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

Date of decision: 08.02.2023

+ MAC.APP. 264/2018 & CM APPL. 9335/2018 (stay)
TATA AIG GENERAL INSURANCE CO LTD Appellant
Through: Mr.Rudra Kahlon & Ms.Vandana
Kahlon, Advs.

versus

KRISHAN LAL GUPTA & ORS Respondents
Through: Ms.Aruna Mehta, Adv. for R-1 to 3.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') preferred by the Insurer seeks to assail the award dated 23.11.2017 passed by the learned Motor Accident Claim Tribunal (hereinafter referred to as 'the Tribunal') in MAC No.499/2011. Vide the impugned award the learned Tribunal has granted a compensation of INR 9,40,000/- along with interest at the rate of 9% per annum in favour of the respondent nos. 2 and 3 i.e., the son and daughter of the deceased.

2. The brief facts emerging from the record are that on 14.11.2003, Mrs.Kanchan Gupta was travelling in the car bearing Registration No. DL 2CV 3454, which was duly insured with the appellant. Her son Mr.Gaurav Gupta, who is respondent no.4 in this appeal, was driving the car. The said car met with an accident and collided against a tree as a result of which, Mrs.Kanchan Gupta sustained fatal injuries, and succumbed thereto. When

the respondents raised a claim for insurance, it was rejected by the appellant on the ground that the Insured could not be a beneficiary against himself. Aggrieved by the rejection, the respondent nos.1 to 3 preferred a claim petition under Sections 140 and 166 of the Act before the learned Tribunal.

3. In support of its claim, the respondents sought to examine five witnesses. However, since one of the witnesses failed to turn up for examination, the learned Tribunal relied only on the evidence of four witnesses on behalf of the respondent Claimants. On the other hand, the appellant/insurer did not lead any evidence on its behalf, but it cross-examined the witnesses of the respondents.

4. After considering the evidence led by the respondents, the learned Tribunal came to the conclusion that the death of Mrs.Kanchan Gupta was brought about by the negligence of the driver of the insured vehicle, i.e., respondent no.4, her son. Consequently, the learned Tribunal held the appellant liable to pay compensation. While calculating the compensation amount, the learned Tribunal accepted the respondents' plea that the monthly income of the deceased was INR 7000/-. To buttress the conclusion that Mrs.Kanchan Gupta ran a boutique tailoring business named 'Kanchan Boutique' and earned an approximate monthly income of INR 7000/-, the learned Tribunal relied on the testimonies of respondent no.1, i.e., PW4/husband of the deceased as also PW3/Ms.Leela, a regular client at the boutique.

5. Being aggrieved by the decision of the learned Tribunal, the appellant Insurer has preferred the present appeal.

6. Mr.Rudra Kahlon, learned counsel for the Insurer has made two primary submissions in support of the appeal. His first and foremost

contention is that since the offending vehicle was being driven by the son of the deceased, for whose death the insurance claim has been raised, this is not a bonafide claim and is a clear case of collusion. He submits that proof of the lack of bonafides of these claimants is reflected by the fact that they did not register any First Information Report in respect of the accident. He, therefore, contends that no compensation ought to have been granted by the learned Tribunal in these circumstances.

7. Without prejudice to his submission that the respondents' claim was liable to be outrightly rejected, Mr.Kahlon, next contends that the learned Tribunal also erred in accepting the purported monthly income of the deceased as being INR 7000/-. He submits that the figure is arbitrary and, barring the oral claims made by the respondents' witnesses, no reliable evidence was placed on record to substantiate this figure or the fact that the deceased was earning anything at all. In the absence of such evidence, if at all the learned Tribunal wished to grant compensation to the respondents, the amount of compensation ought to have been calculated as per the existing minimum wages prescribed for unskilled workers. He, therefore, prays that the present appeal be allowed and the impugned order be set aside.

8. Per contra, Ms.Aruna Mehta learned counsel for the respondent supports the impugned award by urging that merely because the son of the deceased was driving the car, it would not automatically imply that there was any collusion between the claimants to secure the insurance compensation. She submits that once the appellant has failed to deny that the accident took place in the manner as claimed, it cannot urge that there was any collusion on the part of the parties. She further submits that this accident

is a terrible tragedy that has befallen the family of the respondents, and the grief from it continues to affect all of them. The fact remains that the respondents truthfully narrated the entire incident to the local police station, and a Daily Diary Entry therefor was also made by the concerned police officers. The appellant having neither denied the Daily Diary Entry being recorded nor about the car being insured with them, cannot be permitted to wriggle out of its liability to pay compensation.

9. Ms.Mehta then submits that insofar as the appellant's opposition to the quantum of compensation is concerned, there is no basis for assailing the figure. She submits that not only had PW4/husband of the deceased produced legitimate Bill Books of Kanchan's Boutique, but even the unrebutted statement of PW3/Ms Leela, a regular client of the deceased, supported the position that the deceased was earning a monthly income of about INR 7,000/-. She submits that there was no element of arbitrariness in the quantum of compensation, rather the same had been fixed after a careful consideration of the oral and documentary evidence adduced by the respondents. She, therefore, contends that there is no infirmity in the impugned award passed by the learned Tribunal and thus seeks dismissal of the appeal.

10. Having considered the rival submissions of learned counsel for the parties and perused the record, I find no merit in any of the grounds urged by the appellant Insurer.

11. To begin with, the first contention made on behalf of the Insurer assails the bonafides of the claimant premised on the fact that the deceased Mrs.Kanchan Gupta was the mother of the person driving the car. It is the appellant's case that since a family member, i.e., respondent no.4 caused this

accident the resulting insurance claim is a case of collusion between members of the family. In order to appreciate this plea, it would be apposite to advert to the circumstances surrounding the accident, as noted by the learned Tribunal in arriving at a conclusion that the accident took place on account of the negligence on the part of respondent no. 4. The relevant extracts of the findings of the learned Tribunal reads as under:

“(iii) PW Bhagat Singh testified that on 14.11.2003 he along with his friend Anil Kumar visited Shani Mandir, at Koshi Kalan, UP. In the said temple, he met with respondent no. 1 and his mother Kanchan Gupta. He further testified that after performing puja, he alongwith his friend was coming back in his car bearing no. DL ICJ 0100, which was driven by his friend. He further testified that respondent no. 1 Gaurav alongwith his mother was also returning to Delhi in his Maruti Car bearing no. DL2C V3454 and the same was being driven by respondent no. 1. He further testified that when they crossed Palwal, respondent no. 1 overtook their car. Thereafter, he lost control over his car, consequently, car went to Kacha Road and struck against tree. He stopped his car immediately and proceeded towards the car of respondent no. 1, which was damaged badly. Though they tried to open the door, but could not open it as it was jammed due to collision. In the meantime, some one informed the police. Accordingly, police van reached there and took the injured to the hospital. He further testified that Gaurav Gupta requested him to inform his family, accordingly, he informed his father. Later on, he came to know that Kanchan Gupta succumbed to her injuries. The testimony of PW1 remained unchallenged during inquiry. Accordingly, this Tribunal has no reason to disbelieve the deposition of PW Bhagat Singh.

(iv) As already stated that respondent no. 1 in his written statement took the plea that due exertion, he slept and due to that reason accident had taken place. From the testimony of PW Bhagat Singh and the plea taken by the respondent

no. 1, it becomes clear that respondent no. 1 drove the car from Delhi to Koshi Kalan, UP and after performing puja, he along with his mother started returning journey. Consequently, he had no time to take rest. Despite that he drove the car at high speed and due that reason, he overtook the car of PW Bhagat Singh. Since he was exerted and had not taken rest, he had a nap and due to that reason he lost control over his car. Consequently, his car went off the road and struck against a tree. Since respondent no. 1 was driving the car without taking rest at high speed on highway, I am of the considered opinion that there was rashness and negligence on the part of respondent no. 1. Accordingly, Issue no. 1 is decided in favour of claimants/petitioners and against the respondents.”

12. It is evident that the learned Tribunal meticulously canvassed the events leading up to the fatal accident. I am inclined to agree with the submission of the learned counsel for the respondents that simply because the accident took place on account of negligence of the son of the deceased, it could not be necessarily inferred that there was any collusion between the parties. Not only is it a rather gruesome suggestion that a fatal accident causing the death of the driver's mother was intentional and planned, the fact is that there is nothing on record to establish such a contention. In any event, given the aforesaid position, once it is an admitted fact that the vehicle met with an accident, and that this vehicle was duly insured by the appellant, the appellant cannot dispute its liability to pay compensation. I, therefore, do not find any infirmity in the conclusions arrived upon by the learned Tribunal in this regard.

13. Insofar as the appellant's challenge to the quantum of compensation is concerned, it may be apposite to refer to the findings in this regard as

contained in the impugned award; the same read as under:-

“(ii) PW4 testified that his wife was running a boutique and used to stitch ladies suits and was earning Rs.7,000/- per month. His testimony is corroborated by PW1 Mamta Aggarwal. She testified that that Kanchan Gupta was in the tailoring business. She further testified that after deducting her expenses, she must be earning between Rs.7000/- to Rs.8000/- per month. She further deposed that she had seen bills of Boutique of Kanchan Gupta. Her cross examination was deferred on the request of counsel for insurance company as petitioners had not supplied the advance copy of the affidavit, but later on she did not grace the witness box. Since, her testimony was not tested on the edge of cross examination, no reliance can be placed on her deposition.

(ii) PW Leela also corroborated the testimony of PW4 by deposing that Kanchan Gupta was doing tailoring job and used to charge Rs.130/- for one suit. She further testified that she used to avail the services of deceased Kanchan Gupta. Though, witness was cross examined yet nothing could be extracted which may cast any doubt over her testimony.

(iii) From the above, it becomes clear that deceased Kanchan Gupta was running business of tailoring and she used to earn approximately Rs.7000/- per month. Accordingly, her income is assessed at Rs.7000/- per month. In other words, her annual income is assessed at Rs.84,000/-.”

14. From a perusal of the aforesaid findings as also from the record, it is evident that the appellant did not produce any witness in support of its case before the learned Tribunal. The witnesses produced by the respondent-Claimants, however, conclusively indicated that the deceased Mrs.Kanchan Gupta was an entrepreneur and ran a tailoring boutique from which she earned a monthly income. The testimony of PW-3, a regular customer of the deceased is that she was charged about INR 130 for tailoring a woman's

suit. This witness was cross examined, yet no cloud could be cast on the veracity of her testimony. For that matter, PW4/Mr Krishan Lal Gupta the husband of the deceased successfully produced bill books of the deceased to show that the monthly income of the deceased was more than INR 7,000/-. What therefore emerges is that even though the appellant had cross-examined both these witnesses, their evidence in this regard could not be shaken. I, therefore, do not find any reason to interfere even with this finding of the learned Tribunal.

15. The appeal along with pending application, being meritless, is accordingly dismissed.

16. Even though the impugned award contains a disbursal scheme according to which the amount was to be placed in FDRs of INR 10,000/- each, which were to be released periodically in favour of the respondents, taking into account that over 20 years have elapsed since the date of the accident, this direction deserves to be modified. I am of the view that taking into account this period of 20 years, it will be in the interest of justice that the entire awarded amount is now released in lumpsum in favour of the respondents. Accordingly, while dismissing the appeal, the disbursal scheme contained in the impugned award is modified by directing the learned Tribunal to forthwith release the entire awarded amount alongwith accrued interest thereon, in favour of the respondents.

(REKHA PALLI)
JUDGE

FEBRUARY 8, 2023
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