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

% **Date of decision: 22nd May, 2024**

+ **MAC.APP. 240/2024**

**BAJAJ ALLIANZ GENERAL INSURANCE COMPANY
LIMITED** Appellant

Through: **Mr. Ankit Chaturvedi and Mr.
Shubham Aggarwal, Advs.**

versus

SMT. KAVITA AND ORS Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 26571/2024 (Ex.) & CM APPL. 26572/2024 (Ex.)

1. Allowed, subject to just all exceptions.
2. The applications stand disposed of.

MAC.APP. 240/2024 and CM APPL. 26573/2024 (Stay)

3. The appellant/insurance company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988¹ assailing the impugned judgment-cum-award dated 15.01.2024 passed by learned Presiding Officer, Motor Accident Claims Tribunal-02, Shahdara, Karkardooma Courts, Delhi², challenging the factum of accident and involvement of the offending vehicle

¹ M.V. Act

² Tribunal



4. None appeared for the respondent-claimant as well as the driver and the registered owner of the offending vehicle despite sending advance notice.
5. Shorn of unnecessary details, it appears that FIR³ No. 321/2015 under Section 279/304-A of the Indian Penal Code, 1860 was registered at Police Station M.S. Park to the effect that on 19.06.2015 at about 2.10 p.m. DD No. 23 was received to the effect that one Jitender S/o Shri Gurcharan Das has been admitted in Swami Dayanand Hospital due to sustaining injuries in an accident that had taken place at Shahdara Flyover, in which tyre of TSR⁴ No. DL-1RJ-1240 had got detached and the Doctor had declared the injured as 'brought dead'.
6. During the course of investigation by the police, statement of one eye witness, namely Rinku S/o Shri Shyam Lal came to be recorded, which brought about the involvement of Champion Vehicle bearing registration No. DL-1LL-0980, that was being driven rashly and negligently by its driver i.e. respondent No.2 and as a result of the impact the wheel of the TSR got detached, due to which the TSR hit the divider and turned turtle.
7. Learned counsel for the appellant/insurance company has vehemently urged that the registration number of the offending vehicle was not indicated in the DD No.23 dated 19.06.2015, recorded at 2.10 p.m. and it was vehemently urged that testimony of PW-2 Rinku S/o Shyam Lal was not credible.

³ First Information Report

⁴ three-seater auto rickshaws



8. It would be apposite to reproduce the observations made by the learned Tribunal while deciding issue No.1 as to whether respondent No.2 Beyas Singh was guilty of rash and negligent driving resulting into fatal injuries to the deceased, which go as under:-

9. In this case as is evident from the perusal of the DAR on 19.06.2015 when accident took place information received to MACT Cell from PS M.S. Park, wherein it was mentioned that the driver of the TSR died due to detachment of tyre of the TSR and driver received injuries. It is on the basis of such information local police station registered the FIR no.321/2015, when there was no details regarding the manner in which accident has taken place as that stage no eye witness was found either at the place of accident or even in hospital. Perusal of the report u/s 173 Cr.PC annexed with the DAR mentions that later during the investigation an eye witness Rinku met with the police and informed the manner in which accident took place as well as referred to involvement of vehicle no. DL-1LL-0980 in the accident. On the basis of such information received, notice u/s 133 M.V. Act dated 05.07.2015 was served to registered owner of that vehicle i.e. Umesh Chand. In pursuance to that wife of Umesh Chand appeared and disclosed the name of the respondent no.1 being driver of the offending vehicle. Driver also appeared and later offending vehicle was seized by the investigating officer.

10. It is in view of such factual background counsel for the Insurance company has submitted that offending vehicle has been falsely implicated because the DD entry no.'23 dated 19.06.2015 regarding the unfortunate accident does not mention regarding involvement of vehicle no. DL-1LL-0980. It is submitted that there is an inordinate delay in introduction of the above said vehicle shown to be involved in the accident. It is submitted that statement and evidence of so called eye witness Rinku (PW2) is also unworthy of any reliance because of inherent contradictions. It is submitted that version of accident also does not get corroboration from mechanical inspection. Counsel for the insurance relied upon the judgments in Veerappa and ors. vs. Siddappa and ors. (MFA No.8488/2004 decided on 03.11.2000), United India Insurance Company Limited and ors. vs. Ninganna and ors. (MFA Nos.31714, 31535/2009, 30405/2010 and 30637/2010 (MV) decided on 09.03.2016), Safiq Ahmad vs. ICICI Lombard General Insurance Co. Ltd. and Ors. (decided by Hon'ble Apex Court on 12.09.2023) and Bajaj Allianz General Insurance Co. Ltd. vs. B.C. Kumar and another MANU/KA/0402/2009.



11. Counsel for the petitioner submitted that evidence of eye witness is cogent and sufficient to rely upon regarding the manner in which accident took place as well as to prove rash and negligent driving of respondent no.1 which resulted in causing of accident due to detachment of tyre of TSR and causing of fatal injuries to deceased.

12. Having considered the submissions, at the outset it be noted that information regarding the accident has been received by DD No.23 dated 19.06.2015 from MACT Cell. No doubt in that DD it is mentioned that accident had occurred on account of detachment of the tyre of TSR of the deceased resulting in causing of fatal injuries to deceased. But as it is known to all that DD or FIR even cannot be encyclopedia therefore contents of DD recorded at that stage cannot be taken to be the only truth of the matter. Perusal of the DAR shows that later during the investigation eye witness met the IO and gave the account of the accident giving details of involvement of offending vehicle no. DL-1LL-0980.

13. That eye Witness whose statement was recorded by the police, has been examined in this case as PW2. PW2 in his deposition has stated that on 19.06.2015 he was going on his motorcycle DL-5S-BW-4606 in a normal speed towards Seelampur from Dilshad Garden. When he was going on Shahdara flyover, TSR No.DL-IRJ-1240 was going ahead of him and in the meantime a Champion vehicle no. DL-1LL-0980 came from behind, overtook motorcycle of PW2 in a very high speed and in a rash and negligent manner and hit TSR No.DL-IRJ-1240 with a great force from conductor side. As a result of forceful impact the front wheel of the TSR broke down and TSR turned turtle due to which driver of the TSR fell down on the road and crushed under the TSR.

14. On the above details of the accident, PW2 was cross examined in length. Counsel for the insurance raised certain aspects of the cross examination to submit that evidence of PW2 is unworthy of reliance. However at the outset it be noted that in proceedings of accident claims, evidence is required to be assessed broadly, to conclude regarding prove of a fact by preponderance of probabilities. Therefore evidence of eye witness cannot be minutely examined, as may be required in a criminal case for accident. Moreover evidence of PW2 in totality, appears to be inspiring as PW2 in cross examination stated that he saw the accident from the distance of about 100 feet. PW2 stated that offending vehicle hit the vehicle (TSR of deceased) from left side. He stated that after the accident he remained at the spot for 10-15 minutes and when two three persons gathered at the spot and one scooty driver removed the deceased from the spot of accident to the hospital.



15. Nothing came in the cross examination to render the evidence of PW2 regarding the manner in which accident has taken place, to be unbelievable. No doubt in cross examination witness stated that he came to know about the death of the deceased in that accident in newspaper, after 10/12 days of the accident. PW2 also stated that he saw the offending vehicle no. DL-ILL-0980 and noted down on some paper but lost with the theft of his vehicle. Therefore he could not hand over the slip on which he noted the number, to police. Such version is only with regard to recording of number of offending vehicle. Such version of PW2 though appears to be improbable but still cannot be considered to be impossible in certain situations. Different persons behave differently in similar situations, therefore only on this aspect entire evidence of PW2 cannot be brushed aside, more particularly when his statement was recorded by the police during the investigation. On the basis of information so provided by PW2, police served the notice u/s 133 M.V. Act, wherein the driver and wife of registered owner admitted the involvement of offending vehicle no. DLILL-0980.

16. Investigating Officer verified all the facts at the very outset and prepared the site plan which also indicate involvement of the offending vehicle in the accident. Thus, the evidence of PW2 gets corroboration from police documents and conclusion of IO in the investigation.”

9. Suffice to state that the based on the aforesaid observations, it was held that the offending vehicle viz. TSR No. DL-1LL-0980 was involved in the accident and the respondent No.2 was responsible for causing the accident and resulting in fatal injuries to the deceased.

10. On a careful perusal of the aforesaid reasoning, this Court finds no grounds to differ from the reasons given by the learned Tribunal while appreciating the testimony of PW-2 in summary proceedings. As was rightly urged by the learned counsel for the appellant/insurance company, the best evidence in the present matter was respondent No.2 Beyas Singh and nothing precluded the Insurance Company from summoning and examining the said witness and/or for that matter the Investigating Officer of the criminal matter.



Having not chosen to lead evidence on the matters in issue, it is not open to the appellant/insurance company to raise afroresaid issues without proving such foundational facts.

11. In view of the foregoing discussion, the present appeal filed by the appellant/insurance company is hereby dismissed in *limine*.

12. Statutory amount of Rs. 25,000/- deposited by the appellant/insurance company is forfeited to the State.

13. The pending application also stands disposed of.

DHARMESH SHARMA, J.

MAY 22, 2024

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