



2023:DHC:7322



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 04.10.2023***+ **MAC.APP. 455/2023****RELIANCE GENERAL INSURANCE CO. LTD.**

..... Appellant

Through: Mr.Pankaj Gupta, Adv.

versus

SMT BHOLI AND OTHERS

..... Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)****CM APPL. 50923/2023 (Exemption)**

1. Allowed, subject to all just exceptions.

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2. This appeal has been filed challenging the Award dated 27.07.2023 (hereinafter referred to as 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, North District, Rohini Courts, Delhi (hereinafter referred to as 'Tribunal') in MAC Petition no.790 of 2017, titled as ***Smt.Bholi & Anr. v. Sh. Ram Sagar Prasad & Ors..***

3. It was the case of the claimants, that is, the respondent nos. 1 and 2 herein, that on 08.07.2017, the deceased- Junaid

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was driving a TSR, bearing registration no. DL1RQ-7678, behind a Crane, bearing registration no. HR-55B-6462 (hereinafter referred to as 'Offending Vehicle'). At about 1:50 AM, when the deceased reached near Ring Road leading from Burari to Mukundpur Chowk, near Cemetery, Delhi, the driver of the Offending Vehicle suddenly applied brakes, as a result of which, the vehicle of the deceased collided with the Offending Vehicle from the rear side, causing it to entangle with the Offending Vehicle. Thereafter, the deceased was removed from the vehicle and taken to BJRM Hospital, Jahangir Puri, Delhi for his medical examination. He was later shifted to Lok Nayak Hospital, where he unfortunately succumbed to his injuries.

4. The appellant challenges the Impugned Award on two grounds:

- a) That the learned Tribunal has erred in not attributing any contributory negligence on the deceased, as it was the deceased who had hit the offending vehicle from behind.
- b) That the learned Tribunal has erred in awarding a higher rate of interest as well as default interest of 9% per annum.

5. The learned counsel for the appellant submits that contributory negligence should have been attributed to the deceased inasmuch as, it was his vehicle that had hit the Offending Vehicle from behind due to his failure to maintain safe distance with the vehicle in front. In support of his

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submission he places reliance on Regulation 23 of the Rules of the Road Regulations, 1989 (hereinafter referred to as 'Regulations') and on the judgement of the Supreme Court in ***Nishan Singh & Ors. v. Oriental Insurance Co. Ltd.***, (2018) 6 SCC 765.

6. I have considered the submissions made by the learned counsel for the appellant.

7. At the outset, it is to be noticed that the driver and owner of the Offending Vehicle did not file their response to the Claim Petition before the learned Tribunal. Their defence was struck off vide order dated 02.02.2018. The driver of the Offending Vehicle did not lead any evidence before the learned Tribunal nor entered the witness box. The appellant filed its written statement claiming statutory defence and exoneration from paying the compensation. The learned Tribunal in the Impugned Award has relied upon the testimony of Sub-Inspector, Nag Singh (PW-3), who was the Investigating Officer, the mechanical reports of the TSR and the Offending Vehicle, and the application made by the deceased to the SHO concerned soon after the accident, to conclude that the accident had taken place due to the rash and negligent driving of the driver of the offending vehicle, that is the respondent no.3 herein. I may reproduce the relevant portion hereinunder:

“16. Respondent no. 1 namely Sh. Ram Sagar Prasad S/o Sh. Raj Kumar Prasad (respondent no.1) has been charge sheeted for offences

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punishable U/s 279/304A/471 IPC & 3/181 & 56/192 M.V. Act by the investigating agency after arriving at the conclusion on the basis of investigation carried out by it that the accident in question has taken place due to rash and negligent driving of offending vehicle. Same points out towards rash and negligent driving of aforesaid offending vehicle by respondent no. 1.

17. Perusal of mechanical inspection report dated 12.08.2017 (which is part of DAR) of offending vehicle would show fresh damages i.e. its rear side bumper from left side was found scratched. Likewise, copy of mechanical inspection report dated 16.07.2017 (which is also part of DAR) of vehicle of deceased would show that its front side wheel mudguard was found damaged; its wheel suspension was damaged; its front side wheel was missing; its front side body and body frame were damaged; its both headlights were found damaged; its front side windscreen glass was found broken; its glass frame was damaged and its handle system was also found damaged. Both these reports would also corroborate the ocular testimony of PW3 to the effect that the vehicle of deceased rammed against the offending vehicle from its rear side(offending vehicle). It is a matter of record that the then injured Junaid was immediately taken to BJRM hospital, Jahangir Puri, Delhi, where he was medically examined, wherefrom he was shifted to Lok Nayak Hospital where he succumbed to the injuries and died on the same day. Postmortem of the deceased was conducted at Maulana Azad Medical College & Lok Nayak Hospital, Delhi. It is also a document as part of DAR that the then injured (subsequent deceased) made an application to the SHO concerned soon after the accident, after examination from BJRM hospital. His own version, vide letter which forms part of DAR, also reveals the mannerism of cause of accident wherein initial efforts for settlement

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of the matter were made. It forms part of record wherein vide written documents which form part of DAR, the version of the deceased prior to his death supports the facts duly prove on record that the offending vehicle/crane in question was plying ahead on the road when the TSR of the deceased got hit due to sudden swirl of the crane towards its right side, which caused fatal injury to the deceased and total damage to the TSR of the deceased.

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21. PW1 and PW3 admitted that they are not the eye witnesses to the accident in question but PW3 who is the IO has been examined to prove the rash and negligent driving of the offending vehicle (crane) being driven by the driver. The rash and negligent driving of the offending vehicle (crane) may be proved, either by direct evidence or by circumstances including principle by applying the res-ipsa loquitur. Admittedly, PW3 is the IO who has filed the charge-sheet in criminal case. Though, he was not a witness of the accident in question, yet has deposed that the offending vehicle (crane) is involved in the accident in question and it came into his investigation that respondent no. 1 who is the driver of the alleged offending vehicle (crane) caused the accident by his rash and negligent driving. Further, it has not been disputed by any of the parties that the owner of the offending vehicle (crane) has disclosed vide his reply to the notice U/s 133 of M.V Act that at the time of alleged accident, the respondent no. 1/driver of the offending vehicle (crane) was driver of the said vehicle. It also an admitted fact that the respondent no. 1 was arrested in this case.

22. It is pertinent to note that the respondent no. 1/driver of the offending vehicle, was the other material witness to throw light by testifying as to how and under what circumstances, the accident has taken place. However, he has preferred not to enter into the



witness box. Thus, an adverse inference is liable to be drawn against him to the effect that the accident in question has taken place due to rash and negligent driving of the offending vehicle (crane) bearing registration no. IR-55B6462 by the respondent no.1 There is nothing on record to show that the claimants/petitioners had any enmity with the driver of offending vehicle (crane) so as to falsely implicate him in this case. Reliance placed on **Cholamandalam MS General Insurance Co. Ltd. V. Kamlesh & Ors, MAC APP. No. 530/2008** passed by Hon'ble Delhi High Court on 11.11.2008."

8. Rule 23 of the Regulations reads as under:

"23. Distance from vehicles in front.—The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop."

9. The Supreme Court in **Nishan Singh** (supra) has opined that "sufficient distance" as mentioned in Rule 23 of the Regulations has not been elucidated upon in any regulations or elsewhere, in light of which "sufficient distance" would mean a gap of 2-3 seconds between two motor vehicles, so as to give sufficient time to the vehicle behind to avert a collision. Further, the Supreme Court in the case before it observed, that a gap of 10-15 feet between the truck and Maruti car behind it, was not "sufficient distance" and the driver of the Maruti car must take the blame.

10. Applying the same to the facts of the case at hand, it is established that the TSR of the deceased was being driven



behind the offending vehicle. The offending vehicle was being driven in a rash and negligent manner inasmuch as it deviated from its path, causing collision with the vehicle of the deceased. Such sudden change in path of the Offending Vehicle could not have been pre-empted by the deceased. Even otherwise, the driver of the Offending Vehicle was the best person to throw light on the manner in which the accident place or to deny the above. He neither filed a reply to the Claim Petition nor appeared as a witness.

11. In view of the above, I find no merit in the submission of the learned counsel for the appellant that contributory negligence should have been attributed to the deceased.

12. The learned counsel for the appellant further submits that the rate of interest at 9% per annum, as well as the penal interest at 9% per annum awarded by the learned Tribunal, is not warranted. He submits that the rate of interest awarded on the compensation payable is higher than the prevailing rate of interest. He further submits that once simple interest has been awarded on the compensation payable, the appellant cannot be further made liable to pay default interest. In support of the same he places reliance on *National Insurance Co. Ltd. v. Keshav Bahadur & Ors.*, (2004) 2 SCC 370.

13. I have considered the submissions made by the learned counsel for the appellant.

14. In *National Insurance Co. Ltd. v. Yad Ram and Others*, 2023 SCC OnLine Del 1849, this Court has opined that the rate



of interest awarded on compensation payable should be decided on a case-to-case basis, rather than having a fixed measure of the same, as what may be reasonable in one case may not be so in another. In this case, the accident had taken place on 08.07.2017, while the Impugned Award came to be passed on 27.07.2023. The appellant has not placed on record any material to show why the rate of interest at 9% should be declared as unreasonable. I find the rate of interest awarded by the learned Tribunal to be reasonable, and as such does not warrant interference by this Court.

15. As far as the question of default interest is concerned, in **Keshav Bahadur** (supra), the Supreme Court as observed as under:

“13. Though Section 110-CC of the Act (corresponding to Section 171 of the new Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110-CC of the Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty



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which is not statutorily envisaged and prescribed. It is, therefore directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal.”

16. In the present case, the learned Tribunal, by the Impugned Award, has awarded compensation of Rs.26,11,000/- in favour of the respondent nos.1 and 2 herein, along with interest at the rate of 9% per annum with effect from the date of the filing of the Claim Petition, that is, 12.09.2017, till the date of its realization. However, while fastening the liability on the appellant, the learned Tribunal has further directed that in case the appellant fails to deposit the awarded sum within a period of 30 days from passing of the Impugned Award, the appellant shall be liable to pay interest at the rate of 9% per annum for the said delay.

17. As the rate of interest remains the same, there is no default rate of interest granted by the Impugned Award. The above challenge is accordingly rejected.

18. I, therefore, find no merit in the present appeal. The appeal and the pending application are accordingly dismissed. There shall be no order as to costs.

19. The appellant shall deposit the awarded amount along with interest, with the learned Tribunal within a period of six weeks from today.

20. The appellant is exempted from depositing the statutory

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amount. In case the same has been deposited, it shall be returned to the appellant along with interest accrued thereon.

OCTOBER 4, 2023/RP

NAVIN CHAWLA, J

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