



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

% **Judgment reserved on : 24 April 2024**
Judgment pronounced on : 01 July 2024

+ **MAC.APP. 249/2016**

SUNITA DEVI & ORS Appellants
Through: **Mr. Ashok Popli, Adv.**

versus

SATISH KUMAR CHAUDHARY & ANR (NEW INDIA ASSURANCE CO LTD) Respondents
Through: **Mr. Yuvraj Sharma, Proxy Counsel for Mr. Pankaj Seth, Adv. for R2**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide the present appeal filed by the appellant/claimants under Section 173 of the Motor Vehicles Act, 1988¹ assailing the impugned judgment-cum-award dated 08.12.2015 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Karkardooma Court, Shahadra District, Delhi² in MAC No. 277/2012, whereby the learned Tribunal disallowed the claim petition filed by the claimants.

FACTUAL BACKGROUND

2. Succinctly put, the accident occurred on 11.07.2011 when at about 11:15 P.M., Sh. Mahaveer Singh, (hereafter, deceased) who was

¹ Act

² Tribunal



returning home by his motorcycle³, was hit from behind by a Maruti Alto car bearing registration No. DL-5CD-0674 (*hereinafter referred to as the 'offending vehicle' for brevity*) which was being driven by respondent No.1/Satish Kumar Chaudhary, who is the driver⁴-cum-registered owner⁵ of the offending vehicle and the same was duly insured with respondent No.2/New India Assurance Co. Ltd. Due to the impact, the deceased fell down and sustained multiple injuries and was taken to MAX hospital and later shifted to Tirath Ram Shah Hospital, where he succumbed to his injuries after three days i.e. on 15.07.2011. Subsequently, an FIR No. 419/2011 was registered against the driver of the offending vehicle under Section 279/304A IPC⁶ with Police Station Shakarpur, New Delhi.

3. Respondents No.1 and 2 filed their separate written statements contesting the claim petition. The respondent No.1/driver-cum-owner stated that he has been falsely implicated in the present case in connivance with the police officials as the deceased was working as a constable in Delhi Police, while respondent No.2/insurer admitted the fact that the offending vehicle was indeed insured with them *vide* insurance policy No. 31260031110100159699 in the name of Satish Kumar, which was valid for a period from 09.03.2011 to 08.03.2012,

³ Section 2(27) "motor cycle" means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle.

⁴ Section 2(9) "driver" includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle.

⁵ Section 2(30) "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.

⁶ Indian Penal Code, 1860



it took several objections available in the form of defence under Section 149(2) of the Act.

4. Suffice to state that the learned Tribunal *vide* the impugned judgment-cum-award dated 08.12.2015, came to the conclusion that the claimants have miserably failed to prove the involvement of the offending vehicle in the accident, *inter alia* rendering a finding that the testimony of PW-4/Mukesh Rawat was utterly unreliable, did not conform to notions of human behaviour, and was untrustworthy. Resultantly, the claim petition was dismissed.

5. Learned counsel for the appellants/claimants has assailed the impugned judgment-cum-award primarily on the ground that the learned Tribunal ought to have considered the testimony of PW-4/Mukesh Rawat as he was an eye witness to the said incident, who testified as to the manner in which the accident had occurred and thus, bringing out rash and negligent driving of the offending vehicle by respondent No.1. It was urged that in the face of pleadings by the respondent No.1, apparently, there was an admission about the factum of accident and the involvement of the vehicle.

ANALYSIS AND DECISION:

6. Having given my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at the Bar and considering the relevant records of the case including the Trial Court Record, at the outset, this Court is unable to persuade itself to set aside the findings recorded by the learned Tribunal, thereby, dismissing the claim petition.



7. First things first, it would be expedient to point out that the offending vehicle was untraceable and, in this regard, a DAR⁷ in the form of 'Untraced Report' was filed by the Investigating Officer (IO). However, the petitioner filed an application seeking directions for further investigation stating that she received telephonic calls from one person, who claims to be an eye witness to the said incident but the name of the person was not disclosed in the application. Ergo, the case was reopened by the learned predecessor Tribunal but again, an Untraced Report was filed by the IO.

8. Further, in so far as the appreciation of the testimony of PW-4/Mukesh Rawat is concerned, he deposed that he along with another person namely Billu, saw the deceased being hit by the offending vehicle and he noted down the registration number of the offending vehicle. Although PW-4 alleges that he had contacted the brother of the deceased after getting his contact number from his purse, the learned Tribunal, after meticulous examination of the records, observed that no such purse was recovered from spot, and neither the identity of his friend Billu was established nor he was examined. It would be apposite to reproduce the germane observations made by the learned Tribunal in this regard, which read as under:

“13. PW-4 Sh. Mukesh Rawat was examined by the Petitioners as the eye witness of the accident. He testified that he along with his friend Billu were going to Dayalpur by motorcycle which was driven by Billu. He testified that the motorcycle of the deceased was hit by a car and the motorcyclist had fallen down. He stated that many persons gathered on the spot and one of them took the purse of the deceased with his mobile, from which, he got the Mobile No. 9010690690. This witness then told the persons

⁷ Detailed Accident Report



gathered there to take the injured to the hospital and left the spot as he had to catch a train on 12.07.2011. The record suggests that no such purse or anything was recovered from the spot. PW-4 could not tell the contact number or address or any other material facts which could be helpful to establish the identity of his friend Billu. It is strange that if Mukesh Rawat was an eye witness, he would have immediately informed the police and would have taken the injured to the hospital, more particularly, when the said injured happened to be his close relative (son of maternal uncle). PW-4 also could not be able to show any documentary proof i.e. Train Tickets to his village i.e. Kanan Prayag, Uttarakhand the very next day. PW-4 further states that he remained on the spot for about 2-3 minutes only. He candidly admits that he did not inform the police about the accident on 11.07.2011 and it was only after a gap of four months when he chose to contact the family of deceased.

14. Strangely enough, the objection application of Smt. Sunita Devi does not mention the name of this eye witness, though she states that the said person telephoned her many times from his native village and stated to have seen the accident. This court has perused the untraced report and the status report dated 30.10.2014 filed by DCP (East), which mentions that PW-4 was a close relative of the deceased. It mentions the falsity of statement of PW-4 wherein he stated that on the spot, he gave a mobile call to the brother of deceased at Mobile No. 9810690690 from his own Mobile No. 9540161658. The scrutiny of the call details of Mukesh Rawat show no such call was ever made from this mobile number to the brother of deceased.”

9. Intriguingly, a supplementary statement was also recorded under Section 161 Cr.P.C.⁸, made by one namely Krishan Pawar, who made a PCR⁹ call just after the accident and took the deceased to the hospital. In his statement, he stated that after 15-20 days of the said accident, a person stating himself to be the brother of the deceased approached him to give a false statement, which he refused to do. In this regard, the learned Tribunal *vide* paragraph (16) of the impugned judgment-cum-award, recorded the following observations:

⁸ Code of Criminal Procedure, 1973

⁹ Police Control Room



“16. There is yet another aspect of the matter which is not ignorable. The record reveals that just after the accident, one Krishan Pawar, resident of D-2772, Lalita Park, Shastri Nagar had made a PGR Call about the accident. He had also taken the injured to the hospital in a TSR. In his supplementary statement U/s 161 Cr.P.C., he states that 15-20 days after the accident, a person stating himself to be the brother of deceased had approached him asking him to give false evidence but he had refused to do so. If PW-4 had seen the accident, then despite in relation of the deceased, why did he not immediately inform the parents/family of deceased and take the injured to the hospital instead of leaving the spot instantly and then leaving for his village the very next day. The gap of about 4 1/2 months and silence of Petitioners in not disclosing his name is inexplicable and proves fatal to their version. In her cross examination, PW-1 Smt. Sunita stated that she did not know any Mukesh Rawat. She stated that she did not know the name of the person who had called her or conveyed her about the accident. None of her family approached the police despite such knowledge of the person having seen the accident. She instead chose to move an application dated 18.11.2011 before the learned Tribunal i.e. after about four and a half months of the accident.”

10. Concluding its findings, the learned Tribunal was of the view that the testimony of PW-4/Mukesh Rawat was treacherous in nature and he was considered to be a highly motivated or interested witness, out to favour the claimants, probably on account of family pressure or any other reason. On a bare perusal of the testimony of PW-4, I am afraid that there is an inescapable conclusion that the testimony of PW-4/Mukesh Rawat is untruthful and unworthy of credence, if not treacherous in nature. Further, the conduct of PW-4/Mukesh Rawat in leaving the injured at the spot and not even bothering to take him to the hospital, who was his real maternal uncle, is something which is unpalatable and does not divine the eyes. Assuming for the sake of convenience that even if the witness left the spot as he had some urgent work to attend to, what prevented him from even informing the



family members of the deceased. All said and done, it is not explained as to why his name does not find a mention in the police investigation at any stage of the case. Even in the objections that were addressed by the claimant/Smt. Sunita to the 'closure report' filed by the Investigating Officer, his name was not indicated.

11. Further, the vehement plea taken by the learned counsel for the claimants that the learned Tribunal ignored the pleadings in the nature of admission by respondent No.1/driver-cum-owner about the factum of the accident is also not sustainable. A bare perusal of the pleadings in the written statement filed by respondent No.1/driver-cum-owner would go on to show that there is a complete denial by him having caused any accident as also the involvement of his vehicle resulting into the death of the deceased. Further, R2W1/Satish Kumar also came in the witness box and denied the fact that he had any knowledge about the factum of the accident as also the involvement of his vehicle in the accident.

12. In view of the foregoing discussion, this Court has no hesitation in agreeing fully with the findings rendered by the learned Tribunal in dismissing the claim petition. Hence, the instant appeal is dismissed.

DHARMESH SHARMA, J.

JULY 01, 2024

Sp/sadiq