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

Date of decision: 28.11.2023

+ **MAC.APP. 236/2022**

THE NEW INDIA ASSURANCE COMPANY LTD.

..... Appellant

Through: Ms.Bhairavi S.N., Adv.

versus

SMT. SARLA DEVI & ORS.

..... Respondents

Through: Mr.S.N.Parashar, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 08.06.2022 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, North-East District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT no.180/2019, titled *Sarla Devi & Ors. v. Arvind Kumar & Ors..*
2. It was the case of the claimants, that is, the respondent nos.1 to 5 herein, before the learned Tribunal that on 17.03.2019, at about 12.47 A.M, the deceased-Sh.Omveer Kashyap was going towards Village Sabhapur from Wazirabad in an Alto car bearing no. HR-10-G-6845. When the car reached the main road at 2nd Pusta Road, Sonia Vihar, Delhi, the offending vehicle, that is, the



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Dumper bearing registration no.HR-38-S-6444, which was being driven by the respondent no.6 herein in a rash and negligent manner, came from the opposite side and hit the car of the deceased with great force. The deceased was rushed to the Jag Pravesh Chandra Hospital, where the doctors declared him as 'brought dead'.

3. The learned Tribunal on appreciation of the evidence, has in the Impugned Award held that the accident was caused due to the rash and negligent driving of the offending vehicle by the respondent no.6 herein.
4. The first challenge of the appellant to the Impugned Award is on this account.
5. The learned counsel for the appellant submits that this was a case of a head-on collision between the two vehicles, that is, the Alto Car driven by the deceased and the offending vehicle driven by the respondent no.6 herein. She submits that it is also evident that the offending vehicle was being driven on the right side of the road at the time of the accident and it is the Alto car that jumped lanes and hit the offending vehicle on its left side. She submits that, therefore, the learned Tribunal has erred in its finding that the accident had taken place due to the offending vehicle being driven in a rash and negligent manner by the respondent no.6 herein.
6. She further submits that without prejudice to the above, at least some portion of the contributory negligence should have been attributed to the deceased for the accident in question. In support,



she placed reliance on the site plan (Ex.PW-2/R-3-1), and the photographs of the accident (Ex.PW-2/R-3-2 (colly)). She further places reliance on the statement of the eyewitness, that is, Sh.Ajay Kumar (PW-2), who during his cross-examination stated that it was the car which had gone towards the right side of the road for crossing over the Dumper, due to which it hit the left side of the Dumper.

7. On the other hand, the learned counsel for the respondent nos.1 to 5 submits that being a Heavy Motor Vehicle, the offending vehicle should have been driven on the left side of the road. He submits that from the site plan, it is evident that the offending vehicle was being driven in the middle of the road and, therefore, the learned Tribunal placing reliance on the statement of the eyewitness-PW-2, has rightly concluded that the accident had taken place due to the offending vehicle being driven by the respondent no.6 herein in a rash and negligent manner. He submits that, in any event, the respondent no.6 did not enter the witness box nor gave any contrary version of the manner of the accident. He submits that it is not open to the insurance company, that is, the appellant herein, to now challenge the manner in which the accident had taken place.
8. I have considered the submissions made by the learned counsels for the parties.
9. A perusal of the site plan (Ex.PW-2/R-3-1) would show that the accident had taken place in the middle of the road with the two vehicles colliding head-on. The eyewitness (PW-2) in his



testimony has stated that it was the offending vehicle which was being driven at a very high speed and in a rash and negligent manner. He has also stated that the deceased was blowing horn in order to warn the driver of the offending vehicle, however, the offending vehicle kept coming towards it. The deceased went towards the right side of the road for crossing over/avoiding the offending vehicle and hit the left side of the offending vehicle. The site plan and the photographs of the site (Ex.PW-2/R-3-2) corroborate the version of the PW-2/eyewitness.

10. It is clear that it was the offending vehicle which was coming in a rash and negligent manner being driven in the middle of the road and, in spite of the warning by the deceased, did not move to its side thereby resulting in the accident in question. It appears that the deceased tried to avoid the accident by trying to take his vehicle to the right side of the road, however, could not still avoid the accident due to the negligent driving of the offending vehicle.
11. In any case, as pointed out by the learned counsel for the respondent nos.1 to 5, the best evidence on the manner in which the accident had taken place could have been given only by the respondent no.6, the driver of the offending vehicle. He did not enter the witness box and did not in any manner dispute the version of the eyewitness.
12. In ***Vidhyadhar v. Manikrao*** (1999) 3 SCC 573, the Supreme Court, in similar circumstances, has observed as under:

“17. Where a party to the suit does not appear



in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct....”

13. It is, therefore, not open for the appellant to challenge the manner in which the accident had taken place. The plea that contributory negligence should be attributed to the deceased, also cannot be accepted.
14. The learned counsel for the appellant further submits that the only driving licence of the deceased produced by the claimants before the learned Tribunal was valid only till the year 2008. The learned counsel for the appellant submits that as the accident in question had taken place on 19.03.2019, therefore, the deceased was not having a valid driving licence. She submits that this itself should have lead the learned Tribunal to attribute contributory negligence on the deceased for the accident in question.
15. The learned counsel for the respondent nos.1 to 5 on the other hand, submits that the above plea was not taken by the appellant before the learned Tribunal. He submits that the claimants may have produced the driving licence which came in their hand on the death of the deceased. Had the appellant raised this issue before the learned Tribunal, the Claimants could have searched for the subsequent issued driving licence of the deceased and could have placed the same on record.
16. I am in agreement with the submission made by the learned counsel for the respondent nos.1 to 5.



17. From the evidence, it could not be shown that the appellant raised the above issue before the learned Tribunal or even confronted the witnesses of the claimants with the above discrepancy in the driving licence of the deceased. Had the same been done by the appellant, the claimants would have had an opportunity to produce the driving licence of the deceased which was valid as on the date of the accident or offer an explanation for its non-production. In the absence of such a plea being taken before the learned Tribunal, the appellant cannot be permitted to raise it as a defence in the present appeal.
18. In view of the above, I find no merit in the above challenge of the appellant. The same is, accordingly, rejected.
19. The next challenge of the appellant to the Impugned Award is on the multiplier adopted by the learned Tribunal.
20. The learned counsel for the appellant submits that the learned Tribunal itself has noticed that there were multiple documents placed on record by the respondent nos.1 to 5, which all show different dates of birth of the deceased; the Aadhar card of the deceased showed the date of birth of the deceased as 01.01.1977, while the date of birth mentioned in the driving licence was 20.05.1960, in the MLC his age was mentioned as 48 years, while in the certificate of high school of the deceased, his date of birth was mentioned as 01.09.1970. She submits that the learned Tribunal has determined the age of the deceased on the basis of the high school certificate, while ignoring that the wife of the deceased had stated that the deceased was only 8th standard pass.



She submits that, therefore, the learned Tribunal has erred in taking the age of the deceased as around 48 years, and thereby choosing a wrong multiplier to be adopted.

21. On the other hand, the learned counsel for the respondent nos.1 to 5 submits that even in the MLC, the age of the deceased was mentioned as 48 years. He submits that the said age is corroborated by the date of birth given for the deceased in his high school examination certificate. The said certificate was not challenged by the appellant before the learned Tribunal.
22. I have considered the submissions made by the learned counsels for the parties.
23. As far as the statement of the wife of the deceased that the deceased was only 8th standard pass, from the high school certificate produced by the claimants, it is apparent that the deceased, in fact, failed in his high school standard. In any case, the appellant did not challenge the veracity of the high school certificate of the deceased produced by the respondent nos.1 to 5 before the learned Tribunal.
24. The MLC also discloses the age of the deceased as 48 years. At that stage, there would have been no reason for the claimants to have fabricated or falsely declared the age of the deceased, as they would be in shock and pain due to his death.
25. Therefore, no fault can be found in the learned Tribunal in reaching the conclusion that the deceased was aged around 48 years at the time of the accident.
26. I, therefore, find no merit in the above challenge of the appellant



to the Impugned Award. The same is, accordingly, rejected.

CONCLUSION:

27. In view of the above, I find no merit in the present appeal, the same is dismissed. There shall be no order as to costs.

DIRECTIONS:

28. The statutory amount deposited by the appellant be returned back to the appellant.
29. By the order dated 18.08.2022, this Court had directed the appellant to deposit the awarded amount along with interest with the learned Tribunal, and for the said amount to be kept in an interest bearing fixed deposit receipt. By a subsequent order dated 12.01.2023, this Court directed the release of 60% of the awarded amount in favour of the respondent nos.1 to 5/claimants, as per the scheme of disbursal stipulated in the Impugned Award.
30. Now, as the appeal stands dismissed, the entire awarded amount shall be released in favour of the respondent nos.1 to 5/claimants, in terms of the schedule of disbursal prescribed by the learned Tribunal in the Impugned Award.

NAVIN CHAWLA, J

NOVEMBER 28, 2023
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Click here to check corrigendum, if any