) Alok Kumar Singh suffered serious fatal injuries and later on succumbed to the injuries. The driver of the Vento car had no chance to stop the vehicle immediately due to sudden sharp turn of the ambulance's driver and short distance between the two vehicles. The deponent applied the break of his Vento car but could not avert the collision."

(Emphasis supplied)

15. Clearly, the statement of PW-2 that the ambulance was standing in the middle of the road appears to be a mistake in translation or improper English, as immediately subsequent thereto, PW2 had stated that the ambulance suddenly moved towards the right side of the road. He had also stated that the ambulance was being driven in a rash and negligent manner resulting in the accident. Therefore, no mileage can be drawn by the appellant by this stray sentence in the evidence by way of the affidavit of PW-2. The evidence has to be read as a whole and not in such bifurcated form.

16. In **Jagdish Prasad Patel & Anr. v. Shivnath & Ors.** (2019) 6 SCC 82, the Supreme Court has held as under:

"15. Section 58 of the Evidence Act, no doubt, postulates that the things admitted need not be proved. However, the proviso to Section 58 of



the Evidence Act gives full discretion to the court to require the facts admitted to be proved otherwise than by such admission. When the respondent-plaintiffs have filed the suit for declaration of their title, the respondent-plaintiffs cannot isolate few sentences in the written statement and take advantage of only those parts of the written statement which are favourable to them. The written statement filed by the appellant-defendants has to be read in toto”

17. In ***Shahaja v. State of Maharashtra*** 2022 SCC OnLine SC 883, the Supreme Court has held as under:

“27. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

xxxx

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the



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credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

xxx”

18. PW-2 was also cross-examined not only by the appellant but also by the respondent nos.4 and 5, however, in his cross-examination his testimony could not be shaken and no doubt could be cast on the same.

19. He was not confronted by the site plan prepared by the police. In the absence of such confrontation, no reliance can be placed on the mere fact that in the site plan, the ambulance has being shown to be on the left side of the road. The learned counsel for the respondents submits that the site plan may have reflected the position of the vehicle post the accident. This could have been explained by PW-2, if he was confronted with the same, or by the Investigating Officer if he had been summoned by the appellant or by the respondent nos.4 and 5 to prove their case that the ambulance was standing stationary on



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the left side of the road at the time of the accident. In the absence of any such evidence being led by the appellant or by the respondent nos.4 and 5, in my opinion, their case that the ambulance was standing stationary on the left side of the road at the time of the accident cannot be believed.

20. The photographs that have been relied upon by the learned counsel for the appellant also tell a different story. There is damage on the right back side of the ambulance, which, in my opinion, clearly reflects that the impact had taken place with the car hitting the back and the right back side of the ambulance. The said damage would have taken place only with the ambulance moving towards the right side at the time of the accident and not with the car hitting the ambulance only from the back while the ambulance was in a stationary position on the left side of the road.

21. It is also relevant to note that even the Mechanical Inspection Report shows that the engine of the ambulance was in a satisfactory position. This itself belies the stand of the respondent nos.4 and 5 that there was some mechanical problem in the ambulance because of which it was parked on the left side of the road.

22. From the above, I find no infirmity in the learned Tribunal holding that the accident had taken place due to the ambulance being driven in a rash and negligent manner.

23. No other challenge has been laid by the appellant to the Impugned Award.



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24. Accordingly, the appeal alongwith the pending application stands dismissed. There shall be no orders as to costs.

25. The statutory amount deposited by the appellant shall be released in favour of the appellant along with interest accrued thereon.

26. This Court by its order dated 16.07.2021 had directed the appellant to deposit the entire awarded amount with the learned Tribunal. It had further been directed by this Court that the Tribunal shall not disburse the amount to the claimants till the next date of hearing and shall keep the same in an interest bearing FDR. By a subsequent order dated 02.03.2023, this Court had directed the learned Tribunal to release a sum of Rs.10,00,000/- in favour of the respondent nos.1 to 3. The learned counsel for respondent nos.1 to 3 submits that the said amount is yet to be released.

27. Be that as it may, as now the appeal stands dismissed, the awarded amount deposited by the appellant with the learned Tribunal shall be released in favour of the respondent nos.1 to 3 in accordance with the schedule of disbursal prescribed by the learned Tribunal in the Impugned Award.

28. The Trial Court Record be returned back to the learned Tribunal.

NAVIN CHAWLA, J

NOVEMBER 1, 2023/rv/AS