



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

%

Judgment reserved on : 06 March 2024
Judgment pronounced on : 24 April 2024

+ **MAC.APP. 631/2014**

SHRIRAM GENERAL INSURANCE CO LTD Appellant

Through: **Mr. Sameer Nandwani, Mr. Sarthak Arora & Ms. Niyati Jadaun, Advs.**

versus

NISHA DEVI & ORS

..... Respondents

Through: **Mr. T.N. Tripathi, Mr. Ranjeet Singh & Mr. Pragyesh Pratap Singh, Advs.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant/Insurance Company has preferred this statutory appeal under Section 173 of the Motor Vehicles Act, 1988¹ as amended up to date, challenging the impugned judgment-cum-award dated 05.03.2014 passed by the learned Presiding Officer, Motor Accident Claims Tribunal², South District, Saket Courts, New Delhi, whereby the respondent No.7 herein was held to be guilty of rash and negligent driving of the offending truck bearing registration No.HR-55-B-6988, registered in the name of respondent No.8 herein. Furthermore, the claim for the compensation filed by the claimants, who are the wife, four children and father of the deceased under

¹ M.V. Act

² Tribunal



Section 166 read with Section 140 of the M.V. Act, was allowed. The claimants were awarded a total compensation of Rs.21,38,900/- with interest @ 9% p.a. from the date of filing of the petition till realisation on account of the death of Santosh Kumar involving the aforesaid truck.

2. Having heard the learned counsel for the appellant/Insurance Company and learned counsel for respondents No.1 to 6/claimants at the Bar and on perusal of the record, this Court proceeds to decide the present appeal.

ANALYSIS & DECISION:

3. At the outset, Mr. Sameer Nandwani, learned counsel appearing for the appellant/Insurance Company, has urged that the deceased was a “*gratuitous passenger*” and, therefore, the Insurance Company is not liable to pay compensation to the claimants. Learned counsel took this Court through the testimony of PW-1/Smt. Nisha Devi, wife of the deceased, and pointed out that she was not an eye-witness to the accident. It was submitted that PW-2/Daya Ram was the employer of the deceased Santosh Kumar, who was also not an eye-witness to the accident, while PW-3/Akhilesh Kumar was produced and examined as an eye-witness. It was urged that the deceased Santosh Kumar was employed by PW-2, and he was a co-driver with PW-3, and they had a sudden fight, and the deceased in the process of fleeing away, attempted to climb on the left side of the offending truck bearing registration No.HR-58-B-6988 as a gratuitous passenger. It was vehemently urged that there is no *iota* of evidence, as to in what



capacity the deceased was on the offending truck as he was neither the driver nor the cleaner in respect of the offending truck.

4. *Per contra*, learned counsel for the claimants alluded to the observations made by the learned Tribunal while deciding issue No.1 regarding the factum of the accident and the finding on the issue as to whether the respondent No.7/Desh Raj was guilty of rash and negligent driving of the offending truck. It would be apposite to reproduce the reasons that prevailed in the mind of the learned Tribunal while holding the factum of accident having being established, as also the culpability of respondent No.7/Desh Raj, which reads as under:

“10. PW-1 has stated that on 16.11.12 at about 4.00 PM at Bhati Road, Arya Bhat Tiraha, Delhi her husband was climbing in the truck no. HR 55 B 6988 from the left side. Suddenly, the respondent no.1 drove his truck rashly and negligently. As a result her husband fell down on the road and came under the wheel of the offending vehicle. He was removed to Trauma Center, AIIMS where doctor declared him brought dead. A case vide FIR no. 283/12 u/s 279/304-A IPC was registered against the respondent no.1.

In her cross-examination she admitted that she is not an eye-witness of the accident. She denied that the accident had taken place due to the negligence of deceased himself. She denied that her husband had not got the permission from the driver of the offending vehicle to climb on the offending vehicle. She denied that the driver of the offending vehicle was not aware that somebody was trying to climb on to the truck from the left window. She denied that the deceased was a gratuitous passenger.

11. PW-3 Akhilesh Kumar has stated that on 16.11.12 at about 4.00 PM he was standing at main road at Fateh Pur Berl. He saw the deceased Santosh Kumar boarding the truck bearing no. HR 55 B 6988 from left side. All of a sudden the driver moved the said truck in a rash and negligent manner. The hand of the deceased Santosh Kumar slipped and he fell down. The left wheel of the truck ran over the head of the deceased. People gathered at the spot. Someone called at 100 No. PCR reached at the spot. They took the deceased to the hospital. Police took him to the police station on



the same day and recorded his statement. The case was registered on his statement.

In his cross-examination he stated that he knew the driver Desh Raj prior to the accident. He denied that a quarrel took place between him and the driver Desh Raj prior to the accident. He was standing about 50 meters away from the spot.

In the instant case a Detailed Accident Report is also filed by the SHO of PS Fateh Pur Bert. Perusal of it shows that the case was registered on the statement of PW-3. He has deposed the same facts. Charge sheet was also filed against the respondent no.1. As per the postmortem report the cause of death was shock as a result of crush injury to the head. All injuries are antemortem in nature and could be caused due to road traffic accident.

For the foregoing discussions, it is established that Santosh Kumar died of the injuries sustained in an accident took place on 16.11.12 at about 4.00 PM at Bhati Road, Arya Bhat Tiraha, Delhi due to rash and negligent driving of the vehicle bearing no. HR 55 B 6888 by respondent no.1. Document show that the vehicle was owned by respondent no.2 and it was Insured with respondent no.3/insurance company.

12. Issue no.1 is accordingly decided in favour of the petitioners and against the respondents.”

5. The aforesaid reasons have to be examined in the light of testimony of the witnesses examined during the course of proceedings/trial. Indeed, PW-1 and PW-2 are not eye-witnesses to the accident; however, PW-3/Akhilesh Kumar categorically deposed that the deceased/Santosh Kumar was trying to board the offending truck bearing registration No.HR-55-B-6988, from the left side, when all of a sudden, the driver of the said truck drove it in a reckless manner. As a consequence, Santosh Kumar slipped and fell down, and the left wheel of the truck ran over his head, causing his death on the spot. Interestingly, PW-3 was not cross-examined on behalf of the appellant/Insurance Company despite affording an opportunity. Although, PW-3 was examined by the learned counsel for respondents No.1 and 2, he was merely given a suggestion that a quarrel had taken



place between him and driver/Desh Raj prior to the accident. On being prodded in his cross-examination, he deposed that he was about 50 metres from the spot, and his own vehicle was parked about 200 metres away from the spot. He was not prodded about how and in which manner the deceased attempted to climb over the roof or the cabin of the offending truck bearing registration No. HR-55-B-6988. The appellant/Insurance Company had an opportunity to summon respondent No.7/Desh Raj, S/o Ram Bahadur, but they did not do so at their own peril. There is no denying the fact that the offending truck was involved in the accident.

6. At the cost of repetition, in the aforesaid backdrop, respondent No.7/Desh Raj was the best witness, who was not summoned and examined by the appellant insurance company. Indeed, it has not been made clear that, as to in what capacity the deceased was connected with the offending truck, but certainly, it is a far-cry in the wilderness that he was a gratuitous passenger. There is no merit in the plea that the offending truck was registered as a commercial goods vehicle and the cabin was meant for only two persons, including the driver.

7. Be that as it may, a bare perusal of the printed/computerised policy of insurance dated 26.01.2012 marked Ex. R3W-1/B (also PW1/7) would show that it was a 'comprehensive policy' covering third party risks as well as risks towards two drivers and one cleaner. There is nothing in the policy of insurance excluding insurance cover to any other person. At this juncture, there is another interesting twist in the entire tale when it is seen that the initial handwritten cover note provided for insurance of the offending vehicle No. 3099108 dated



20.01.2012 with regard to the offending vehicle bearing registration No. HR55-B-6988 indicates the basic liability clause/table as under:-

A. Own Damage			B. Liability	
Basic OD	6523		TP Premium	10550
Elec. Accessories	3510		PA to owner driver	100
Non Elec. Accessories			LL to paid driver	25
			Passenger	50
			Employee	
CNG/LPG Kit			Total	10725
Discount 20%	2007		Net Premium (A+B)	15139
Loading			S.T.	1559
NCB NCB	3612		Final Premium	16698
Total	4414			

8. It is interesting to point out that Rs. 50/- in the handwritten note is neither directly across the passenger nor the employee but in the middle. Therefore, unhesitatingly this Court finds that even assuming for the sake of convenience, that victim was a gratuitous passenger, he was covered by the Insurance Policy and the appellant/insurance company cannot escape its financial liability. Reference can be invited to decision by the Three Judges Bench of the Supreme Court in the case of **Amrit Lal Sood v. Kaushalya Devi Thapar**³, a decision by the Three Judges Bench of the Supreme Court, wherein it was categorically held that the terms of contract of insurance can be wider than what is prescribed by statute. Nothing precludes the

³ (1998) 3 SCC 744



insurer from agreeing to indemnify the insured against all sums which the insured would become legally liable to pay in respect of death of or bodily injury to any person and any person would include gratuitous passenger as well.

9. In view of the foregoing discussion, I find that there is no merit in the plea that the deceased was a gratuitous passenger and travelling in the offending vehicle. There is no dispute raised with regard to the quantum of compensation awarded by the learned Tribunal. Evidently, the deceased was found to be 30 years of age, and his annual income was fairly assumed to be Rs.8,814/- p.m. as per scales of minimum wages provided for a skilled persons during the relevant time. 50% was added to the income of the deceased for computing future prospects, and a multiplier of 16 was applied. More or less, the amount of compensation has been awarded in a fair and just manner, itemising towards loss of financial dependency, loss of love and affection and loss of consortium besides funeral expenses and loss of estates. Although it may be stated that the compensation of loss of love and affection has not been approved by the Supreme Court in the case of **National Insurance Co. Ltd. V. Pranay Sethi**⁴. However, considering that there were six dependents of the deceased including father, if the loss of consortium/loss of love and affection is assumed @ Rs.14,000/- p.m., the total amount comes to Rs.2 lacs only.

10. In view of foregoing discussion, I find that the learned Tribunal has not committed any illegality, perversity nor had adopted an incorrect approach in law.

⁴ (2017) 16 SCC 680



11. The present appeal is dismissed. Interim order dated 18.07.2014 passed by this Court is hereby vacated. A sum of Rs.12 lacs have already been released to the respondents No.1 to 6/claimants. The balance amount of compensation with interest @ 9% p.a. be released to the claimants from the date of filing of the present petition till realisation. The balance amount be deposited with the learned Tribunal within four weeks from today, failing which the appellant/Insurance Company shall be liable to pay the same with penal interest @ 12% p.a. from the date of this judgment till realisation.

12. In view of the aforesaid, the amount of Rs. 25,000/- towards the statutory deposit for filing of the appeal by the appellant/Insurance Company be refunded back to the appellant/Insurance company.

DHARMESH SHARMA, J.

APRIL 24, 2024

Sadiq