



2023:DHC:8467



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

Date of decision: 24.11.2023

+ **MAC.APP. 523/2023**

RELIANCE GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Ms.Suman Bagga & Mr.Pankaj
Gupta, Advs.

versus

SMT KRISHNA AND OTHERS

..... Respondents

Through: Mr.Shahil & Mr.Aashish, Adv.
for R-1 & R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 61006/2023 (Exemption)

1. Allowed, subject to all just exceptions.

MAC.APP. 523/2023 & CM APPL. 61005/2023

2. This appeal has been filed challenging the Award dated 06.09.2023 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, North District, Rohini Courts, Delhi (hereinafter referred to as 'Tribunal') in MAC Petition No. 299/2018 titled as *Smt. Krishna & Anr. v. Sh. Mukesh Kumar & Ors.*

3. The above Claim Petition has been registered under Section 166(4) of the Motor Vehicles Act, 1988 on the Detailed

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Signing Date: 28.11.2023

18:57:42

MAC.APP. 523/2023

Page 1 of 6



2023:DHC:8467



Accident Report (in short, 'DAR') filed by the Police, for grant of compensation to the respondent nos.1 and 2 herein. It has been contended that on 04.02.2018, the deceased namely Uttam, aged around 19 years, was going on his motorcycle bearing registration no. DL-8S-BT-0259 to attend a marriage ceremony at Alipur, Delhi. At about 10:00 AM, when he reached at Holambi Khurd Mor to Fatak, 30-40 feet ahead from the Chowk, Narela, Delhi, a Tata Tempo bearing registration No. DL-1LK-1584 (hereinafter referred to as the 'Offending Vehicle'), which was being driven by the respondent no.3 herein, in a rash and negligent manner came from its right side, that is, from Fatak side, and hit against the said motorcycle of the deceased. As a result of the accident, the deceased along with his motorcycle fell down on the road and the deceased sustained fatal injuries. Though he was rushed to the SRHC Hospital, Narela, Delhi, he was declared as '*brought dead*'.

4. In support of their claim, the respondent nos.1 and 2 herein *inter alia* examined Shri Balraj Singh as PW-2, claiming him to be the eyewitness to the accident. The learned Tribunal, by way of the Impugned Award, has held that the accident had taken place due to the Offending Vehicle being driven in a rash and negligent manner and causing the accident resulting in the death of the deceased. The appellant is aggrieved by this finding of the learned Tribunal.

5. The learned counsel for the appellant submits that while the appellant does not dispute the involvement of the Offending

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Signing Date: 28.11.2023

18:57:42

MAC.APP. 523/2023

Page 2 of 6



2023:DHC:8467



Vehicle in the accident, the manner in which the accident had taken place was not properly proved by the respondent nos.1 and 2 herein. He submits that the only witness relied upon by the learned Tribunal for its finding that the accident had taken place due to the Offending Vehicle being driven in a rash and negligent manner, is the testimony of PW-2, who, the learned counsel for the appellant submits, was a planted witness. He submits that PW-2, in his statement, has *inter alia* stated that after the occurrence of the accident, he chased the Offending Vehicle and did not return back to the spot of the accident. The learned counsel for the appellant submits that if the PW-2 did not return back to the spot of the accident, then his signatures and his presence during the seizure of the Offending Vehicle, the preparation of the rukka, the site plan, etc., cannot be believed.

6. On the other hand, the learned counsel for the respondent nos.1 and 2, who appears on advance notice, submits that PW-2 was in no manner related to respondent nos.1 and 2. He was an independent witness and his testimony cannot be disregarded on a mere stray statement. He further submits that the manner of the accident also stood proved by way of the Mechanical Inspection Report of the Offending Vehicle and the motorcycle driven by the deceased. He submits that, in fact, the driver of the Offending Vehicle, that is, the respondent no.3 herein, did not enter the witness box and, therefore, the manner in which the accident took place was not disputed by him.

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Signing Date: 28.11.2023

18:57:42

MAC.APP. 523/2023

Page 3 of 6



2023:DHC: 8467



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

8. As noted hereinabove, the involvement of the Offending Vehicle in the accident is not denied by the appellant. The appellant merely denies the manner in which the accident had taken place and prays that contributory negligence should be attributed to the deceased for the accident. The onus for the same would lie on the driver of the Offending Vehicle, as he is the only one who can otherwise depose on the manner in which the accident had taken place. As noted hereinabove, the respondent no.3, that is, the driver of the Offending Vehicle, did not enter the witness box.

9. In ***Oriental Insurance Co. v. Shushila Devi***, 2020 SCC OnLine All 1946, the Allahabad High Court has held as under:

“19. This Court is not impressed with the aforesaid submissions. It is now no more res integra that the issue regarding the contributory negligence is to be proved like any other issue of fact. Though the appellant had raised a plea in its written statement, but consequently no evidence whatsoever was led to establish the contributory negligence. At least, the driver of the bus belonging to the Corporation could have been examined to indicate the manner in which the accident occurred. This has not been done rather there is no evidence from the side of the appellant. The only document which has been relied upon by the learned counsel for the appellant happens to be the site-plan bearing Paper No. C-17/6.

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Digitally Signed By: SUNIL

Signing Date: 28.11.2023

18:57:42

MAC.APP. 523/2023

Page 4 of 6



21. This Court is fortified in its view in light of the decision of the Hon'ble Apex Court in the case of Jiju Kuruvila v. Kunjuamma Mohan reported in (2013) 9 SCC 166. Another Division Bench decision of this Court in the case of Prabhandhak, U.P. Rajya Sadak Parivahan Nigam v. Rabia Begum, reported in 2015 ACJ 1492 wherein in Para-28, this aspect of the matter has been dealt with which reads as under:—

“28. To sum up:—

1. Burden of proof with regard to contributory negligence shall be on the party who pleads for it. The contributory negligence should be proved like other issues. No inference may be drawn solely from Naksha Nazari or mere pleading on record.”

22. In view of the above, this Court has no hesitation to hold that the finding regarding contributory negligence does not require any inference from this Court.”

(Emphasis Supplied)

10. On the other hand, the claimants are merely to prove the manner of the accident on the touchstone of preponderance of probability. Reference in this regard may be had to the judgments of the Supreme Court in **Vimla Devi v. National Insurance Co. Ltd.**, (2019) 2 SCC 186; and **Anita Sharma v. New India Assurance Co. Ltd.**, (2021) 1 SCC 171.

11. The respondent no. 1 and 2 have produced the eyewitness to the accident, that is, PW-2, who is not shown to be an interested witness, and has described the manner of the



2023:DHC: 8467



accident. He has deposed that the Offending Vehicle was coming on the wrong side of the road and suddenly turned towards the right side, hitting the motorcycle of the deceased. The manner of the accident and the testimony of PW-2 also stood corroborated by the Mechanical Inspection Report of the Offending Vehicle. The learned Tribunal has also taken note of the above factors, including the fact that an FIR was registered under Section 279/304A of the Indian Penal Code, 1860 against the respondent no.3 herein, at Police Station Narela.

12. I, therefore, find no merit in the challenge of the appellant to the Impugned Award.

13. Accordingly, the present appeal and the pending application are dismissed.

14. There shall be no order as to costs.

15. The appellant shall deposit the awarded amount, along with interest, with the learned Tribunal, within a period of six weeks from today. On such deposit, the same shall be disbursed to the respondent nos.1 and 2/claimants in accordance with the schedule of disbursement prescribed by the Impugned Award.

16. The appellant is exempted from depositing the statutory amount.

NAVIN CHAWLA, J

NOVEMBER 24, 2023/rv

Click here to check corrigendum, if any

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18:57:42

MAC.APP. 523/2023

Page 6 of 6