

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

Reserved on : 07.10.2022

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Pronounced on : 16.03.2023

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MAC.APP. 284/2022

IMRAN KHAN & ANR.

..... Appellants

Through: **Mr. Sandeep Sharma and Mr. Mukesh Birla, Advocates.**

versus

TRIBHUBHAN MANDAL & ORS.

..... Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the impugned Award dated 19.05.2022 passed by the Ld. Presiding Officer, MACT (Central) Tis Hazari Courts, Delhi, in MACP No. 58368/2016 with the following prayers:-

"A. To admit the appeal and summon the original records in claim petition MACT No.58368/2016 tilled as "Imran Khan & Anr. Vs. Tribhubhan Mandal & Ors." from the Court of Sh. Lovleen, Ld. P.O., M.A.C.T.(Central) Tis Hazari Courts, Delhi.

B. To modify/set-aside the impugned Award dt. 19.05.2022 passed in claim petition MACT No. 58368/2016 and grant compensation/award of Rs.50,00,000/- along with interest at the rate of 18% p.a. from the date of filing the claim petition till realization of the award amount in favour or the Appellants and against the Respondents jointly and severally;

C. To award the costs of the appeal in favour of the Appellants and against the Respondents; and

D. Pass any other order/s, in favour of the Appellants and against the Respondents, which the Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. In brief, the facts of the case are that, Mohd. Asif S/o Sh. Imran Khan, died as a result of motor vehicular accident which occurred on 04.08.2016 at around 08.30 AM at a location situated on Burari Flyover, Outer Ring Road, Delhi. At the aforesaid time and location, a Tata Recovery Van bearing registration no. DL-ILG-7174 (hereinafter referred to as "offending vehicle"), which was being driven by its driver in a rash and negligent manner, hit the motorcycle bearing registration number DL-7SBZ-4835 of the deceased which he was riding along with his acquaintance - Sh. Abzal S/o Sh. Yameen Khan and as a result of the collision, both riders fell on the ground. Pursuant to this accident, an FIR No. 379/2016, under sections 279/337 IPC was registered at PS Burari.

3. On the basis of the pleadings of the parties, the Ld. Tribunal framed the following issues:

“1. Whether the deceased Sh. Mohd. Asif suffered fatal injuries in an accident that took place on 04/08/2016 at about 08.30 AM involving Crane bearing registration No. DL-ILG-7174 driven by the Respondent No. 1 rashly and negligently, owned by the respondent No. 2 and insured with the respondent No. 3? OPP.

2. Whether the petitioners are entitled for compensation? If so, to what amount and from whom?

3. Relief.”

4. I have heard the learned counsel for the appellant and have perused the records of this case.

5. It is submitted by learned counsel for the appellant that learned Tribunal did not take into account the facts on record with caution and has wrongly passed the impugned award. It is further submitted that learned Tribunal did not consider the fact that accident was caused due to the negligence of the respondent no. 1 and he further submitted that driving license of the respondent no. 1 which was produced before the authorities was fake. It is further submitted that learned Tribunal failed to appreciate the sufferings of the appellants who are the parents of the deceased while not granting the compensation. It is further submitted that learned Tribunal has not taken into account the income of the deceased i.e., Rs. 20,000/- per month and has also failed to grant future prospects. The learned Tribunal rigidly followed the rules of CPC and Evidence Act at the time of determining the income of the deceased under the Motor Vehicle Act and has not appreciated the law governing the disposal of petitions filed under the M. V. Act which clearly lays down that the strict rules of procedure or evidence, which apply to any other lis do not apply to the M.V. Act. He further submitted that the standard of proof in a claim before the Claims Tribunal is much below than what is required in a criminal case as well as a civil case.

In support of his contentions, learned counsel for the appellant has placed reliance on following judgments: -

- ***Ranu Bala Paul Vs. Bani Chakraborty (1999 (1) TAC 151)***

- *Narinder Vishal & Anr. Vs. Rambir Singh & Ors. (MAC Appeal No.1007-08/2006 decided on 20.02.2008)*
- *Nishan Singh and Ors. Vs. Oriental Insurance Company Ltd. and Ors. (MANU/SC/0463/2018)*
- *Archit Saini & Ors. Vs. The Oriental Insurance Company Ltd. & Ors. (MANU/SC/0105/2018)*
- *Jumani Begam Vs. Ram Narayan & Ors. (MANU/SC/1784/2019)*

6. As far as the contention of the learned counsel for the appellant that the standard of proof in accident claim matters is much lower as compared to criminal or civil matters, there is no dispute in this regard and these matters are to be decided on the basis of preponderance of probabilities, however, that does not mean that the Court has to shut its eyes on the facts, evidence and documents placed on record and just because an accident has happened or the FIR is registered the claim petition is to be allowed.

7. The main issue in this appeal is *Issue No. 1* and the onus to prove this issue was on the appellants. In order to prove this issue and in support of their claim, the appellants examined the eye witness of the incident, namely, Sh. Abzal as PW-3. PW-3 has deposed that on 04.08.2016, in the morning hours, he was travelling with the deceased from Kashmere Gate to Meer Vihar on a motorcycle and the deceased was driving the said motorcycle while PW-3 was sitting as a pillion rider. He further deposed that the offending vehicle had hit their motorcycle and due to the accident, they fell down and sustained injuries at the spot of accident.

8. The Ld. Tribunal while deciding *Issue No. 1* made the following observations:

“9. In order to prove the present issue, the petitioners have examined the eye witness of the incident namely Sh. Abzal as PW-3. PW3 has deposed that on 04.08.2016, in the morning hours, he was travelling with the deceased from Kashmere Gate to Meer Vihar on a motorcycle. The deceased was driving the said motorcycle and he (PW-3) was sitting as a pillion rider. He further deposed that the offending vehicle hit their motorcycle at the spot of accident. Before proceeding to assess the effect of testimony of PW-3, it would be appropriate to refer to the photographs of spot/scene of the accident, as placed on record by the IO alongwith the DAR. Perusal of the said photographs reveal that the motorcycle, which the deceased was riding alongwith PW-3, is entangled in the rear part of some machine (as per written statement filed by R- 1 & R-2 the offending vehicle was towing a mixture machine and therefore it may be presumed that the said machine was a mixture machine).

10. As per petitioners the offending vehicle was in motion at the time when it hit the motorcycle. This claim of the petitioners is supported by PW-3 in this regard. Although, respondents claim that the offending vehicle was halted due to a punctured tyre of the mixture machine but even if we presume for the sake of arguments that the offending vehicle was in motion at the relevant time still there is an unresolved contradiction in the case of the petitioners. Admittedly, as per petitioners, both the offending vehicle and the motorcycle were proceeding in the same direction and that the motorcycle was behind/following the offending vehicle. This Tribunal fails to understand as to how the rear part of a machine being towed by the offending vehicle could hit any vehicle travelling behind it, while the same were moving in the same direction. PW-3 has admitted during his cross examination that there was very little traffic at the spot of accident at the relevant time. He has further stated that the deceased was riding the motorcycle at the speed of 40-50 kmph at the relevant time. The photographs mentioned above clearly demonstrate that the motorcycle has hit the mixture machine, being towed by the offending vehicle, in its rear. In the absence of heavy traffic and in

*view of the speed at which the motorcycle was travelling (both facts disclosed by PW-3), the collision could not have taken place but for the rashness and negligence of the deceased in riding his motorcycle. This conclusion is sufficient to discard the testimony of PW-3. **In the absence of any other relevant material, this Tribunal is constrained to decide this issue against the petitioners and in favour of the respondents.**"*

9. The findings given on this issue against the appellants and in favour of the respondents were mainly on the ground that the photographs of the spot of accident, clearly demonstrated that the motorcycle had hit the mixture machine, being towed by the offending vehicle, in its rear. The collision could not have occurred but for the deceased's reckless and negligent driving of his motorcycle, given the lack of heavy traffic and the speed at which the motorcycle was moving. In the absence of any other relevant material, this finding was held sufficient by the Ld. Tribunal to toss out PW-3's testimony.

10. In the instant case, the respondent nos. 1 and 2 asserted in written statements submitted to the Ld. Tribunal that the offending vehicle was pulling a mixture machine at the relevant time and that one of the machine's tyres had burst, causing the offending vehicle to stop and respondent no. 1 had also put a sign board to warn the approaching traffic. After a while, a motorcycle struck the parked offending vehicle at a high rate of speed which caused injury to its riders. According to both respondents, the deceased's own rashness and negligence were to blame for the accident.

11. Perusal of the records of this case including the photographs of scene of the accident reveals that the motorcycle which was being driven by the deceased was entangled in the rear part of the mixture machine and it can be

safely gauged from the material on record that the motorcycle has hit the mixture machine which was being towed away by the offending vehicle, in its rear and not the other way round.

12. Keeping in view the peculiar facts and circumstances of the case and in absence of any other material in support of the testimony of PW-3, this Court finds no infirmity in the impugned Award dated 19.05.2022, passed by the Ld. Tribunal. Accordingly, the impugned Award is upheld and the present appeal stands dismissed alongwith pending applications, if any.

RAJNISH BHATNAGAR, J

MARCH 16, 2023

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