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

% Date of decision: 5th February, 2024

+ MAC.APP. 83/2024

M/S NATIONAL INSURANCE COMPANY LTD

..... Appellant

Through: Ms. Rakhi Dubey and Mr.
Sandeep Kumar Dubey, Advs.

versus

MS. SAVITA & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 6626/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

MAC.APP. 83/2024 & CM APPL. 6625/2024 (Stay)

3. The appellant/Insurance Company is assailing the impugned judgment-cum-award dated 10.11.2023 passed by the learned Presiding Officer, Motor Accident Claims Tribunal-02, Shahdara, Karkardooma Courts, Delhi¹ primarily on the ground that the learned Tribunal erred in finding the involvement of the offence vehicle bearing registration No. RJ-02CB-8286 in the accident resulting in the death of the deceased/motorcycle rider, Mr. Rajesh Kumar Sharma.
4. Learned counsels for the appellant referred to the contents of the First Information Report² *vis-a-vis* testimony of R3W1/IO-SI Om Prakash from Police Station Kotwali District Sambhal, Uttar Pradesh

¹ Tribunal



besides that of PW-2 Mahender Singh, who was produced as an eye witness to the accident. It was submitted that in the FIR No. 177/2015 under Section 279/337/304A of the Indian Penal Code, 1860³ Police Station Sahibabad, Ghaziabad no details about the offending vehicle were given and it was also reported that the deceased motorcyclist was struck by some unknown vehicle and when he fell down there was another vehicle, which came from behind and crushed the head of the injured motorcyclist and fled away from the spot leading to the death of the injured at the spot. It was also urged that that testimony of R3W1 i.e. the Investigating Officer was based on the information by the secret informer, thereby enabling him to trace the whereabouts of the offending vehicle as well as the registered owner is not fathomable. While, the PW-2 in his testimony does not inspire confidence as to the manner in which the accident had occurred.

5. The aforesaid submissions on the part of the appellant/Insurance Company have been dealt with by the learned Tribunal in the impugned judgment-cum-award vide paragraph (14) and it would be expedient to reproduce the same, which goes as follows:

“14. Having considered the submissions and going through the evidence of R3W 1, the fact that involvement of offending vehicle has been made belatedly in the investigation of criminal case on the basis of information given by secret informer, ipso facto cannot be considered to be a reason for concoction or fraudulent involvement of vehicle when nothing has come on the judicial record. It is matter of record that driver/respondent no. 1 of the offending vehicle bearing no.RJ-02CB-8286 faced prosecution in the criminal case. Certified copy of criminal case documents are on record. Moreover PW2 is the eye witness who also deposed

² FIR

³ IPC



consistently regarding the manner in which accident taken place. Thus on the basis of evidence of PW2 coupled with documents on record, there is sufficient evidence available on record to prove that accident has taken place due to rash and negligent driving of respondent no. 1. Issue thus decided in favour of petitioner and against the respondents.”

6. On a careful perusal of the material on the record, this Court finds that the learned Tribunal has correctly appreciated the evidence that was brought on the record. Incidentally, R3W1/SI Om Prakash was a witness for appellant/insurance company only, whose testimony goes as under:-

I am summoned witness and have brought the summoned record i.e. copy of case diary which was attested by me as original is filed in Ld. ACJM-8, Ghaziabad Court. On 20.2.2015, I got lodged the FIR and Investigation was marked to me. I recorded statement of Subhash Chand. In FIR, the name of driver and number of offending vehicle is mentioned. On 24.2.2015, I further investigated the case but there was no clue regarding the offending vehicle. On 26.2.2015, I recorded statement of witness of Punchnama. On 2.3.2015, I had taken the PM report of deceased and thereafter on 18.3.2015, I got mechanical inspection report of vehicle which was driven by the deceased. On 28.4.2015, I again conducted investigation of the case and made efforts to search out the offending vehicle as well as driver. During investigation, one informer (mukhbir) informed me that the vehicle involved in accident dated 19.2.2015 was bearing no. RJ 02CV 8286 and owned by Rajnish Kumar R/o Alwar, Rajasthan and presently was residing at C-80, DLF, Dilshad Garden, Delhi and driver of vehicle at the time of accident was Sunil. I was further informed that Sunil was going to his village by this vehicle and caused this accident on the way which was witnessed by one Mahender S/o Dharam Singh R/o village Nistoli, Loni, Ghaziabad, UP who was behind the offending vehicle at the time of accident and was going to his village after selling out of milk at Delhi. I recorded statement of Mahender on 28.4.2015. I conducted the investigation on the basis of informer including arrest of accused/driver and impleadment of witnesses and then filed chargesheet before the concerned court. I do not know whether SI Jayant Singh was posted with PS in which I was posted at the time of this



investigation. I filed charge-sheet on 23.5.2015. Copy of case diary is Ex.R3W1/A (colly. 23 sheets)

XXXXXXXXXXXX by Ms.Sulekha Thakur, counsel for petitioner

Nil. Opportunity given for cross examination.

XXXXXXXXXXXX by respondent No. 1 &2

Both are ex-parte.”

7. First things first, the aforesaid testimony was allowed to remain on the record, without any request by the insurance company to treat the witness as hostile and there was no request for cross-examination on the part of the insurance company. Although the provisions of Indian Evidence Act,1872⁴ are not strictly applicable in summary proceedings like the present one, Section 114 of the IEA raises a presumption that the police official during the course of the investigation unearthed the relevant facts in the ordinary course of his official duties. It is the categorical testimony of R3W1 that during the course of investigation he was able to locate the offending/insured vehicle bearing registration No. RJ-02CB-8286, which was owned by Mr Rajesh Kumar, a resident of Alwar, Rajasthan, who disclosed that at the time of the accident, vehicle was driven by one Mr. Sunil and the accident was also witnesses by one Mr. Mahender Singh S/o Sh Dharam Singh. Evidently, R3W1 had no ulterior motive to depose falsely on the matter in issue. Further, Mr. Mahender Singh was examined as PW-2 and his testimony on the record also categorically brings out that the motorcycle which was being driven by the deceased, was hit by the offending car bearing No. RJ-02CB-8286 when it was trying to overtake the motorcycle from the left side. Merely because PW-2 was not able to recall the registration of the

⁴ IEA



motorcycle or that his statement was recorded by the police after 4-5 days of the accident, is hardly of any significance when it was his categorical testimony that he had informed the Police Chowki about the accident and his address was taken by the police. It was explained by PW-2 that he had left the deceased at the spot and went to the police chowki which was about half a kilometre to inform them about the accident and his conduct cannot be said to be unnatural or tainted in any manner. As a matter of fact, PW-2 was able to give a vivid description about the place of occurrence as well, which was not challenged in his cross-examination. There is no evidence on the record that he was a planted witness.

8. As regards the plea that some other vehicle had hit the deceased, the said aspect was not brought to the fore by the appellant/insurance company during the inquiry/trial nor any witness was prodded about the same. In any case, the primary responsibility for the accident lies in the rash and negligent driving of the offending insured vehicle.

9. In view of the foregoing discussion, I find that the impugned judgment-cum-award passed by the learned Tribunal does not suffer from any illegality, infirmity or incorrect approach in law.

10. Accordingly, the present appeal is dismissed in *limine*.

11. The application also stands disposed of.

DHARMESH SHARMA, J.

FEBRUARY 05, 2024

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