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

Date of decision: 12.09.2023

+ MAC.APP. 768/2018
NATIONAL INSURANCE CO LTD Appellant
Through: Mr.Pankaj Seth, Adv.

versus

HEERA DEVI & ORS Respondents
Through: Mr.K.K. Dubey, Adv. for R-1
to R-3

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 4892/2020

1. This application has already been disposed of vide order dated 05.10.2022.

MAC.APP. 768/2018 & CM APPL. 35140/2018

2. This appeal has been filed by the appellant challenging the Award dated 21.03.2018 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, District Shahdara, Karkardooma, Delhi (hereinafter referred to as the 'Tribunal') in MACT Case no.766/2016, titled ***Heera Devi & Ors. v. Sh.Lal Giri & Anr..***

Brief Facts:

Signature Not Verified The facts leading to the filing of the claim petition before the

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learned Tribunal are that on the intervening night of 05/06.07.2013 the deceased Rajesh Kumar, who was driving a truck bearing no. RJ-14-2G-9415, along with the injured Suraj Kumar, who was working as a conductor on the said truck, were returning from Jaipur to Delhi. At about 12.30 a.m., when the truck of the victims reached the flyover near Rajiv Chowk, Gurgaon, the driver of offending Container bearing No. HR-55B-1891 (hereinafter referred to as 'Offending Vehicle'), which was going ahead of the vehicle of the victims, suddenly applied brakes without any indication and in a rash and negligent manner, which resulted in crashing of the vehicle of victims into the Container from behind. The deceased suffered fatal injury in the accident. The claim petition was filed by the respondent nos.1 to 3 seeking compensation before the learned Tribunal.

4. The learned Tribunal by way of the Impugned Award has held that the accident occurred due to the offending vehicle being driven in a rash and negligent manner. On the question of compensation, the learned Tribunal has held that the claimants had been unable to produce any document in proof of the income of the deceased. The learned Tribunal, therefore, applying the minimum wages of skilled worker prevalent in the State of Uttar Pradesh in the transport sector, determined the income of the deceased.

Challenge of the Appellant:

5. The appellant challenges the Impugned Award on the following grounds:

- a. That the learned Tribunal has failed to attribute any contributory negligence on the deceased;



- b. That the claimants were all residents of District Jaunpur, Uttar Pradesh (in short, 'UP'); the accident had taken place in Gurugram (previously referred to as 'Gurgaon'); the deceased was driving the truck which was registered in Rajasthan; the insurance for the offending vehicle was also taken in Noida, UP; and the respondent no.4, the driver of the offending vehicle, was a resident of District Champawat, Uttarakhand. Therefore, the learned Tribunal lacked the territorial jurisdiction to adjudicate the Claim Petition.
- c. That the learned Tribunal has erred in not granting a right to the appellant to recover the compensation amount from the driver and the owner of the offending vehicle, that is, the respondent nos.4 and 5 herein, respectively, though, the offending vehicle was being driven without a valid permit. The respondent nos.4 and 5 had failed to produce a valid permit for the Container in spite of a notice being sent to them for the production thereof.

Contributory Negligence

6. On the first challenge, the learned counsel for the appellant has drawn my attention to the statement of Mr. Suraj Kumar (PW-2). He submits that the witness states that the offending vehicle was not being driven at a high speed. He, in fact, goes on to say that even the offending vehicle was being driven at a moderate speed and was maintaining a distance from their vehicle. The learned counsel for the

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appellant submits that if the statement of PW-2 is to be believed, then contributory negligence has to be attributed to the deceased inasmuch as he did not apply the brakes on time even if the offending vehicle had applied brakes in a sudden manner.

7. On the other hand, the learned counsel for the respondent nos.1 to 3 submits that the learned Tribunal has rightly held that the accident took place only because of the offending vehicle applying brakes without any prior indication. He submits that PW-2 in his testimony had clearly stated that the vehicle of the victims was being driven by the deceased in a proper manner, at a moderate speed, and was also maintaining proper distance from the offending vehicle. He submits that the deceased could not have anticipated that the driver of the offending vehicle will apply brakes in a sudden manner on a highway and, therefore, contributory negligence cannot be attributed to the deceased.

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

9. Mr.Suraj Kumar (PW-2) in his evidence by way of affidavit (EX.PW-2/A) had narrated the manner of the accident, stating that the truck of the victims was being driven by the deceased at a moderate speed and in accordance with the traffic rules and regulations. He had further stated that the offending vehicle was being driven in a rash and negligent manner at a very high speed and had applied sudden brakes without caring for traffic rules and regulations. In the course of his cross-examination, however, PW-2 admitted that the offending vehicle was being driven at a speed of around 40 km/ph. He stated



that the truck of the victims was being driven at around 20-30 km/ph and was maintaining a distance of around 20 meters behind the offending vehicle. He stated that the offending vehicle applied sudden brakes resulting in the accident.

10. If the above statement is to be believed, both, that is, the offending vehicle as also the truck of the victims, were being driven at a moderate speed; there was also sufficient distance between the offending vehicle and the truck of the victims, then in such a situation, even if the offending vehicle had applied brakes suddenly, it would have given sufficient time to the deceased to have also applied the brakes, thereby avoiding the accident or at least the severity thereof. It did not so happen only because either the speed of the vehicle of the victims was also moderately high or the distance between the two vehicles was not enough so as to give the deceased sufficient time to apply brakes.

11. In either of the above situations, in my view, the learned Tribunal has erred in not attributing the contributory negligence on the deceased for the accident. In fact, on a reading of the Impugned Award, it is apparent that this issue was not considered by the learned Tribunal at all. While it may be true that the accident occurred due to the brakes being applied suddenly and without any prior indication by the offending vehicle, at the same time, in case the deceased was driving the vehicle at an appropriate speed while maintaining proper distance from the offending vehicle, the accident could have been avoided or at least the severity thereof would not have been fatal to

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the deceased.

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12. In view of the above, I deem it appropriate to attribute a contributory negligence of 25% on the deceased for the accident.

Territorial Jurisdiction

13. On the challenge of the territorial jurisdiction of the learned Tribunal to adjudicate on the claim petition, I would note that the claimants had stated that though they are permanent resident of district Jaunpur, (UP), however, at the time of filing of the claim petition, they were residing at Nand Nagari, Shahadra, Delhi. The owner of the offending vehicle was also claimed to be a resident of Delhi. There was no challenge to the above assertions from any of the respondents, that is, the driver, owner, or the Insurance Company. In absence of any challenge to the above averments, the submission of the appellant of lack of territorial jurisdiction of the learned Tribunal, cannot be accepted. Section 166(2) of the Motor Vehicles Act, 1988, empowers the claimants to file an application seeking compensation on the option of the claimants either to the Claims Tribunal having jurisdiction over the area in which the accident has occurred or within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides. In the present case, with the averment of the claimants, they have satisfied two out of the three criteria to invoke the jurisdiction of the learned Tribunal. I, therefore, find no merit in the challenge of the appellant to the Impugned Award on this ground.

Recovery rights

14. The last challenge of the appellant to the Impugned Award is on



the non-grant of right to recover the compensation paid to the claimants from the respondent nos.4 and 5 herein, being the driver and the owner of the offending vehicle.

15. The learned counsel for the appellant submits that in spite of the notice being served, the respondent nos.4 and 5 had failed to produce a valid permit as on the date of the accident for the offending vehicle. However, he fairly admitted that in the written statement filed before the learned Tribunal, this plea was not taken by the appellant nor any evidence on this led before the learned Tribunal. In absence thereof, no fault can be found with the finding of the learned Tribunal in not granting a right to the appellant to recover the compensation paid to the respondent nos.1 to 3 herein, from the respondent nos.4 and 5. I therefore, find no merit in the said challenge and the same is rejected.

Conclusion and Directions:

16. In view of the above, the compensation amount awarded in favour of the claimants/respondent nos.1 to 3 herein, shall stand reduced to Rs.12,60,750/- (Rs.16,81,000-Rs.4,20,250/-). The same shall carry interest at the rate of 9% from the date of filing of the claim petition till realization.

17. Pursuant to the order dated 29.08.2018 of this Court, the appellant had deposited the awarded amount with interest with the learned Registrar General of this Court. As the compensation amount stands reduced, the excess amount deposited by the appellant shall be released in favour of the appellant, along with interest accrued thereon. The balance amount shall be released in favour of the



prescribed by the Impugned Award.

18. The Statutory Amount deposited by the appellant shall be released to the appellant along with interest accrued thereon.

19. The appeal is disposed of in the above terms. The pending application also stands disposed of.

NAVIN CHAWLA, J

SEPTEMBER 12, 2023/Arya/rp

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