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

\+ MAC.APP. 196/2024, CM APPL. 20799/2024

THE ORIENTAL INSURANCE CO LTD

.....Appellant

Through: Mr. JPN Shahi, Advocate.

versus

SMT JANKI DEVI AND ORS

.....Respondent

Through: Mr. Manoj B, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% 08.10.2024

1. An Appeal under Section 173 Motor Vehicle Act, 1988 has been filed on behalf of the Insurance Company to challenge the Award dated 08.12.2023 vide which the Insurance Company has been held liable to pay the compensation in the sum of Rs.27,20,710/- along with interest @8% p.a., on account of demise of Shri Anil Kumar aged 32 years in the road accident.

2. The Insurance Company is aggrieved by the finding of the negligence of the alleged offending vehicle, as held by the learned Tribunal in the impugned Award. It has been argued that this is one unique case where a scooty which was hit by the car in which the deceased was travelling, has been held to be the offending vehicle. It is not comprehendible as to how a smaller vehicle can be termed as an offending vehicle. It is further

submitted that the testimony of the eye witness shows that the driver of the car/deceased was drunk. Furthermore, as per the eye witness, the pillion rider of the scooty, because of the impact had rolled over and fallen on the wind screen of the car. However, PW2 Shri Deepak has admitted in his cross-examination that the wind shield of the car was not broken, which is highly improbable. The only evidence led by the claimants to prove the negligence of the driver was this eye witness PW2 Deepak, whose testimony does not in any manner establish the negligence. Therefore, the finding of the alleged offending vehicle as negligent is incorrect and no liability can be imposed on the Insurance Company to pay the compensation amount.

3. The Appellant has also challenged the interest as being on the higher side.

4. **Learned counsel on behalf of the Claimant**, who has appeared on advance Notice, has argued that it is an admitted case that the scooty was coming from the wrong side of the road. The speed of the scooty was so high that even the pillion rider on the scooty rolled over and fell on the wind shield of the car. The impact was so high that the driver of the car/deceased suffered head injury, which proved fatal, subsequently. It is submitted that the Tribunal has considered the entire evidence and has rightly held that the driver of the scooty was rash and negligent and was responsible for causing the accident. The liability to pay the compensation amount has been rightly levied on the Insurance Company with which the scooty was insured. It is submitted that there is no infirmity in the impugned Award and the Appeal is liable to be dismissed.

5. Learned counsel on behalf of the Claimant/respondent has submitted that the interest has been given at the rate which is generally followed.

However, it is pointed out that while the interest has been awarded @ 9% per annum in paragraph 26 of the Award, there is a typographical error in mentioning the rate of interest as 8% per annum in paragraph 28 of the Award while affixing the liability on the driver/owner to pay the compensation, to be paid by the Insurance Company for and on behalf of the driver and the owner.

6. **Submissions heard**.

7. It is not in dispute that the Chargesheet has been filed against the driver of the scooty, which is pending trial. In the Chargesheet, after due investigations it has been concluded that the accident occurred on account of the negligence of the Tenjin, the driver of the scooty.

8. In the present case as well, the learned Tribunal has in detail considered the testimony of the eye witness PW2 Deepak to conclude that the negligence was of the driver of the scooty.

9. The first argument on behalf of learned counsel for the Insurance Company/appellant is that peculiarly in this case, the smaller vehicle has been held as the offending vehicle. This argument is not tenable on the face of the record. It has been categorically deposed by PW2 Deepak that the scooty had come *from the wrong side of the road*. The speed of the scooty can be well gauged from the fact that after the impact, the pillion rider of the scooty fell over the wind shield of the car. Though, a suggestion had been given that the driver of the car/deceased was drunk, but no cogent evidence in this regard has been proved. The manner in which the accident has happened which is not disputed, it is quite evident that the negligence has been rightly attributed to the driver of the scooty.

10. Learned counsel on behalf of the respondent has pointed out that there

is discrepancy in mentioning the rate of interest. While in paragraph 26 of the impugned Award the rate of interest has been specified as 9% per annum, but while granting the final relief, the interest has been directed to paid @8% per annum. Learned counsel on behalf of the Insurance Company, however, has submitted that the rate of interest is 7.5% which is being granted and the rate of interest is excessive.

11. The accident is of the year 2022 nd considering the prevailing market practice, it cannot be said that the rate of interest is on higher side. However, considering the discrepancy of rate of interest in the two paragraphs of the Award, it is hereby clarified that the interest payable shall be @ 9% per annum.

12. There is no infirmity in the Order of the learned Tribunal.

13. The Appeal is accordingly disposed of.

NEENA BANSAL KRISHNA, J

OCTOBER 8, 2024
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