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

% **Date of decision: 4th March, 2024**

+ **MAC.APP. 117/2024 & CM APPL. 11237/2024**

TATA AIG GENERAL INSURANCE COMPANY LTD.

..... Appellant

Through: Ms. Vandana Kahlon and Mr.
Rudra Kahlon, Advs.

versus

SMT. PREETI WIFE OF DECEASED & ORS..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 11309/2024 (Exemption)

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

CM APPL. 11310/2024 (delay in filing)

3. This is an application filed by the applicant/appellant seeking condonation of delay of 45 days in filing the present appeal.
4. For the reasons stated in the application and in the interest of justice, the same is allowed. The delay of 45 days in filing the present appeal is condoned.
5. The application stands disposed of.

MAC.APP. 117/2024

6. This appeal has been preferred by the appellant/insurance



company under Section 173 of the Motor Vehicles Act, 1988¹ assailing the impugned judgment-cum-award dated 27.09.2023 passed by learned Presiding Officer, Motor Accident Claims Tribunal-01 (South-West District), Dwarka Courts, New Delhi² on the limited ground that the offending vehicle, which was evidently insured, was not involved in the accident.

7. Shorn of unnecessary details, the claimants are the wife, two minor daughters and parents of the deceased Upender Dagar, who met with a motor accident on 17.09.2021 when his Scooty bearing registration No. DL-3SES-8364 was allegedly hit by a Bolero Jeep bearing registration No. DL-1LAA-6591 driven by respondent No.6 Satpal in a rash and negligent manner near village Dhansa, South-West Delhi. The injured received fatal injuries resulting in his death on 18.09.2021. Evidently, FIR No. 145/2021 PS Jaffarpur Kalan under Section 279/304A of the Indian Penal Code [“IPC”] was registered.

8. The learned Tribunal decided issue No.1 with regard to the involvement of the offending vehicle i.e. Bolero Jeep and whether or not respondent No.6 was driving in a rash and negligent manner and held as under:-

“In order to discharge his onus, the petitioners got examined PW02-Shishpal @ Majar who claimed himself to be eye-witness to the present accident. As per his testimony, on 17.09.2021, he was going on his motorcycle towards his home, at village Dhansa, South-West Delhi-110073 when he reached near Sahid Baba Majar at the same, he saw Scooty bearing Registration No. DL-3SES-8364 ahead of him, suddenly, a Bolero Jeep

¹ MV Act

² Tribunal



2024:DMC:1769



Bearing Registration no. DL-1LAA-6591 which was being driven in very, speed and negligent manner hit the victim's who was riding on scooty. The said accident occurred due to the sole negligence of the driver of the offending vehicle. The concerned officer of J.P. Kalan recorded his statement regarding this accident.

It is worthwhile to mention here that during the cross-examination, PW02-Shishpal denied the suggestion that he was not present at the time of accident or that the vehicle bearing No. DL-ILAA-6591 was not involved in the accident and had been wrongly implanted.

It is worthwhile to mention here that the cross-examination was done by Id. counsel for the respondent no. 3/insurance company (since cross-examination on behalf of R1 & R2 is nil) is not suggestive of anything which may discard the claim of the petitioners.

On the other hand, the respondent No. 3/Insurance company got examined R321-Retd. SI-Raj Kumar. He testified that The original case file of FIR bearing No. 145/21 P.S.-J.P. Kalan U/s 279/304A IPC had already been filed before the concerned Id. M.M. of P.S.- Jaffarpur. That day, he had brought the copy of statement of witnesses namely Mr. Harish S/o Sh. Wazir, Mr. Pravesh S/o Sh. Krishan Kumar, Mr. Chander Prakash, Smt. Pushpa Rani W/o Sh. Rajesh Kr. Dagar, Mr. Shishpal @ Mazar S/o late Sh. Zile Singh, Mr. Krishan Kumar S/o Sh. Zile Singh, Smt. Preeti W/o late Upender Singh and in a case dairy, statement of SI-Kuldeep Singh No. 1130/D, PIS No. 28823373 and statements of Const. Sonpal No. 861/DW, PIS No. 28081858, Statement of Const. Sonpal dated 18.09.2021. Same are Mark-A (colly) (running into 15 pages). Since he was the investigating officer, I had kept one set of case file with him and he had brought the documents Mark-A from the set retained at his end. He had not given U/s 160 Cr.P.C. notice to any of the witness. The eye-witness-Sh. Shishpal was brought by Ms. Pushpa Rani on 22.10.2021. Ms. Pushpa Rani was working as SI with Delhi Police. She was posted at P.S.-J.P. Kalan at the time of accident. He had given notice U/s 133 Cr.P.C. to the owner of the offending vehicle on 22.10.2021. He did not remember when he had seized the offending vehicle. (Vol. Vehicle was seized after it was presented by the owner). Mechanical Vehicle Inspection of the offending vehicle was done on 18.10.2021. There was no CCTV camera installed near the spot of accident. The number of the offending vehicle was told by Shishpal. Later, the registration number of the offending vehicle was also told by Sahil who was son of owner of the offending



vehicle.

Further, the respondent no. 3/insurance company also got examined Sh. Satbir Singh, Asst. Ahlmad in the Court of Abhinav Ahlawat-Id. MM-12, Souht-West District, Dwarka Courts, New Delhi as R4W2.

It is worthwhile to mention here that nothing came from the testimony of R3W1-Retd. SI-Raj Kumar and R4W2- Satbir Singh which could help the case/defence of the R3/insurance company.”

9. Learned counsel for the appellant/insurance company vehemently urged that it was a stark case where PW-1 Shishpal was planted as a witness so as to falsely implicate the offending vehicle/insured vehicle although in the first incident report prepared on 18.09.2021, there was no mention of the registration number of the offending vehicle. Alluding to the testimony of PW-1 Shishpal recorded during the course of the trial, it was urged that this testimony was in total contradiction to what he deposed in the criminal trial vide FIR No. 145/2021 before the learned Metropolitan Magistrate [“MM”].

10. Much mileage was sought to be taken from the copies of the Call Data Records [“CDRs”] of the mobile phone of PW-1 Shishpal so as to canvas the plea that on the date of the incident i.e. 17.09.2021, all the time from 13:27:28 till late in the night i.e. 21:10:45 the location of his mobile phone was shown to be opposite Sarvodya Girls School, Dhansa Village, Delhi, Dhansa Border.

11. I am afraid the submissions made by the learned counsel for the appellant/insurance company cut no ice. The testimony of PW-1 Shishpal was recorded before the learned Tribunal on 17.03.2023 whereas he was examined as a witness before the learned MM as a



prosecution witness on 29.08.2022. In other words, the appellant/ insurance company should have known that the witness has given a certain version of the incident in the judicial proceedings and they could have very well made an attempt to procure its copy and confront him with his previous testimony when he was cross-examined before the learned Tribunal on 17.03.2023.

12. Be that as it may, even a bare reading of the deposition recorded before the learned Tribunal as also before the learned MM, except for the time of the incident which is stated to be 8.30 p.m. and 7.30 p.m. respectively i.e. 8.30 p.m. before the learned Tribunal and 7.30 p.m. before the learned MM, there is no further patent contradiction. PW-1 categorically testified that although he had not seen the accident, he had very much come to the spot. PW-1 Shishpal in his testimony categorically deposed that the Bolero Jeep had hit the Scooty from the driver side. Infact even the Investigating Officer Retired SI Raj Kumar was examined as R3W1 in the Court and his version that the accident had occurred involving the offending vehicle was not controverted in any manner. There was no apparent motive for the Investigating Officer to falsely implicate the offending vehicle.

13. As regards the CDRs, PW-1 Shisupal was never confronted with such records. The CDR has been obtained without any certificate from the concerned quarters under Section 65-B of the Indian Evidence Act. Not much mileage can be sought from the fact that he had not made any call to the police despite carrying the mobile number 9821347313 at the time of accident. To the same effect was his testimony before the learned MM which was recorded on



29.08.2022. Although, he deposed before the learned MM that his statement was recorded after 10 days of the accident, that irregularity, if at all, should have been addressed to the Investigating Officer R3W1.

14. Since, no other ground is canvassed in the present appeal, for the foregoing reasons, I find that the present appeal is bereft of any merits. The same is accordingly dismissed.

15. The appellant/insurance company is directed to deposit the entire amount of the compensation with accrued interest with the learned Tribunal within two weeks from today. The amount of compensation be released to the claimants in terms of directions passed by the learned Tribunal.

16. The appeal along with pending application stands disposed of.

DHARMESH SHARMA, J.

MARCH 04, 2024

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