



2023:DHC:7308



\$~15

* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 06.10.2023***+ **MAC.APP. 195/2020 & CM APPL. 23593/2020**
SBI GENERAL INSURANCE COMPANY LTD.

..... Appellant

Through: Mr.Nikhil, Adv. for Mr.Sameer
Nandwani, Adv. (through VC)

versus

AMAR SINGH & ORS.

..... Respondents

Through: Mr.Vinod Sharma, Adv. for
Claimants (through VC)
Mr.Rohit Khanna and
Mr.Sudhir Batra, Adv. for
Mr.Rahul Sudan (Owner).
Ms.Aditi Gupta, Adv for R 2-3**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This appeal has been filed challenging the Award dated 10.07.2020 (hereinafter referred to as 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, Shahdara District, Karkardooma, Delhi (hereinafter referred to as 'Tribunal') in MACP No.1734/2017 titled as ***Amar Singh & Anr. v. Salim Khan & Ors.***
2. It was the case of the claimants before the learned Tribunal that on 12.03.2017 at 11 PM, the deceased - Sh. Mohan Lal was

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 09.10.2023

16:05:02



MAC.APP. 195/2020

Page 1 of 6



coming on a motorcycle bearing no. DL-13SS-8584 from Shahdara to Ghaziabad after meeting his family members, while his brother - Sh. Somnath was following him on another motorcycle. When the deceased reached the Chauraha, New Flyover of Meerut Highway, suddenly a trailer bearing no. UP-20M-0996 (hereinafter referred to as the 'offending vehicle') came in a rash and negligent manner and hit the motorcycle of the deceased. As a result, the deceased died on the spot. FIR No.0476/17 under Sections 279/304A/427 of the Indian Penal Code was registered at Police Station Vijay Nagar.

3. The learned counsel for the appellant submits that the offending vehicle has been falsely implicated in the accident. He submits that the learned Tribunal has wrongly relied upon the statement of the brother of the deceased - Sh. Somnath (PW-2) to arrive at the conclusion that the accident had taken place with the offending vehicle being driven in a rash and negligent manner. He submits that the presence of the PW-2 at the site of the accident is highly doubtful and, in fact, the Tribunal itself had observed that he was trying to play extra smart and was trying to avoid questions and was replying in a very tricky manner during the course of his cross-examination.
4. I do not find any force in the submission made by the learned counsel for the appellant.
5. The driver of the offending vehicle, that is, respondent no.3 herein, had, in his written statement, stated that the accident had





already taken place with some unknown person having hit the deceased. He, however, also admitted that the police officials had taken him into custody. As far as the appellant is concerned, it had only disputed the quantum of the claim raised by the respondent nos.1 and 2 herein, that is the claimants.

6. The learned Tribunal after a detailed scrutiny of the evidence of PW-2 observed as under:

“14. In the aforesaid cross examination, there are several suggestions regarding the manner in which the accident took place. The suggestion that the driver of motorcycle, upon which PW-2 was sitting as a pillion rider, had caused the accident is contrary to the defence taken by respondent no. 1, that the accident had already been caused by some unknown vehicle. Though, PW-2 has been subjected to lengthy and searching cross examination, so far as the present petition is concerned, on the touchstone of preponderance of probabilities, the court find no reason to disbelieve the testimony of PW-2.

15. It may be noted that respondent no. 1 did enter the witness box as RIW1 and in his deposition, he stated that the accident was already caused by some unknown vehicle and that the police officials stopped his vehicle and asked him to run away after which he was falsely implicated in this case. This plea does not inspire confidence as it is hard to believe that out of so many vehicles passing on the road, police officials would only stop the vehicle of respondent no. 1 and would ask him to run away. In case the police had any motive to falsely implicate respondent no. 1, then they would have arrested respondent no. 1 at the spot rather than asking him to run away.





16. During the course of arguments, it was strongly urged by ld. counsel for respondent no. 1 and 2 that PW-2, who is brother of the deceased, is a planted witness and he was never present at the spot when the accident took place. He further submitted that had PW-2 been present at the spot, as testified by him, he would have immediately taken the deceased to hospital, but he did not do so, which shows that he was not present at the spot and he was planted as a witness by the police to falsely implicate respondent no. 1.

17. On careful reading of testimony of PW-2 as reproduced hereinabove, it cannot be inferred that he is a planted witness. Further, if the defence raised by respondent no. 1 in his written statement that respondent no. 1 ran away from the spot is to be believed, then on what basis, respondent no. 1 can say with certainty that PW-2 was not present at the spot. Moreover, PW-2 in his cross examination deposed that the deceased expired at the spot after the accident because of which PW-2 who is the real brother of deceased 'became hopeless'. In these circumstances, when PW-2 had seen untimely death of his brother in front of his eyes, it is possible that he could not think of taking police action immediately, taking the dead body of his brother to the hospital.

18. For the purpose of disposal of the claim petition, the burden of proof is not as high as in criminal cases and in the light of judgments cited hereinabove, the court is of the opinion that the testimony of PW-2 is credible and trustworthy and can be relied upon. In view of the fact that respondent no. 1 is charge sheeted by the police and is facing trial and further, in view of the testimony of PW-2, the Tribunal is of the opinion that the accident took place on 12.03.2017 at 11 pm between the motorcycle of deceased and the offending vehicle which was being driven by respondent no. 1 in a rash and negligent manner. It also stands proved





that at the time of accident, the offending vehicle was owned by respondent no. 2 and insured with respondent no. 3. Issue no. 1 is answered in favour of petitioners.”

7. I see no infirmity in the above observation of the Tribunal and in its finding that the claimants had been able to prove that the accident had taken place with the offending vehicle hitting the motorcycle of the deceased while it was being driven in a rash and negligent manner. As noted by the learned Tribunal, the onus of the proof on the claimants is to be judged on the touchstone of preponderance of probabilities and not on proof beyond reasonable doubt as is required in a criminal trial.
8. The only other challenge of the appellant to the Impugned Award is on the determination of the income of the deceased based on the minimum wages of a skilled worker as notified by the Govt. of NCT of Delhi (in short ‘GNCTD’). The learned counsel for the appellant submits that admittedly, the deceased was a resident of Ghaziabad; and there was no proof of him working as a driver with Ola Cabs or working for gain in Delhi. He submits that, therefore, minimum wages as notified by the Government of Uttar Pradesh should have been adopted for the determination of the income of the deceased.
9. On the other hand, the learned counsel for the claimants submits that the deceased had a driving licence issued by the GNCTD for LMV commercial vehicles. The same duly proves that he was a driver with Ola Cabs and, in any case, the adoption of minimum wages as notified by the GNCTD cannot be faulted with.





2023:DHC:7308



10. I have considered the submissions made by the learned counsels for the parties.
11. Though no proof of the deceased working as a driver with Ola Cabs was produced by the claimants, at the same time, the driving licence of the deceased (Ex.PW-1/2) has been issued by the GNCTD and was valid for LMV commercial vehicle. Therefore, no fault can be found in the learned Tribunal determining the income of the deceased based on the minimum wages of a skilled worker as notified by the GNCTD.
12. Accordingly, I find no merit in the above objection of the appellant to the Impugned Award.
13. In view of the above, I find no merit in the present appeal. The appeal and the pending application are accordingly dismissed. There shall be no order as to costs.
14. The statutory amount deposited by the appellant shall be returned to the appellant along with the interest accrued thereon.

NAVIN CHAWLA, J

OCTOBER 6, 2023/ns/am

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 09.10.2023

16:05:02



MAC.APP. 195/2020

Page 6 of 6