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

Date of decision: 26.09.2023

+ MAC.APP. 503/2018
THE ORIENTAL INSURANCE CO LTD Appellant
Through: Mr.A.K.Soni, Adv.

versus

PUSHPA DEVI & ORS Respondents
Through: Mr.S.N.Parashar, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellant challenging the Award dated 20.03.2018 (hereinafter referred to as the 'Impugned Award') passed by the Motor Accident Claims Tribunal-1, Central District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Tribunal) in Suit no.374 of 2009 titled *Smt. Pushpa Devi v. Abhey Taneja & Ors.*, awarding compensation for the death of the deceased-Ms.Neetu Gangwani @ Alisha Gangwani, who had died as a result of a motor vehicular accident that had taken place on 07.01.2008.
2. Before the learned Tribunal, it was the case of the claimant, that is, the respondent no.1 herein, that on 07.01.2008, the deceased was travelling in a Santro car bearing registration No.HR-51E-6827 (hereinafter referred to as the 'Offending Vehicle') as she was going from Noida to



her house. The car was being driven by the respondent no.2 herein at a high speed in a rash and negligent manner. At about 4.15 am, when the car reached near Morna Choraha, Noida, the car crashed over the road divider and flipped over. Consequent thereto, the deceased suffered fatal injuries. She was rushed to the hospital but was declared 'brought dead'. DD no.11/2008 was registered at Police Station Sector-49, Noida, Gautam Budh Nagar, Uttar Pradesh.

3. The limited challenge of the appellant to the Impugned Award is on the ground that the offending vehicle has been falsely implicated in the accident.

Submissions of the Learned Counsel for the Appellant:

4. The learned counsel for the appellant submits that the DD entry does not state that the accident had taken place due to the involvement of the offending vehicle. It is only in a complaint lodged after more than 8 months, on 24.09.2008, that the claimant asserted that the accident had taken place while the deceased was travelling in the offending vehicle. He submits that, curiously, the respondent no.2, who had taken the deceased to the hospital, has the same address as that of the deceased, as recorded in the Memo prepared by the hospital at the time of the deceased being brought there, as also in the other documents relating to the accident.
5. He submits that the respondent no.1 in his written statement, falsely admitted that the deceased was travelling in the offending vehicle when the accident took place, though he also denied that he was driving the vehicle in a rash and negligent manner.
6. He submits that the claimant did not lead any cogent evidence to prove



the involvement of the offending vehicle in the accident. The only evidence led by the claimant was in the form of the testimony of Sh.Jaibir Singh (PW-2), who claimed himself to be the eye-witness to the accident. His presence at the site of the accident is doubtful and he also appears to be a planted witness set up by the claimant to prove her case. He states that PW-2 was not named in the DD entry or anywhere else. How the claimant came to know of the presence of PW-2 at the site of the accident is also not proved. He submits that, therefore, no reliance could have been placed on the testimony of PW-2 by the learned Tribunal.

7. He submits that on the other hand, the appellant had examined Ms.Pallavee Thakral, Administrative Officer of the appellant as R3W1. In her evidence by way of affidavit, she stated that the offending vehicle was not involved in the accident at all, as there is no FIR of the alleged accident and that the address of the deceased and that of the respondent no.1 are the same. Her testimony could not be challenged by the claimant in the cross-examination.
8. The learned counsel for the appellant submits that, therefore, the learned Tribunal has erred in accepting that the accident had taken place while the deceased was travelling in the offending vehicle and that the offending vehicle was being driven in a rash and negligent manner resulting in the accident.

Submissions of the Learned Counsel for the Respondent no.1:

9. On the other hand, the learned counsel for the respondent no.1 submits that, as is evident from the Memo dated 07.01.2008 regarding the admission of the deceased in the hospital and the GD entry, the



deceased was brought to the hospital by the respondent no.2, the driver of the offending vehicle. The Memo and the GD entry are proximate to the time of the accident and, therefore, cannot be doubted. He submits that the respondent no.1 in his written statement had admitted the involvement of the offending vehicle in the accident, though at the same time, denying that he was driving the offending vehicle in a rash and negligent manner.

10. He submits that the appellant in its written statement did not deny the involvement of the offending vehicle, but vaguely made a denial of all averments made in the Claim Petition. He submits that in view thereof, the involvement of the offending vehicle in the accident cannot be doubted.
11. He further submits that the learned Tribunal has given cogent reasons for its finding that the accident could have taken place only if the respondent no.2 herein was driving the offending vehicle in a rash and negligent manner.

Analysis and Findings:

12. I have considered the submissions made by the learned counsels for the parties.
13. I find merit in the submission of the learned counsel for the appellant that the statement of PW-2- Sh.Jaibir Singh as an eye-witness of the accident is completely doubtful and cannot be relied upon. PW-2 in his statement has stated that he was a summoned witness. How his particulars came to be known to the claimant for summoning him, when admittedly, he was not named in the Memo of admission of the deceased in the hospital or in the GD entry or even thereafter, has not



been explained by the claimant. It appears that PW-2 was set up by the claimant at a later stage as an eye-witness to prove that the accident had taken place with the offending vehicle being driven in a rash and negligent manner by the respondent no.2.

14. However, even discarding the statement of PW-2, there was enough material before the learned Tribunal to hold that the accident had taken place with the involvement of the offending vehicle.
15. For the said purpose, it is to be noted that, admittedly, the deceased was brought to the hospital by the respondent no.2. The GD entry, as also the Memo, recorded proximate to the date and time of the accident, record the above and have remained undisputed.
16. Merely because the address of the deceased, given at the time she was brought to the hospital, was given as the same as that of the respondent no.2 is of no consequence. It could be the case that the respondent no.2 at the time of bringing the deceased to the hospital has given his own address as that of the deceased. Also, the fact that the deceased and the respondent no.2 were travelling together in the same vehicle rather than showing that the offending vehicle was being wrongly involved in the accident, would, in fact, show that the accident had taken place with the involvement of the offending vehicle itself.
17. The respondent no.2 in his written statement had admitted that the accident had taken place with the offending vehicle turning turtle and skidding on the side where the deceased was sitting, resulting in fatal injuries being suffered by her. The appellant herein filed a written statement merely denying all the averments of the Claim Petition. There was no specific plea taken by the appellant in its written



statement denying the involvement of the offending vehicle in the accident in question or stating that the offending vehicle had been falsely involved in the said accident. Mere vague denial shall amount to an admission of the appellant to the involvement of the Offending Vehicle in the accident.

18. With the above admission of the respondent no.2 in the written statement and the vague denial by the appellant in its written statement, the claimant was not to further prove the involvement of the offending vehicle in the accident. The same stood proved by the mere non denial thereof by the appellant and the respondent no.2.
19. The statement of R3W1 is also based only on conjectures. Even otherwise, in the absence of such a defence being set up, the statement of R3W1 denying the involvement of the offending vehicle in the accident, could not be admitted.
20. The only question, thereafter, left with the learned Tribunal to be determined was whether the accident had taken place with the offending vehicle being driven in a rash and negligent manner. The learned Tribunal in its Impugned Award, on this issue has observed as under:

“10. (iii) In his written statement, respondent No.1 admitted that deceased was travelling in the above said car. He also admitted that the accident had taken place and in the said accident, deceased sustained injuries, accordingly, he took her to the hospital. But he denied that there was any rashness or negligence on his part. He took the plea that one big stone was lying on the road and there was heavy fog and when he was turning the car, it skid, consequently, it over turned towards the side of



deceased and due to that reason, deceased sustained injuries..... it is established that deceased was taken to the hospital by respondent no. 1 and respondent no.1 admitted the accident in his written statement. The only plea taken by respondent no.1 is that there was no rashness or negligence on his part as the accident had taken place due to the big stone, which was lying on the road and the car skid and overturned. Assuming for the sake of arguments that a big stone was lying on the road, but it is undisputed fact that respondent no.1 failed to control the car. This shows that car must be driven at excessive speed. If there was heavy fog on the road, it was the duty of respondent no.1 to drive the car at very slow speed. Since, he lost control over the car, this shows that there was some rashness or negligence on the part of respondent no.1. PW2 clarified the said rashness or negligence by testifying that car was being driven at fast speed in a zig-zag manner.

(iv) In view of the above, I am of the considered opinion that material available on record are sufficient to hold that the accident had been caused due to rash or negligence of respondent no.1. Accordingly, issue no. 1 is decided in favour of petitioner and against the respondents."

21. The learned Tribunal has given cogent reasons for its findings on the issue that the accident had taken place with the offending vehicle being driven in a rash and negligent manner by the respondent no.2 herein. I see no reason to disagree with the same.
22. It is to be remembered that in a claim arising out of a motor vehicle accident, the Claimant is not to prove the claim beyond doubt but on the preponderance of probabilities. The said standard has been met by the Claimant in the present case not only on the involvement of the Offending Vehicle but also on the accident occurring due to the Offending Vehicle being driven in a rash and negligent manner.



23. In view of the above, I find no merit in the present appeal. The same is, accordingly, dismissed. There shall be no order as to costs.
24. The statutory amount deposited by the appellant shall be released in favour of the appellant along with interest accrued thereon.
25. The learned Tribunal shall release the compensation amount deposited by the appellant with the learned Tribunal in accordance with the Schedule of Disbursal as stipulated by the learned Tribunal in the Impugned Award.

NAVIN CHAWLA, J

SEPTEMBER 26, 2023
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