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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 11.09.2023

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MAC.APP. 374/2023 & CM APPL. 39708/2023

ORIENTAL INSURANCE CO LTD

..... Appellant

Through: Mr.Pradeep Gaur & Ms.Sweta
Sinha, Advs.

versus

SMT. OMWATI AND ORS

..... Respondents

Through: Mr.Manish Maini, Ms.Yashika
Miglani & Mr.Vibhor Jain,
Advs. for R-1 & R-2.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This appeal has been filed by the appellant challenging the Award dated 06.05.2023 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal-01, North West District, Rohini Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT Case No. 55/2022, titled *Smt. Omwati Devi & Ors. v. Ramesh & Ors..*

2. The above Claim Petition was registered on the Detailed Accident Report (for short, 'DAR') filed by the Legal Representatives (LRs) of the deceased Vivek @Vikas, who had died in a motor vehicle accident on 17.09.2021. It was stated that on 17.09.2021 at about 3:00 PM, on a road in front of the DDA Park, Sector 24, Rohini, Delhi, when the deceased was going on a scooty, he was hit by a DTC bus bearing no. DL-1P-



D-4421 (hereinafter referred to as the ‘offending vehicle’), which was being driven by driver/respondent no.3 herein, in a rash and negligent manner. Due to the collision, the deceased alongwith his scooty fell down on the road and the left rear side wheel of the offending vehicle ran over the head of the deceased. The deceased was declared as brought dead by the doctors at Dr.Baba Saheb Ambedkar Hospital, where he was rushed after the accident.

3. The challenge of the appellant to the Impugned Award is on the contention that the accident had occurred due to the own negligence of the deceased.

4. The learned counsel for the appellant, in support of his challenge, places reliance on the statement of Shri Manish (PW-2), who was an eye-witness to the accident. He submits that PW-2 denied the suggestion in the course of his cross-examination that the respondent no.3 herein, that is the driver of the offending vehicle, was negligent in causing the accident.

5. On the other hand, the learned counsel for the respondent nos.1 and 2/claimants submits that PW-2 in his statement had clearly stated that the accident had occurred when the offending vehicle hit the scooty driven by the deceased at a high speed. It was only a typographical error in the recording of the cross-examination, where it is recorded as under:-

“.....It is wrong to suggest that respondent No.1 was negligent in causing the accident.”



6. He submits that the above-said sentence is clearly contradictory to the testimony of the PW-2, visibly evidencing that it was merely a typographical error in the recording of the same.

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

8. PW-2 in his evidence by way of affidavit (Ex. PW2/A) described the occurrence of the accident as under:-

*“2. That on 17.09.2021 at about 03:00 P.M, when I along with my friend Sh.Naseem was standing at the main gate of Ram Lila ground, DDA Park, Sector -24, Rohini then I saw a person namely Sh.Vikas was coming on driving his Scooty No. **DL 11/SM-2924** at a very normal speed and he was proceeding towards Sector 24, Rohini side from Sector 23, Rohini side, Delhi. At about **03:00 PM**, when he was just 20-25 steps away from the main gate of DDA Park then I saw that a DTC Bus No. **DL1P/D-4421** which was being driven by its driver **Sh. Ramesh-Respondent No.1** at a very high speed, in a zig-zag way, rashly, negligently, without taking necessary precautions, without observing proper look out violating the traffic rules and without blowing any horn, came from behind from Sector-23 Rohini, side and when he was in the process of overtaking the above said Scooty of Sh.Vikas then the front right side wheel of the above mentioned bus struck against the middle divider of the road. As a result of which the above said offending bus became dis-balanced and violently hit the Scooty No. **DL-11/SM-2924** and its rider Sh. Vikas with a great force. As a result of this violent impact the Scooty rider namely Sh. Vikas along with his Scooty fell down on the road and the left rear wheel of the above said offending bus ran over his head and he died on the spot due to serious/grievous injuries received by him in the accident.”*



9. I would also reproduce the cross-examination of the PW-2, as under:-

“XXXXX by Sh. SANJAY KUMAR, Ld Counsel for Respondent No.3

I am a gym trainer in Budh Vihar. There is no timing of my working. Sunday is my weekly holiday. I am graduate. I am not known to the deceased or his family members. The accident occurred on 17.09.2021 at about 3 PM I was playing cricket in near by park and when I came outside of the park I saw the accident. It is wrong to suggest that the deceased hit his scooty to the offending bus. The speed of the bus was at 50-60 Km/hr. I cannot say the speed of scooty. It is wrong to suggest that I had not witness the accident. The driver of the offending bus tried to flee away from the spot of accident but was apprehended by a person namely Naseem. Some public person informed the police regarding accident. The police PCR reached at the spot of accident after about 10 mins. Police official namely Sunil recorded my statement on the spot of accident. Police official never took me at the spot of accident after the date of accident. I cannot say if the police has prepared any site plan of the accident in my presence. There was no traffic at the time of accident on the road where accident occurred. It is wrong to suggest that the accident occurred due to the sole and total negligence of the deceased Vikas. It is wrong to suggest that respondent No.1 was negligent in causing the accident. It is wrong to suggest that public persons had not called the police and R1 had called the police himself. It is wrong to suggest that I am not known to deceased Vikas or his family members. It is wrong to suggest that I had made a statement to police to support the claimants. It is wrong to suggest that I am deposing falsely to favour the accident.

XXXXX by Sh.Naresh Kumar, Ld. Counsel for R1



It is wrong to suggest that the accident in question took place with a Swift Dzire car and not by the offending bus No. DL-1PD-4421. It is wrong to suggest that the scooty was coming from wrong side and hit by Swift Dzire car and thereafter dashed with the bus. It is wrong to suggest that I am deposing falsely to favour the accident.”

10. There clearly appears to be a typographical error in recording of his cross-examination on 27.02.2023 in the sentence reproduced hereinabove. The evidence of PW-2, read as a whole, clearly establishes that the accident took place due to the Bus being driven by the respondent no. 3 in a rash and negligent manner. The appellant cannot take advantage of the same. In fact, the same is also substantiated by the nature of the cross-examination of the PW-2 by the respondent no.3 herein, that is, the driver of the offending vehicle. The driver of the offending vehicle sought to suggest to the witness that the scooty was coming from the wrong side and was hit by a swift dzire car, and that it was the deceased who then dashed into the bus. However, apart from making this suggestion to PW-2, the respondent no.3 did not lead any other evidence in support of such a plea.

11. Accordingly, I find no merit in the present appeal. The same is dismissed.

12. The learned counsel for the appellant submits that the statutory amount is yet to be deposited by the appellant. As the appeal has been dismissed, the appellant need not deposit the



statutory amount. The appellant shall remain exempt from depositing the same.

NAVIN CHAWLA, J

SEPTEMBER 11, 2023/rv/rp

