



\$~15

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

Date of decision: 18.09.2023

+ MAC.APP. 800/2018 & CM APPL. 36421/2018
ARCHANA MAHESHWARI & ANR Appellants
Through: Mr.Sunil Kr. Verma, Adv.

versus

THE ORIENTAL INSURANCE CO LTD & ORS
..... Respondents
Through: Mr.Ravi Sabharwal, Adv.

**CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA**

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellants challenging the Award dated 13.04.2018 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, New Delhi District, Patiala House Courts, Delhi (hereinafter referred to as the 'Tribunal') in Suit No.20/2015, titled *Archana Maheshwari &Ors. v. Hira Lal Yadav &Ors..*

2. It was the claim of the claimants/appellants herein before the learned Tribunal that on the intervening night of 23/24.02.2014 at around 2:30 a.m., the deceased Mr.Kaushal Maheshwari was travelling from Daula Kuan bus stand to Sarai Kale Khan bus stand on the TSR make bajaj, bearing no.DL-1RK-1893, which was driven by the respondent no.2 herein and owned by the respondent no.3 herein.

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 22.09.2023

10:23:22

MAC.APPL.800/2018



When the TSR reached gate no.1 of Pragati Maidan at around 2:30 a.m., it was hit by a car from behind. The TSR overturned due to the impact of the said accident and the deceased suffered fatal injuries, while the respondent no.2 also suffered injuries. On the basis of the statement of respondent no.2, an FIR was registered against the unknown vehicle. The appellants claimed that even the TSR was being driven by the respondent no.2 herein in a rash and negligent manner. The Claim Petition was filed claiming the accident to be a result of composite negligence of the two vehicles, that is, the car and the TSR. Claim petition was, however, filed only against the driver, owner, and the Insurance Company of the TSR.

3. In support of their claim of TSR being also driven in a rash and negligent manner, the appellants produced Mr.Ghanshyam Choudhary (PW-2) as an alleged eyewitness of the accident in question. The learned Tribunal refused to believe PW-2 as an eyewitness to the accident in question. The finding of the learned Tribunal on this aspect is reproduced herein below:

“12. However, PW2 Sh. Ghanshyam Chaudhary is being claimed to be an eye witness of the above accident and he has also tendered on record his examination-in-chief by way of an affidavit Ex.PW2/A and a copy of his voter identity card as Ex.PW2/1. According to the depositions made by him in his above affidavit, during the night of accident he was returning back to his home after completing his work and was standing near the above gate of Pragati Maidan when all of a sudden, the above TSR came at very high speed and turned down and the passenger sitting inside got buried under the said TSR. He has also stated specifically in the said affidavit that above accident took place due to sole negligence of



driver of the above TSR.

13. But on appreciation of testimony of this witness as a whole and in light of the other evidence brought on record, this tribunal is not at all satisfied regarding claim being made by the above eye-witness about witnessing the above accident and it apparently appears to this tribunal that he is a false witness planted in this case by Ld. Counsel for the petitioners himself. It is so because this witness has not been able to give any satisfactory explanation during his cross examination to satisfy this tribunal about his presence at the spot at the relevant time of accident and the claim of witnessing the said accident and rather, he has revealed his old association with Ld. Counsel for the petitioner. He was not a summoned witness in this case and he came to depose only on request of Ld. Counsel for the petitioners and he also could not reply as to how he came to know about the present proceedings. The relevant extracts of the depositions made by this witness during his cross-examination are being reproduced herein below:-

“ I am not the summoned witness and I have come to depose today on the request of the Ld. Counsel for the petitioner.

I have not read the complete affidavit and I have just seen a little bit. it is correct that my statement was not recorded about the accident by the police in the criminal case, I did not make any call to the police about the accident on 100 number. In my presence the police had arrived at the spot of accident, however, I did not approach the police official for recording of my statement. I can not tell as to whether the TSR overturned on its own or it was hit by some vehicle. I was at a distance of around 20-25 yds from the spot of the accident.

At this stage, the Tribunal feels it necessary to ask few questions from



the witness in exercise of its inherent powers to test the veracity of the witness and his claim regarding the witnessing the above accident.

Replies given by the witness to the queries by the Tribunal:-

I can read little bit of English. At this stage, the witness has been asked by the Tribunal to read his affidavit Ex. PW2/A and to tell as to in what manner the above accident took place and particularly if any other vehicle, i.e. except the above TSR, was also involved in the accident or not. The witness states that he cannot tell these things as he can only read little bit of English but cannot understand it.

I do not know any of the petitioners. I know the Ld. Counsel for the petitioner for the last around four years. I had also worked for sometime as a Munshi with some other Advocate in Dwarka Courts. I had worked with the Advocate Sh. R.D. Kaushik during the year 2011-12. Ld. Counsel for the petitioner is also having a seat In Dwarka Courts. Presently, I am doing the work of waiter with some Caterers. I came to know about the Ld. Counsel for the petitioners having a seat In Dwarka Courts around the year 2013 when I got a recommendation letter from him for admission of my child in some school.

At this stage, the witness has been asked by the Tribunal as to how he has come to know that the Ld. Counsel for the petitioner Sh. Sunil Verma has filed a claim petition for LRs of deceased of the above accident, but the witness has kept mum and has not been able to give any reply.

On the day of accident i.e. 24.02.2014, I was coming back from Atta Chowk, Noida to do some catering work for Rawat Group Caterers. I



became free around 12.30 am during the said night of 23-24.02.2014. I cannot give the details where the function on that night took place. I returned to Delhi by cab at gate of Pragati Maidan but I do not remember the gate number. Presently, I am residing at Palam and at the time of accident, I was residing at Brijvasan. The above accident took place at 2 pm. I cannot tell the direction from which TSR was coming and to which direction it was going. We were 3-4 persons together. Again said, we were two persons. I or other person/persons did not even make any attempt to go and see what happened with the TSR driver or the passengers travelling in it. I went to my home by night service bus.”

14. It is clear from the above that presence of PW2 at the spot of accident at wee hours during the night of 23/24.02.2014, i.e. 2:30AM, is highly doubtful. This witness was allegedly returned from Noida to his residence at Brijvasan during the said night and there does not appear to be any justification for his appearance at the spot of accident. He was not even able to tell the manner in which the above accident took place or the gate number outside which it took place and was even not aware if any other vehicle was also involved in the accident or not. He has also specifically admitted his association with Ld. Counsel for the petitioners for the last around four years and further stated that he came to depose only at instance of the Ld. Counsel for the petitioners. Hence, the testimony of this witness is required to be discarded and it will result in grave injustice to the respondents, if the depositions made by this witness are believed or acted upon by this tribunal. Moreover, he was not an eye-witness of the above accident as per the contents of the charge-sheet of the above criminal case, which



was filed as untraced as the above car or its driver could not be traced out.”

4. I must herein note that the police during the process of investigation had also recorded the statement of Ms. Kisunpati Devi as an eyewitness to the accident in question. She had deposed that it was a car driven at a high speed that hit the TSR resulting in the accident. The claimants/appellants herein did not examine her before the learned Tribunal in the claim petition.

5. In the absence of any evidence, therefore, the learned Tribunal held that there was nothing to infer from the record, that it is a case of composite negligence. The learned Tribunal, therefore, dismissed the claim, however, granting liberty to the appellants to pursue their claim by filing a claim petition under Section 163A of the Motor Vehicle Act, 1988 (hereinafter referred to as the ‘Act’) or if so advised approach the Delhi Legal Service Authority for grant of compensation under the Delhi Victims Compensation Scheme.

6. The learned counsel for the appellants reiterates that as the accident had admittedly occurred while the deceased was travelling in the TSR, it was a case of composite negligence. In support, he placed reliance on the judgment of this Court in ***National Insurance Co. V. Savitri Devi & Ors.***, Neutral Citation 2017:DHC:2804.

7. I am unable to agree with the submission made by the learned counsel for the appellants. A situation of composite negligence would arise only if the accident in question is said to have occurred due to the negligence of more than one person. In the present case, the only testimony led by the appellants in support of their claim before the



Tribunal that the TSR was also being driven in a rash and negligent manner was of the PW-2. His testimony is not creditworthy and has rightly been rejected by the learned Tribunal for the reasons which I had reproduced hereinabove. I find no reason to disagree with the findings of the learned Tribunal.

8. In the absence of any negligence on the part of the driver of the TSR, that is, the respondent no.2 herein, a case of composite negligence was not made out by the claimants/appellants herein in the claim petition before the learned Tribunal.

9. As the Claim Petition had been filed only against the owner, driver, and the Insurance Company of the TSR, it was essential for the appellants to prove that the accident occurred due to the negligence of the driver of the TSR. In absence of the above, the learned Tribunal could have awarded compensation to the appellants only under Section 140 or Section 163A of the Act, as was applicable then.

10. By the Impugned Award, the appellants were given liberty to pursue their claims by filing a fresh claim petition under Section 163A of the Act or, if so advised, approach the learned Secretary, New Delhi District Legal Service Authority (in short, 'NDDLISA) for grant of compensation under Delhi Victims Compensation Scheme.

11. The learned counsel for the appellants submits that the compensation payable under the Delhi Victims Compensation Scheme would be more than what would be determined under Section 163A of the Act.

12. Accordingly, it is directed that in case the claimants approach the learned Secretary, NDDLISA for grant of compensation under the



said scheme, the same shall be expeditiously considered by the learned Secretary, as it is now an admitted case that the deceased had suffered fatal injuries, in an accident caused in a hit and run case. The claim petition of the appellants has been pending adjudication since 2015. Accordingly, the learned Secretary, NDDL SA is requested to consider the claim of the appellants/claimants, if so filed, within a period of three months of its filing.

13. The present appeal is disposed of in the above terms.

NAVIN CHAWLA, J

SEPTEMBER 18, 2023/Arya/AS

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 22.09.2023

10:23:22

MAC.APPL.800/2018