

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

Reserved on : 12.10.2022
% **Pronounced on : 16.03.2023**

+ **MAC.APP. 901/2018 AND CM APPL. 41709/2018 (stay)**

THE ORIENTAL INSURANCE CO LTD Appellant

Through: **Mr. S. P. Jain, Advocate** (*through video conferencing*).

versus

RANJANA & ORS Respondents

Through: **Mr. H. R. Jha, Advocate** for R-1 to 4.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present appeal under section 173 of the Motor Vehicles Act, 1988 has been filed by the appellant against the Impugned Award dated 09.07.2018 passed by the Ld. Tribunal whereby the Ld. Tribunal has allowed the claim petition.

2. In brief the facts of the case are that deceased Sanjay Jha was working as Technical Sales Executive in M/s ESS-DEE Nutek Infinities Pvt. Ltd. On 30.05.2010, he was going with the company

truck which was loaded with machines and at around 7.45 am when the truck reached near Simri, Village Tola Chamela, Pigha GT Road, North Lane Bridge under the jurisdiction PS-Amas, Bodh Gaya, Bihar, offending Truck bearing no. HR-63-3504 came from Delhi side at high speed in a rash and negligent manner and hit the truck of deceased which was in a stationary position at that time. It was alleged that at the time of accident deceased was sitting towards the right side of his truck. Due to the accident, front portion of the offending truck was damaged completely and deceased Sanjay Jha sustained fatal injury and died on the spot. A case FIR No. 64/2010 under section 279/304-A IPC was registered at Police Station Amas, Bihar.

3. On the basis of the pleadings of the parties, the Ld. Tribunal framed the following issues:-

“(i) Whether the deceased Sanjay Kumar Jha had died of injuries sustained by him in an accident which took place on 30.05.2010 because of rash and negligent driving of the truck bearing registration No. HR 63-3504 by respondent No.1?

(ii) Whether the petitioners are entitled to any compensation, if so, to what amount and from whom?

(iii) Relief.”

4. I have heard the learned counsel appearing on behalf of the Appellant as well as Respondent nos. 1 to 4 and have perused the records of this case.

5. It is submitted by the learned counsel for the Appellant-Insurance Company that the learned Tribunal has failed to consider the fact that accident was caused due to complete negligence on part of the driver of the parked truck as the truck was parked in the middle of road in which the deceased was sitting at the time of accident. He submits that the claimants failed to prove negligence on part of the driver of Truck No. HR-63-3504 and the claim petition filed by the claimants was liable to be dismissed but was erroneously allowed by the Ld. Tribunal. It is further contended that the owner of the offending vehicle has filed a fake cover note of the insurance and thus, the insurance company is not liable to pay any compensation to claimants as the Cover Note is false and fictitious and no premium has been received by the appellant-Insurance company. In order to prove the said contention, the Insurance Company examined its official as R3W1 who has categorically stated that aforesaid Truck No. HR-63-3504 was not insured at the time of alleged accident and that the Cover Note placed on record is false and fabricated. Lastly, it is submitted by the Ld. Counsel for the appellant that the Ld. Tribunal has erred in awarding exorbitant amount of compensation towards pecuniary as well as non-pecuniary heads alongwith rate of interest @ 9% p.a. which is on the higher side and therefore, prays that the appellant-Insurance company be absolved from any liability to pay any compensation to the claimants.

6. On the other hand, the Ld. counsel for the respondent Nos. 1 to 4 has disputed aforesaid claim of the appellant Insurance Company with submissions that there is no infirmity in the impugned award dated 09.07.2018 passed by the Ld. Tribunal, inasmuch as the Ld. Tribunal has already dealt with each and every issue raised by the appellant-Insurance Company herein in great detail while passing of the impugned award and contends that there is no merit in the present appeal, accordingly, it deserves to be dismissed.

7. The Ld. Tribunal while deciding the issue of negligence of the truck bearing registration No. HR-63-3504 in causing the accident which took place on 30.05.2010, leading to death of the deceased Sanjay Jha, made the following observations:

“(vi) Though PW3, in his examination in chief testified that the accident had taken place due the rash and negligence of offending truck bearing no. HR-63-3504 but in his cross examination he deposed that the truck was stationed in the middle road since morning and though at the time of accident there was darkness, but no indicator was given by the said truck to show that it was stationed in the middle of the road. He further admitted that the driver of the offending vehicle (HR-63-3504) applied the brake to avoid the accident but since the truck was stationed in the middle of the road without any indication, accident had taken place. From his testimony it can be safely be culled out that the accident had taken place as the truck was parked in the middle of road and since it was darkness and the parking light of the said truck was not on, accident had taken place though driver of the offending truck trying to avoid the

accident by applying the brake. From his testimony, it can be safely be culled out that there was a contributory negligence on the part of driver of the deceased truck. Since deceased was also sitting towards right side of truck, it was his duty to make suitable arrangement to give signal to vehicles coming from behind that their truck was not in motion. But he also failed to take any such precaution. This shows that there was a contributory negligence on his part also.

(vii) No doubt there was a negligence on the part of the deceased as stated above, but it is not sufficient to absolve the respondents from their liability. Since the respondent no. 1 failed to control the truck after seeing the truck of deceased, it can safely be culled out that the speed of the truck must be high otherwise it would have stopped the truck. Further, being heavy vehicle, respondent no. 1 was supposed to drive the truck towards left side of the road at moderate speed but respondent no. 1 was not driving the truck at extreme left lane, rather he was driving in the middle of the road towards extreme right side of the road. This shows that there was also some negligence on the part of the respondent no. 1.

(viii) Considering the facts and circumstances of the case, 40% negligence is ascertained on the part of the truck in which deceased was traveling and balance 60% is ascertained on the part of the respondent no. 1. In other words, 40% of the amount is liable to be deducted from the total amount of compensation towards contributory negligence on the part of the deceased and his driver. Accordingly, Issue No.1 is decided partly in favour of petitioners and against the respondent no. 1, 2 and 3.”

8. The findings given on this issue against the appellant Insurance Company were mainly on the ground that it can be reasonably inferred from the aforementioned that driver of the offending truck had lost

control of the truck as he could not prevent the accident even after spotting the parked truck and that the truck must have been moving at a high speed as otherwise it would have halted. Furthermore, the driver of the offending truck was meant to drive the truck at a reasonable speed towards the left side of the road, but he instead drove it in the middle of the road, towards the extreme right side of the road. In light of this, it can be inferred that there was some negligence on part of the driver of offending truck as well and therefore, the Ld. Tribunal has rightly held the offending truck to be responsible alongwith the deceased and his driver.

9. As far as the contention of the learned counsel for the appellant that there is complete negligence on part of the driver of parked truck, this Court is of the opinion that the same cannot be accepted as although, there is no dispute in this regard that these matters are to be decided on the basis of preponderance of probabilities, however, that does not mean that the Court has to shut its eyes on the peculiar facts and circumstances of each case and just because there was negligence on the part of deceased, the insurance company is to be absolved from their liability completely.

10. Now coming to the issue raised by the Ld. Counsel for the appellant that the owner has filed a fake cover note of the insurance. Perusal of the records of this case including the testimony of R3W1

and the findings of the Ld. Tribunal given in the impugned award, reveals that R3W1 in his examination-in-chief, had stated that the offending vehicle was not insured with the Insurance company and that the alleged cover note was a fake and fictitious document, however, during his cross-examination, he acknowledged that he had not presented the company's sample cover note, which was in use at that time in 2009. Although he had testified that the seal on the cover note is not of the company but his testimony to that degree lacks credibility given the fact that he did not file the sample cover note from the relevant period. He further deposed that he was unsure whether the company owns the phone number which was listed in the cover note. The insurance company has even failed to take any kind of action against the registered owner of the vehicle for furnishing a fake cover note.

11. It is pertinent to note here that the cover note goes to show that the premium was paid to the insurance company by way of cheque bearing no. 246415, drawn on ICICI bank Ltd. for a sum of Rs. 6,722/-, however, throughout the inquiry, insurance company failed to lead any evidence in support of their contentions, showing that the said cheque was either not received by them or that they did not present or encash the cheque in question in the account of insurance company. The Insurance Company has, in toto, failed to bring on record any evidence adducing that the cover note filed by the owner of offending vehicle

was never issued by the insurance company or that the insurance company had not received the premium as mentioned in the cover note.

12. The Ld. Tribunal while deciding the aforesaid issue of 'fake cover note' has made the following observations:

“Perusal of the cover note reveals that the premium was paid to the insurance company by way of cheque bearing no. 246415 drawn on ICICI bank Ltd. of ₹ 6,722/- but during inquiry insurance company did not lead any evidence to show that the said cheque was not presented or encashed in the account of insurance company. Since the premium was paid through Cheque, by examining the bank official, insurance company could easily prove that the said cheque was never issued by the insured and it had never been debited from the account of the insured. Similarly, insurance company could also produce its bank statement that no such payment was ever received by the insurance company. But insurance company deem it appropriate not to lead best evidence available with it. Similarly, insurance company failed to adduce any evidence to show that the cover note bearing no. 0245697 was never issued by the insurance company at the relevant time. In the absence of any such evidence, I am of the considered opinion that the evidence adduced by the insurance company is not sufficient to hold that the cover note placed on record is a forged and fabricated document.”

13. Looking into the entire circumstances and in view of the discussions mentioned hereinabove, I am of the considered opinion that the Ld. Tribunal has dealt with each and every issue in great detail and the quantum of compensation granted by the Ld. Tribunal is just and

proper, therefore, this Court finds no infirmity in the impugned Award dated 09.07.2018, passed by the Ld. Tribunal. Accordingly, the impugned Award is upheld and the present appeal stands dismissed alongwith pending applications, if any.

RAJNISH BHATNAGAR, J

MARCH 16, 2023

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