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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 20.11.2023***+ **MAC.APP. 920/2019**

OMA

..... Appellant

Through: Mr.Vijay Sharma, Adv.
(through VC)

versus

RUDRA NAND JHA & ANR (IFFCO TOKIO GENERAL
INSURANCE CO LTD)

..... Respondents

Through: Mr.H.G.R Khattar, Adv. for R-
1.
Mr.Pankaj Gupta and
Ms.Suman Bagga, Advs. for R-
2.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This appeal has been filed challenging the Award dated 29.08.2019 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal-01 (Central-District), Tis Hazari Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT No. 455/18, titled as *Smt.Oma v. Rudra Nand Jha & Anr.*, dismissing the Claim Petition filed by the appellant herein by holding that the appellant has failed to establish that the deceased- Shri Ramesh Kumar had died on account of the injuries sustained in the accident in question.



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2. The above-mentioned Claim Petition was registered on the Detailed Accident Report (in short, 'DAR'), which stated that on 30.05.2017, at around 08.00 a.m., the deceased-Ramesh Kumar was going towards Gopal Tower, East Patel Nagar. When he reached near Chawla Park, an E-Rickshaw bearing registration no.DL-10ER-0756 (hereinafter referred to as the 'Offending Vehicle'), came from behind and hit him. He fell down on the road and got injured. He was rushed to the RML Hospital. Admittedly, the deceased died on 16.08.2017.

3. In support of her claim, the appellant, who is the widow of the deceased-Ramesh Kumar, examined herself as PW-1. She stated that the deceased was working as a Safai Karamchari in the North Delhi Municipal Corporation (in short, 'NDMC') and had met with an accident on 30.05.2017 caused by the rash and negligent driving of the Offending Vehicle by respondent no.1 herein. The appellant also examined Mr. Jodha Singh (PW-2) as an eyewitness to the accident. He stated that he saw the Offending Vehicle hitting the deceased. Though he could not remember the complete registration number of the Offending Vehicle, he stated that the registration number of the Offending Vehicle was '0756'. He stated that the public persons took the deceased to the hospital. He further stated that the Police only asked for his name and address but did not record his statement. He stated that he could not see the driver of the Offending Vehicle and, therefore, could not identify him. In his cross-examination, he further stated that the deceased suffered head injury due to the accident.

4. The Impugned Award records that the respondent no.1, that is, the driver-cum-owner of the Offending Vehicle in question, had not



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disputed the involvement of the Offending Vehicle in the accident nor the fact that he was driving the Offending Vehicle at the relevant date and time. However, still disbelieved the testimony of the PW2 only because he had stated that he had not seen the driver of the Offending Vehicle and could not identify him.

5. In my opinion, once the respondent no. 1 admitted that he was driving the Offending Vehicle, the testimony of the PW2 could not have been disbelieved by the learned Tribunal; in fact, it stood corroborated by the testimony of the respondent no. 1 himself.

6. Respondent no.1 entered the witness box as RW1. He stated that on 30.05.2017, he was coming from Farid Puri and going to Gopala Tower to park his vehicle. As he reached Chawla park corner where a DMS booth is situated on the pavement, he found one car parked in front of the DMS booth. He states that in order to avoid collision with the car, he turned the Offending Vehicle towards the left side and his front wheel struck against the stone on the pavement and the vehicle came to a halt. Suddenly he realized that one person was lying on the road behind the Offending Vehicle. He stated that the vehicle had not collided with the person who had fallen behind the Offending Vehicle on the road. He further stated that as some people known to the deceased came to the spot, he left the spot of the accident. In his cross-examination, he stated that he could not say whether the deceased collided with the Offending Vehicle or not.

7. The learned Tribunal has disbelieved the statement of the respondent no.1 and held the same to be an afterthought and a concocted story, however, at the same time, has also disbelieved PW-



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2- Mr. Jodha Singh as an eyewitness. While the statement of the respondent no. 1 on the manner in which the accident had taken place is most fanciful and cannot be believed, it lends support to the testimony of the PW2 as an eye-witness. It appears that the respondent no. 1, to avoid hitting the car with his E-Rickshaw, took a sudden turn and hit the deceased, because of which the deceased fell down and sustained head injury.

8. It must be remembered that for proving the claim for compensation under the Motor Vehicles Act, 1988, the Claimants are not to prove their claim beyond reasonable doubt, but only on the touchstone of preponderance of probabilities. In **Anita Sharma v. New India Assurance Co. Ltd.**, (2021) 1 SCC 171, the Supreme Court has held as under:

“17. Unfortunately, the approach of the High Court was not sensitive enough to appreciate the turn of events at the spot, or the appellant-claimants’ hardship in tracing witnesses and collecting information for an accident which took place many hundreds of kilometres away in an altogether different State. Close to the facts of the case in hand, this Court in Parmeshwari v. Amir Chand [Parmeshwari v. Amir Chand, (2011) 11 SCC], viewed that :

“12. The other ground on which the High Court dismissed [Amir Chand v. Parmeshwari, 2009 SCC OnLine P&H 9302] the case was by way of disbelieving the testimony of Umed Singh, PW 1. Such disbelief of the High Court is totally conjectural. Umed Singh is not related to the appellant but as a good citizen, Umed Singh extended his help to the appellant by helping her to reach the doctor’s chamber in order to ensure that an injured woman gets medical treatment. The evidence of Umed



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Singh cannot be disbelieved just because he did not file a complaint himself. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim.

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'15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.'

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21. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyse the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true."

(Emphasis supplied)

9. As it is admitted by the respondent no. 1 in his evidence itself that he had ran away seeing people gather at the spot of the accident, it would not be unusual for the eyewitness not to be able to identify the



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driver of the offending vehicle. However, this could not be a reason to disbelieve the testimony of the eye-witness, who has no reason to depose in favour of the claimant and against the respondent no. 1.

10. In addition to the testimony of the PW2, in the medical documents which are in form of the 'Emergency Registration Card' issued by the Sardar Vallabh Bhai Patel Hospital, and the 'Medical Legal Case Sheet' issued by Dr. RML Hospital, it is recorded that the deceased was admitted to these hospitals on the date of the accident, that is 30.05.2017, reporting him to be a victim of a road accident. In the Discharge/Death Summary dated 19.07.2017 issued by Dr. RML Hospital, it was mentioned that the deceased was hit by an E-Rickshaw while crossing the road. Therefore, there was ample evidence before the learned Tribunal to conclude that the accident had indeed taken place with the E-Rickshaw driven by the respondent no.1 in a rash and negligent manner hitting the deceased thereby causing injuries to him.

11. The learned Tribunal has also placed extensive reliance on the alleged non-cooperation of the hospital as also the family members of the deceased in letting the Investigating Officer (in short, 'I.O.') record the statement of the deceased. The above observation of the learned Tribunal is also totally ill-founded and cannot be sustained.

12. As is evident from the 'Emergency Registration Card' issued by Sardar Vallabh Bhai Patel Hospital, the deceased had been brought to the said hospital and, after performing the CT Scan on his brain, was referred to Dr. RML Hospital for surgery. He was immediately rushed to the Dr. RML hospital, where he was admitted with active bleeding



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from right ear and with a lacerated wound of approximately 3x1 cm over right mastoid region. The injuries suffered by him were described as grievous. In the Discharge/Death Summary dated 19.07.2017 issued by Dr. RML Hospital, in the 'Brief summary of case history', it was reported that the deceased had '*loss of consciousness which continues*'. A surgery was also performed on him, however, he developed craniectomy flap infection with meningitis with ventriculitis and septicemia in post op CSF culture s/o E.coli and was managed with sensitive antibiotics. He was discharged with ryles tube feeding with high protein diet. He was advised to return to the Emergency department, if any further problems arise.

13. The deceased was again admitted to the hospital on 29.07.2017, and unfortunately died on 16.08.2017.

14. From the above, it is very clear that the deceased was in no position to give a statement to the I.O. till the date of his discharge, that is, 19.07.2017 and even thereafter. Therefore, the learned Tribunal has clearly erred in drawing an adverse inference against the appellant by observing that the appellant and other family members had wrongly refused the I.O. to record the statement of the deceased. In fact, from the medical history of the deceased, it becomes apparent that the deceased was in no position to give his statement to the police. The police has also not drawn any adverse inference against the appellant on this account and a Charge Sheet, in fact, stands filed against the respondent no.1 for offences under Sections 279/304A of the Indian Penal Code, 1860.

15. The learned counsel for the respondent no.1, relying upon the



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statement of the Dr.Sachin Mittal (R2W1) and the Discharge/Death Summary, submits that the Doctor has stated that though the condition of the patient was stable but the right portion of the body of the deceased (upper and lower) was not functioning at the time of his discharge on 19.07.2017. He submits that this shows that the deceased may have suffered a paralytic attack because of which he fell down and injured himself.

16. I am unable to agree with the said submission.

17. This was the position described by the Hospital/Doctor at the time of discharge of the patient and not at the time of his admission. It is clear that due to the complications suffered by the deceased in the process of his treatment, his condition deteriorated and he suffered paralysis on the right portion of his body. In any case, the above submission of the learned counsel for the respondent no.1 is not what is stated by the respondent no.1 in his submission before the learned Tribunal. The same appears only as a submission of the counsel for the respondent no. 1 before this Court and cannot be taken cognizance of.

18. On the other hand, from the above submission itself it would be evident that the deceased was in no position to give a statement to the police even on his discharge from the hospital on 19.07.2017, and the learned Tribunal has erred in drawing an adverse inference in this regard against the appellant.

19. The learned Tribunal further holds that the appellant has been unable to prove that the deceased had died on account of the injury suffered in the accident in question. This finding of the learned



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Tribunal also cannot be sustained.

20. As is evident from the abovementioned medical documents, that is, the Emergency Registration Card, and the Discharge/Death Summary, the deceased had suffered injuries in his brain because of which he had to undergo a surgery. Due to the surgery and post operation, he developed complications including septicaemia. In the 'Forensic Investigation Report', the Medical Board of Doctors opined as under:

"On perusal of above mentioned references, we are of the considered opinion as mentioned below:

1. The cause of death in this case septicaemic shock as a sequela of head injury sustained consequent upon blunt surface impact to head.

2. The injuries mentioned in the MLC and the clinical records and notes could be possible in the alleged circumstance that is in a case of Road Traffic Accident."

21. Dr.Sachin Mittal (R2W1) also in his examination stated as under:

"After examining all the documents, we opined that cause of death was septicemic shock was sequela of head injuries sustained consequent upon blunt surface impact to head. My report is now Mark Ex.R2W1/B bearing my signature at point A and signature of Dr. Yogesh Tyagi at point B. The detail of documents which were provided to us is mentioned in our report.

At the time of discharge on 19.07.2017, though the condition of patient was stable but right portion of his body (upper and lower) was not functioning. At the time of discharge, patient was having septicaemia. Septicaemia is one of known complications of surgery and in the



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instant case, surgery was performed because of injuries sustained over the head.”

22. Though in his cross examination he also stated that as per the death summary, the deceased had died due to a cardiac arrest, he clarified that the cardiac arrest was caused due to the septicaemia and this fact is also mentioned in the death summary.

23. The learned Tribunal has clearly not appreciated this part of the evidence of the doctor.

24. For the above reasons, the finding of the learned Tribunal cannot be sustained and are liable to be set aside. The Impugned Award is, accordingly, set aside.

25. As the learned Tribunal has, based on its above finding, not determined the compensation that is payable to the appellant, the Claim Petition shall stand restored to its original number before the learned Tribunal. The learned Tribunal shall assess the compensation payable to the appellant based on the evidence already on record.

26. Keeping in view that the accident had occurred on 30.05.2017, the learned Tribunal shall assess the compensation and pass its final Award within a period of four months of the first listing of the Claim Petition on its remand.

27. The parties shall appear before the learned Tribunal on 11th December, 2023.

28. The Trial Court Record be sent back to the learned Tribunal.

29. The learned counsel for the respondent no.2 submits that the respondent no.2 also has a right to recover the compensation paid to the appellant from the respondent no.1. This issue shall also be



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determined by the learned Tribunal based on the evidence that is on record.

30. The appeal is allowed in the above terms.

31. There shall be no order as to costs.

NAVIN CHAWLA, J

NOVEMBER 20, 2023/ns/ss

Click here to check corrigendum, if any