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

Date of decision: 19.10.2023

(13)+ MAC.APP. 1066/2018 & CM APPL. 49934/2018 & 25655/2019

SHRIRAM GENERAL INSURANCE CO LTD

..... Appellant

Through: Ms.Sunanda Nimisha &
Mr.Surjan Singh, Adv.

versus

NAUSHAD NAZ & ORS

..... Respondents

Through: Ms.Aruna Mehta, Adv. for R-1
& R-2.

(14)+ MAC.APP. 1159/2018 & CM APPL. 54422/2018 & 54849/2019

NAUSHAD NAZ & ANR

..... Appellants

Through: Ms.Aruna Mehta, Adv.

versus

MOHD ASIF & ORS (SHIRIRAM GENERAL INSURANCE CO LTD)

..... Respondents

Through: Ms.Sunanda Nimisha &
Mr.Surjan Singh, Adv. for
Insurance Company.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)



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1. These cross appeals have been filed challenging the Award dated 08.08.2018 passed by the learned Motor Accidents Claims Tribunal (Pilot Court), Karkardooma Courts, Delhi in MACT No. 551/2016 titled *Smt. Naushad Naz & Anr. v. Mohd. Asif & Ors.*

2. By the impugned Award, the learned Tribunal has held that the claimants had been unable to prove that the accident had taken place due to the offending vehicle, that is, the truck bearing registration no. UP 21 N 1098, being driven in a rash and negligent manner. The learned Tribunal has, therefore, by the Impugned Award, treated the Claim Petition as one under Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') and awarded compensation of Rs.5,00,000/- in favour of the claimants.

BACKGROUND FACTS

3. Briefly stated, it was the case of the claimants before the learned Tribunal that the deceased Sh.Avid @ Abid along with his wife Naushad, on 07.01.2015, was going on a motorcycle to Sirsi. At about 12:30 PM, when they reached Wazid Puram, the offending vehicle came from the front side being driven in a rash and negligent manner by Mohd. Asif (respondent no.1 in MAC.APP. 1159/2018) and hit the motorcycle. The offending vehicle was being driven on the wrong side of the road as it was trying to escape the checking by the RTO. Due to the accident, the deceased suffered grievous injuries. He was rushed to the



Government Hospital in Sambhal, UP by the wife of the deceased, and from there he was referred to the Government Hospital Moradabad. Thereafter he was taken to the Safdarjung Hospital, Delhi, where he unfortunately succumbed to his injuries on 19.01.2015. The above Claim Petition was filed claiming compensation for his death in the motor vehicular accident.

4. As noted hereinabove, the learned Tribunal held that the claimants had been unable to prove that the accident had taken place due to the offending vehicle being driven in a rash and negligent manner. The learned Tribunal granted compensation of Rs.5,00,000/- in favour of the claimants under Section 163A of the Act.

CHALLENGE BY INSURANCE COMPANY

5. The Insurance Company challenges the above Impugned Award contending therein that the learned Tribunal erred in awarding compensation under Section 163A of the Act to the claimants as the claimants had been unable to prove the involvement of the offending vehicle in the accident.

6. The learned counsel for the Insurance Company submits that the wife of the deceased gave her evidence as PW-3 before the learned Tribunal. The learned Tribunal, however, held that her testimony does not appear to be trustworthy as an eyewitness. Once her testimony is disregarded, there was no other evidence of the involvement of the offending vehicle in the accident. She submits that, therefore, compensation, even



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under Section 163A of the Act, could not have been awarded in favour of the claimants.

SUBMISSIONS OF THE CLAIMANTS

7. On the other hand, the learned counsel for claimants submits that the learned Tribunal has erred in not placing reliance on the testimony of the wife of the deceased (PW-3). She submits that from the Casualty Report of the Government Hospital, Sambhal, UP, it was evident that it was the PW-3 who after the accident had rushed the deceased to the hospital. The father of the deceased- Sh.Mehboob Hassan filed a complaint regarding the accident with the police on 08.01.2015, wherein also he stated that the wife of the deceased was accompanying the deceased at the time of the accident. The FIR was also lodged based on the said complaint. She submits that merely because PW-3 could not prove that she had sustained any injury in the accident, whereas, in fact, it was never the case of the PW-3 that she had indeed suffered any such injury in the said accident, the learned Tribunal has erred in doubting her presence at the place of the accident.

8. She further submits that the evidence of PW-3 was consistent and could not be demolished by the Insurance Company. She submits that though the driver and the owner of the offending vehicle had filed their written statement denying the involvement of the offending vehicle in the accident, they never appeared as witnesses before the learned Tribunal nor cross-examined PW-3 on the manner of the accident or



regarding the factum of the involvement of the offending vehicle in the accident. PW-3 was cross-examined only by the Insurance Company, who also did not give any suggestion to the eyewitness disputing her presence at the site of the accident. She submits that the learned Tribunal has, therefore, erred in converting the Claim Petition from one under Section 166 of the Act and awarding compensation only under Section 163A of the Act.

ANALYSIS AND FINDINGS

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

10. From the Causality Report and from the complaint filed by the father of the deceased, it is evident that the deceased had been rushed to the hospital immediately after the accident by the wife of the deceased, that is, PW-3. The father of the deceased had also reported to the police on the very next day of the accident that the wife of the deceased was accompanying the deceased at the time of the accident. Though the driver and owner of the offending vehicle filed their written statement denying the involvement of the offending vehicle in the accident, they never appeared as witnesses before the learned Tribunal. They also did not cross-examine the PW-3. As far as the Insurance Company is concerned, it did not even give a suggestion to PW-3 that she was not present at the time of the accident and was not an eyewitness to the same. The statement of PW-3 was consistent throughout and could not be shaken in



the cross-examination either.

11. Merely because PW-3 could not prove any injury suffered by her in the accident, her testimony cannot be disregarded as being not trustworthy. It is not necessary for a pillion rider to also sustain injuries in an accident. In any case, the Claim Petition was not to make a claim for the injury sustained by PW-3 but for the death of the deceased.

12. The learned Tribunal has further observed that the testimony of PW-3 stood shattered in her cross-examination as she failed to answer relevant questions during cross examination regarding the mode and manner of the accident; reporting the matter to the police; driving licence of the deceased; recording of her statement by the police, etc.; and she has also not been made as an eyewitness of the accident in the charge-sheet. The Tribunal observed that her name is not referred to either as complainant or witness of the accident.

13. I am unable to agree with the above reasoning of the learned Tribunal. PW-3 in her evidence by way of affidavit had narrated the manner of the accident. Her cross-examination on which the learned Tribunal places reliance to disbelief her testimony, is reproduced hereinbelow:-

*“PW-3: Statement of Ms.Naushad Naz
W/o. Late Avid recalled for cross-examination
after 31.08.2017*

On SA

*xxxxx by Mr. Vimal Kumar, Adv. for defendant
no.3/insurance company*

*At the time of the accident I was going
from Sambhal to Moradabad on Pulsar Bike.*



There was divider on the road/highway where accident had taken place. The truck had hit our motorcycle from its front side (it was case of head on collusion) and at the time of accident truck was being driving in wrong/opposite direction. Bike was being driven on the left side of the road. I can not tell at what distance from extreme left side of the road the bike was being driven.

I do not remember whether police recorded my statement regarding the accident at any point of time. After the accident I was conscious but I was mindless. Since I had seen the offending vehicle on the spot so I had noted down the number of the said vehicle. I do not know by whom the FIR got registered. I cannot tell whether my husband was having DL to drive the bike.

It is wrong to suggest that accident was caused due to the negligence of my husband. It is wrong to suggest that I have not noted down the number of offending vehicle. It is wrong to suggest that alleged offending vehicle/truck was not involved in the accident. At the time of accident I was residing at Sambhal with my husband.

My husband was working as Tailor with Javed Akhtar @ Guddu who was running a tailoring shop named as S.K. Tailor at Tehsil Road, Sambhal, UP. He was getting salary of Rs.12,000/- per month, initially and at the time of his death his salary was Rs.15,000/- per month. He was working with S K Tailors since June 2013. His salary was increased to Rs.15,000/- in the year 2014 but I cannot tell about the month in which salary was increased. He was getting salary in cash. My husband had studied upto 9th class. My husband was not having any certificate regarding any tailoring course. It is wrong to suggest that my husband was not working as Tailor and earning Rs.15,000/- per month. (Vol. Even father of my husband was working as tailor). It is correct that my husband was not income tax assessee. It is wrong to suggest



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that I have not spent Rs.80,000/- over the treatment of my husband and further a sum of Rs.20,000/- over conveyance.

We had taken rented accommodation at Jagjeet Nagar, Usmanpur, Delhi in 01st September, 2016. It is wrong to suggest that no premises was hired at Inderlok during the treatment of my husband. My husband is survived by me and my daughter aged about 6 years. I have not remarried. It is wrong to suggest that I have filed false and fabricated documents.”

14. Firstly, it is to be noted that the above cross-examination is conducted by the Insurance Company and not by the owner or the driver of the offending vehicle. Secondly, in her cross-examination as well, PW-3 not only explains the manner of the accident but also appears to be truthful about the police not recording her statement. Merely because the police did not record her statement though she was an eyewitness to the accident, cannot in any manner prejudice her claim before the learned Tribunal.

15. Keeping in view the above, in my opinion, the testimony of PW-3 has been wrongly discredited and has been wrongly found untrustworthy by the learned Tribunal.

16. PW-3 has clearly stated about the involvement of the offending vehicle and the manner of the accident.

17. As the Supreme Court has reiterated in its judgment of ***Vimla Devi v. National Insurance Co. Ltd.***, (2019) 2 SCC 186, it is to be remembered that Motor Vehicles Act, 1988 is a beneficial piece of legislation and has been enacted to give



solace to the victims of a motor accident. In a claim arising out of a motor vehicle accident, the claimant is not to prove the claim beyond reasonable doubt but only on a touchstone of preponderance of probability. As for the present case, the said test was made by the claimants.

CONCLUSION

18. In view of the above, I hold that the involvement of the offending vehicle and the fact that the accident had taken place with the offending vehicle being driven in a rash and negligent manner on the wrong side of the road was duly established by the claimants. The claimants are, therefore, held entitled to compensation under Section 166 of the Act.

DIRECTIONS

19. This leaves me with two options:-

- i) To determine the compensation myself; or
- ii) To remand the Claim Petition to the learned Tribunal for determining the compensation.

20. As the evidence with respect to the income of the deceased and other parameters which are relevant for the purposes of determining the compensation, has not been discussed by the learned Tribunal in the Impugned Award, I deem it appropriate to adopt the second option available to me, that is, to remand the Claim Petition to the learned Tribunal for determination of the compensation.

21. It is noticed that the accident had taken place on 07.01.2015 and more than eight years have since passed. The



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evidence of the parties already stands recorded before the learned Tribunal.

22. Accordingly, the learned Tribunal is directed to adjudicate upon the quantum of compensation within a period of two months of the date of remand, after hearing the counsels for the parties.

23. The Insurance Company has deposited the awarded amount along with interest with the learned Registrar General of this Court, in compliance with the order dated 30.11.2018. The said amount along with interest accrued thereon shall be released in favour of the claimants. The same shall be duly accounted for by the learned Tribunal while making the final award pursuant to the remand.

24. The parties shall appear before the learned Tribunal on 16th November, 2023.

25. The statutory amount deposited by the Insurance Company along with interest accrued thereon be released to the Insurance Company.

26. The appeals are disposed of with the above directions.

27. There shall be no order as to costs.

28. The Trial Court Record be returned back to the learned Tribunal forthwith.

NAVIN CHAWLA, J

OCTOBER 19, 2023/rv