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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 22.08.2023

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MAC.APP. 991/2016 & CM APPL. 44120/2016
THE NEW INDIA ASSURANCE COMPANY LTD

..... Appellant

Through: Mr.Gaurav Nair & Mr.Rahul
Saxena, Advs.

versus

LALITA DEVI AND ORS

..... Respondents

Through: Mr.Jalaj Agarwal & Mr.Atul
Agarwal, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 14.09.2016 passed by the learned Motor Accidents Claims Tribunal, Patiala House Courts, New Delhi (hereinafter referred to as the 'Tribunal') in MACP No. 160/2014, titled ***Smt. Lalita Devi & Ors. v. Sh. Ganga Prasad & Ors.***

2. The above Claim Petition was filed by the Claimants/respondent no. 1 and 2 herein, stating that on 28.09.2013 at about 10:30 PM, Shri Vijay Rai, the deceased, along with his friend, Shri Umesh Rai, were going on bicycles. When they reached Mahipalpur Road in front of a Girls School, a truck bearing registration no.HR-55N-3355 (hereinafter referred to as the 'Offending Vehicle'), being driven in a rash and negligent manner by respondent no. 3 herein, hit the bicycle



of the deceased, as a result of which he fell down on the road and sustained grievous injuries. He was taken to AIIMS Trauma Centre, where he unfortunately expired on 12.10.2013.

3. Based on the evidence led by the parties, the learned Tribunal found that the accident had occurred due to the Offending Vehicle being driven in a rash and negligent manner by the respondent no.3 herein. The learned Tribunal awarded a sum of Rs.27,01,647/- as compensation in favour of the respondent nos.1 and 2 herein/claimants. It was further directed that the appellant herein shall deposit the awarded amount in the bank account of the claimants within 30 days of the passing of the Award, failing which, it shall pay interest at the rate of 12% per annum for the period of delay.

4. The learned counsel for the appellant submits that the learned Tribunal has erred in not granting a right to recover the compensation paid in favour of the respondent nos.1 and 2 from the respondent nos.3 and 4, the driver and the owner of the Offending Vehicle. He submits that as per the investigation report received from the private investigator appointed by the appellant, the driving licence of the respondent no.3, on the date of the accident, was fake/not genuine. In this regard, he has drawn my attention to a report dated 09.03.2015 issued by one Shri Rakesh Kumar Sharma, Advocate/Investigator.

5. The learned Tribunal, however, has rightly rejected the above submission of the appellant, placing reliance on the testimony of R2W2- Shri. Raj Kumar, Clerk from ARTO Mathura, who was a witness produced by the owner of the



Offending Vehicle. I may quote the relevant observation of the learned Tribunal as under:-

“35. In its written statement R-3 the insurance company has pleaded that as per DAR the licence of R-1 was found to be fake, hence the insurance company is not liable to indemnify the insured. However, during the course of proceedings R-2 has examined R2W2 Sh.Raj Kumar, Clerk from ARTO, Mathura who has proved the record in respect of licence no.DL891/MTR/90 and stated that the said licence was issued in the name of Sh.Ganga Prasad/R-1 and was valid from 21.5.1990 and was valid upto 14.12.2004. Thereafter the said licence was renewed on 18.05.2013 and was valid upto 17.05.2016. He also stated that Rs.150/- was paid a penalty for the priod from 19.3.2011 to 17.05.2013. He further stated that R-1 was authorised to drive Motorcycle and LMV(Pvt.) and he was also authorised to drive HTV till 17.05.2016 and proved the record Ex.R2W2/1. In the cross-examination he denied the suggestion that the entry related to 18.5.2013 to 17.5.2016 is fabricated.

36. Thus as per deposition of R2W2 the driving licence of R-1 was valid on the date of accident and he was authorised to drive HTV also. Hence the defence as pleaded by the respondent insurance company regarding fake driving licence of R-1, becomes forceless.”

6. In absence of any evidence that would contradict the above finding of the learned Tribunal, mere report of the private investigator cannot sustain the challenge to the impugned Award. I, therefore, find no infirmity in the above finding of the learned Tribunal.

7. The next challenge of the learned counsel for the appellant to the Impugned Award is on account of the

Signature Not Verified determination of ‘loss of dependency’ assessed by the learned



Tribunal. The learned counsel for the appellant submits that the learned Tribunal has erred in adding 50% to the income of the deceased towards future prospects.

8. I find no merit in this challenge of the appellant. It had come on record that the deceased at the time of the accident had a permanent job and was aged only about 34 years. In terms of the judgment in *National Insurance Company Limited v. Pranay Sethi And Others*, (2017) 16 SCC 680, an addition of 50% of the actual salary of the income of the deceased towards future prospects, has, therefore, been rightly made by the learned Tribunal.

9. The last challenge of the appellant to the Impugned Award is by stating that the accident had, in fact, taken place due to the negligence of the deceased himself.

10. I again find no merit in the challenge of the appellant. The learned Tribunal has discussed the evidence led by the parties before it, to arrive at a conclusion that the accident had indeed taken place due to the Offending Vehicle being driven in a rash and negligent manner by the respondent no.3 herein. I would do no better than to quote the relevant observations of the learned Tribunal, as under:-

“8. Petitioners also examined Sh.Umesh Ray an eyewitness of the accident as PW2. He tendered in evidence his affidavit Ex.PW2/A and relied on copy of his adhar card Ex.PW2/I and copy of FIR mark A(colly). In his affidavit he has narrated the whole incident as it has taken place. In the cross-examination he denied the suggestion that the accident had taken place on account of negligence of deceased. He also denied the



suggestion that the accident had not taken place with the offending vehicle. He also denied the suggestion that the deceased was carrying some goods on his bicycle and some construction material was lying on the road for repair purpose and on account of construction material, the deceased lost balance of his cycle and fell down of his own. He also denied the suggestion that the accident had taken place with some other vehicle and the offending vehicle has been falsely implicated. He also denied the suggestion that R-1 was not driving the vehicle in rash and negligent manner.

9. *On the other hand R-2 owner examined himself as R2W1. He tendered in evidence his affidavit Ex.R2W1/1 and relied on copy of insurance policy Ex.R2W1/A. In his affidavit he has disputed the negligence on the part of R-1. However, in the cross-examination he stated that he is not an eyewitness of the accident and admitted that the case vide FIR no.419/13 has been registered against R-1. He further stated that he has not lodged any complaint with any authority either with police or administration to the effect that a false case has been registered against R-1.*

10. *Now coming to the factual matrix of the present case it be seen that PW2 who is an eyewitness in the final report has confidently deposed about the manner of accident and the negligence on the part of R-1. Further, as per charge sheet R-1 has been charge sheeted for offences under Section 279/304A IPC. As per mechanical inspection reports of offending vehicle and bicycle, the offending vehicle had hit the cyclist from the back side. As per arrest memo, R-1 has been arrested in the present case. If the contention of R-1 and R-2 is that R-1 has been falsely implicated, in that case why he has not approached higher authorities against his false implication in the present FIR? There is nothing on record to show that the claimant had any enmity with the driver of offending vehicle so as to falsely implicate him in the case. R-1 has neither got himself examined nor brought any independent*



eyewitness in his favour for which this Tribunal draws a adverse inference against him.”

11. In view of the above, I find no merit in the present appeal. The same, along with the pending applications, is dismissed. The appellant shall also pay a cost of Rs.50,000/- to the respondent nos.1 and 2.

12. The appellant, in terms of the order dated 29.11.2016 has deposited the entire awarded amount with the learned Tribunal. By an order dated 02.02.2017, 50% of the awarded amount was directed to be released to the respondent nos.1 and 2/ the claimants. As the appeal has been dismissed, the balance awarded amount, along with interest accrued thereon, be released in favour of the respondent nos.1 and 2 herein.

13. The amount of cost to be paid by the appellant shall also be deposited by the appellant with the learned Tribunal within a period of four weeks and the same shall be released in favour of the respondent nos.1 and 2/claimants by the learned Tribunal.

14. The statutory amount deposited by the appellant shall, however, be released to the appellant, along with interest accrued thereon.

NAVIN CHAWLA, J

AUGUST 22, 2023/rv/am