



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

% **Judgment reserved on : 01 May 2024**
Judgment pronounced on : 02 July 2024

+ **MAC.APP. 395/2017**

BABY ANUSHA MITTAL THR MOTHER PRATIBHA MITTAL Appellant

Through: **Mr. Deepak Prakash,**
Mr. Vardaan Kapoor, Mr. Kamal Bisht, Advs.

versus

SURAJ PRAKASH & ORS (NATIONAL INSURANCE CO LTD) Respondents

Through: **Mr. Pankaj Seth, Adv. for Insurance Company**

+ **MAC.APP. 488/2015**

SANDEEP MITTAL & ORS Appellants

Through: **Mr. Deepak Prakash,**
Mr. Vardaan Kapoor, Mr. Kamal Bisht, Advs.

versus

SURAJ PRAKASH (NATIONAL INSURANCE COMPANY LTD) & ORS Respondents

Through: **Mr. Pankaj Seth, Adv. for Insurance Company**

+ **MAC.APP. 401/2017**

PRATIBHA MITTAL Appellant

Through: **Mr. Deepak Prakash,**
Mr. Vardaan Kapoor, Mr. Kamal Bisht, Advs.

versus

SURAJ PRAKASH & ORS (NATIONAL INSURANCE COMPANY LIMITED) Respondents

Through: **Mr. Pankaj Seth, Adv. for Insurance Company**



CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This common judgment shall decide the above-noted three appeals preferred by the appellants/claimants assailing the impugned common judgment-cum-award dated 13.05.2014 passed by the learned Presiding Officer, Motor Accident Claims Tribunal-02, Patiala House Court, New Delhi¹, whereby, the claim petitions filed by each of the appellants/claimants under Section 166 read with Section 140 of Motor Vehicles Act, 1988² was dismissed primarily on the ground that they have failed to prove any rash and negligent driving or tortious culpability on the part of the driver of the offending vehicle. Each of the appeal raise common questions of law and facts insofar as the issue of tortious culpability is concerned, and thus, the appeal can be conveniently disposed of by this common order. For the purpose of decision on the issue of 'tortious culpability', MAC.APP. 488/2015 shall be the lead case.

FACTUAL BACKGROUND:

2. Shorn of unnecessary details, the appellants *viz.* Sandeep Mittal, his wife Pratibha and their daughter Baby Anusha Mittal were travelling in car bearing registration No. DL-3CZ-3920³ on 21.06.2006, claimed to have been owned by respondent No.2 i.e., the owner of the appellant/Sandeep Mittal and being driven by respondent No.1/Suraj Prakash. As they were going from Hissar to Narwana near

¹Tribunal

²M.V. Act

³Offending vehicle



Ashish Agro Oil Extracts, Hissar Road, Uklanaat, at about 6.00 AM, a stray animal i.e., a Neel cow suddenly came in front of the speeding vehicle all out of nowhere and rammed into the car as a result of which, the vehicle went out of control and went below the road striking and crashing against the *babool* and *suranam* trees and subsequently falling into the ditch. Resultantly, each of the appellants sustained grievous injuries over their bodies inevitably requiring medical treatment.

3. Each of the appellants instituted a claim petition seeking compensation for the injuries sustained in the accident in terms of Section 166 read with Section 140 of M.V.Act. Respondent No.1/driver and respondent No.2/owner, despite service of summons of the claim petitions, did not prefer to contest the same and were proceeded *ex-parte* by the learned Tribunal.

4. Although respondent No.3/insurance company acknowledged that the offending vehicle was insured with them for third party risks, it took preliminary objections to the effect that the claimants have not approached the Court with clean hands and they have concocted the entire version of the incident in collusion with respondent No.1; and rather it was alleged that it was Sandeep Mittal who was driving the vehicle of his employer's company and thus, he was not a third party so as to get entitled to be indemnified. It was also pointed out that no FIR⁴ with regard to the incident was lodged nor any inquiry or investigation was conducted so as to show how and in what manner the accident had occurred; and that rather the appellant/claimant

⁴First Information Report



Sandeep Mittal stated to the police that nobody was responsible for causing the accident. It was stated that it was the injured persons who have later improved upon their version of the accident in the claim petition thereby, seeking high and exorbitant compensation without any foundation.

5. The learned Tribunal, based on the pleadings of the parties, framed the following issues for consideration *vide* order dated 19.09.2011 :

1. Whether the petitioner sustained Injuries in the accident which occurred on 21.06.2006 at about 6:00 AM near Ashish Agro Oil Extracts, Hisar Road, Uklana, Haryana, due to rash and negligent driving of vehicle No. DL-3CZ-3920 by respondent No.1, owned by respondent No. 2 and Insured with respondent No. 3? OPP
2. Whether the petitioner is entitled for compensation? If so, to what amount and from whom?
3. Relief.

6. It is pertinent to mention that the appellant/Sandeep Mittal in his claim petition bearing suit No.129/2014, examined himself as PW-1 besides other witnesses. For the purposes of decision in the present matter, it is suffice to state that other material witnesses were PW-4/ ASI Karamvir Singh, PS Uklana, District Hissar, Haryana, who submitted that the record with regard to DD No.19 dated 21.06.2006 with PS Uklana, had been destroyed, and therefore, the copy of the DD was allowed to be considered as a secondary evidence and marked as Ex.PW1/5. PW-5 was ASI Dayanand from Haryana Police, who was the Investigating Officer, who testified that he did not consider any need to record the statement of the driver, *who was unconscious at the spot*, since Sandeep Mittal had stated that he did not want any



police action and no one was at fault. Likewise, the appellant/claimant Pratibha Mittal in suit No.122/2014 came in the witness box and was examined as PW-1.

THE IMPUGNED JUDGMENT:

7. The learned Tribunal, based on the testimony of the aforesaid witnesses, observed that neither Sandeep Mittal nor his wife Pratibha Mittal in their respective suits/claim petitions had attributed to any kind of negligence on the part of the driver and their initial version that the accident occurred when all of a sudden, a Neel cow came in front of the speeding car, was truthful. The learned Tribunal also observed that the claimant/Sandeep Mittal himself stated that he did not want any further action as no one was at fault, and therefore, it was held that the claimants have failed to prove that respondent No.1 was rash or negligent in causing the accident. Resultantly, each of the claim petitions were dismissed by a common impugned judgment-cum-award dated 13.05.2014.

GROUND FOR CHALLENGE:

8. The grounds for challenging the impugned judgement-cum-award are *ditto* in each appeal. The appellants have assailed the impugned judgment-cum-award *inter alia* submitting that the learned Tribunal failed to appreciate that merely the word ‘negligence’ was not used in the claim petition, the same is not of material consequence inasmuch as the issue of rash or negligent driving on the part of the driver was a matter of inference to be drawn from the proved set of facts and circumstances and considering that the offending vehicle was completely damaged, a strong inference is invited that the car



was being driven at an impermissible high speed; and mere fact that no FIR was recorded and/or no inquiry or investigation was conducted by the Police as to the cause of the accident, was not by itself a sufficient ground so as to hold that the driver of the offending car was not at fault, for which, reference is made to a decision in the case of **Oriental Insurance Company Ltd. v. Sudhir Chandola**⁵. Additionally, stating that mere fact that the FIR was not registered, does not cast any doubt over the truthful and credible testimony of the witnesses and the accident in question is governed by the *principles of res ipsa loquitur* thereby, meaning that the manner of the accident speaks for itself. Lastly, the learned Tribunal failed to appreciate that the proceedings before it were summary in nature and the strict rules of evidence were not to be applied; and that the learned Tribunal has completely overlooked the nature of permanent disability suffered by the claimant/Sandeep Mittal who has developed myopathy, as also overlooking that the claimant/Pratibha Mittal suffered grievous injuries along with the girl child aged three years, who had a horrific life threatening experience.

ANALYSIS AND DECISION:

9. Having given my thoughtful consideration to the submissions made by the learned counsels for the parties and on perusal of the record including the digitized Trial Court Record, this Court has no hesitation in holding that the impugned common judgment-cum-award is absolutely flawed and has resulted in miscarriage of justice.

⁵MAC.Appeal No.696/2007 dated 25.08.2008



10. It is manifest that the learned Tribunal has based its decision primarily on the fact that the injured-claimants, at the first available opportunity, blamed no one for causing the accident. At the cost of repetition, the version of the witnesses/claimants is consistent that all of a sudden, a Neel cow emerged from nowhere on the road and dashed against the offending speeding car, as a result of which, the driver was not able to control the vehicle that fell into a ditch crashing against the trees down below. Mere fact that the injured-claimants initially stated that no one was to be blamed, was not decisive.

11. Evidently, the factum of accident was not in dispute. The term 'accident' by its grammatical meaning is "*an unpleasant event that happens unexpectedly and causes damage, injury or death*". The dictionary.com defines the terms 'accident' as "*an undesirable or unfortunate happening that occurs unintentionally and usually result in harm, injury, damage or loss; casualty; mishap*". It is an event which happens without deliberate plan or cause. In a matter like the instant one, the manner in which the accident occurred speaks for itself. It is our common experience that on a countryside or otherwise, be it a State or National Highway or in or around the Municipal limits, there roam around stray animals and the motorist face the uphill task of manoeuvring their motor vehicles safely on encountering the stray animals so as to avoid any harm to the them. It is a common site that variety of stray animals emerge on the public roads and pose a certain degree of danger not only to themselves but also to the motorist.

12. When one is driving on a highway, as in the instant case, the speed of the motor vehicle is expected to be high depending upon or



conforming to the speed limits that are placed by the law enforcement agencies for regulation of motor traffic. In such situations, the driving skills of the motorist becomes crucial for safety of everyone, be it inside the motor vehicle or outside including the stray animals. Driving skill requires certain degree of alertness, attentiveness and presence of mind in manoeuvring through difficult terrains and manoeuvring the vehicles when stray animals suddenly come on the road in front of speeding vehicles. In such scenarios, some are able to manoeuvre it properly, but some are not.

13. In the instant matter, the learned Tribunal failed to appreciate that the factum of the accident and the manner in which it occurred and also the aspect of whether or not the driver of the offending vehicle was at fault, was a matter of inference. In a case like the instant one, it would have been appropriate for the learned Tribunal to *suo moto* summon and examine the driver of the offending car, who deliberately failed to appear and thereby, depriving the learned Tribunal of evidence as to how and in what manner, the accident occurred. The testimony of the driver as to the nature of the highway, its width, the vehicular traffic on the road, and whether or not it was passing through a village area, populated or forest area, or for that matter, an agricultural territory, was very crucial for determination of the cause of the mishap or the accident. Lastly, it is also manifest that the learned Tribunal failed to apply its mind to elicit vital evidence as to the speed of the car, its mechanical features and whether or not the brakes were applied by the driver at the time of the accident

14. At the cost of repetition, mere fact that the injured-claimants



blamed no one is not a decisive factor. The inference as to whether or not the driver was negligent has to be drawn in accordance with the legal parameters. In a situation like the instant one, such issues are a mixed question of facts and law and simply rendering a decision based on the *ipse dixit* of the injured-claimants, is not enough in law.

15. Avoiding the temptation to go into a long discussion, it would be sufficed to point out that this Court, in a decided matter titled **National Insurance Company Limited v. Geeta Bindal**⁶, had an occasion to consider the application of principle of *res ipsa loquitur*, which is importing strict liability into motor accident negligence cases. It is well ordained in law that the aforesaid maxim can be applied where the cause of accident is unknown and/or no reasonable explanation as to the cause of accident comes forth from the victim or the tort-feasor. The case law is replete with the proposition that a satisfaction must be arrived at with respect to the fact that the event which caused the accident was such which was within the defendant's/tort-feasor's control. Such an issue has not been addressed and answered by the learned Tribunal.

16. In the case of **Geeta Bindal (supra)**, the deceased with two other occupants was going in a car from Delhi to Vaishno Devi when the car suddenly hit tree due to which, it went down the hill resulting in his death while two other occupants miraculously survived. One of the surviving witnesses when examined, stated that he was sleeping when the car met with an accident. It was in the aforesaid circumstances that this Court invoked the principle of *res ipsa*

⁶2012 SCC OnLine Del 5375



loquitor and the following parameters were laid down for consideration on a conspectus of several decision on the issues:-

- i. *Res ipsa loquitor* means that the accident speaks for itself. In such cases, it is sufficient for the plaintiff to prove the accident and nothing more.
- ii. Where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence in the absence of explanation by the defendants, that the accident arose from want of care.
- iii. There are two requirements to attract *res ipsa loquitor*, (i) that the "thing" causing the damage be under the control of the defendant and (ii) that the accident must be such as would not in the ordinary course of things have happened without negligence.
- iv. *Res ipsa loquitor* is an exception to the normal rule that mere happening of an accident is no evidence of negligence on the part of the driver. This maxim means the mere proof of accident raises the presumption of negligence unless rebutted by the wrongdoer.
- v. In some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him, but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident, but cannot prove how it happened to establish negligence. This hardship is to be avoided by applying the principle of *res ipsa loquitor* is that the accident speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more.
- vi. The effect of doctrine of '*res ipsa loquitor*' is to shift the onus to the defendant in the sense that the doctrine continues to operate unless the defendant calls credible evidence which explains how the accident or mishap may have occurred without negligence, and it seems that the operation of the rule is not displaced merely by expert evidence showing, theoretically, possible ways in which the accident might have happened without the defendant's negligence. The doctrine of '*res ipsa loquitor*', therefore, plays a very significant role in the law of tort and it is not the relic of the past, but the living force of the day in determining the tortious liability.
- vii. The principal function of the maxim is to prevent injustice which would result if a plaintiff were invariably compelled to prove the precise cause of the accident and the defendant



responsible for it, even when the facts bearing in the matter are at the outset unknown to him and often within the knowledge of the defendant.

viii. The doctrine of *res ipsa loquitur* has been applied by the Courts in the following cases:-

- Where victim was sleeping on a cot placed in front of his house by the side of the road when the offending vehicle dashed against the cot and injured the claimant.
- Where a bus had dashed against a tree, causing death of a passenger.
- Where a vehicle negotiating a sharp "U" turn dashed against a tree, moved away to a distance of 150 feet from the road and then overturned.
- Where a vehicle went-off the road, hit against the tree and rolled down killing a passenger.
- Where a truck dashed against the victim standing by roadside.
- Where a truck came at breakneck speed without blowing horn and dashed against a 9 years old boy, who was walking on the extreme left side of the road, from behind resulting in instantaneous death."

17. Saying no more, in view of the foregoing discussion, unhesitatingly, this Court finds that the matter be remanded back to the learned Tribunal for a fresh determination and decision on issue No.1, for which, the learned Tribunal may *suo moto* call upon the driver of the car and examine him so as to bring on record all the relevant facts, some of which have been delineated hereinabove. The learned Tribunal may also consider the issue as to whether or not the principles of *res ipsa loquitur* would be applicable in the present matter.

18. Before parting with this case, the plea by the learned counsel for the Insurance Company that it was the claimant/Sandeep Mittal, who was driving the car, is belied from the appreciation of evidence by the learned Tribunal *vide* the impugned judgment-cum-award. No such



evidence has been led and rather, PW-5/ASI Daya Nand from Haryana Police categorically testified that he did not consider the requirement of recording the statement of the driver who was unconscious at the spot. He certainly did not imply that the driver was appellant/claimant Sandeep Mittal. Be that as it may, all the issues shall remain open for consideration, for which, appropriate evidence may be led. The fact that claimant/Sandeep Mittal has suffered permanent disability and his wife and child have survived with life threatening injuries, gives all the more reasons that the matter be considered afresh by the learned Tribunal.

19. Accordingly, the present appeals are allowed, thereby setting aside the impugned common judgment-cum-award dated 13.05.2014 passed by the learned Tribunal. The instant matters/claim petitions are remanded back to the learned Tribunal with directions to decide the issues afresh in terms of the foregoing reasons.

20. Nothing contained herein shall tantamount to any final expression of opinion on the merits of the case.

21. The appeals are disposed of accordingly.

DHARMESH SHARMA, J.

JULY 02, 2024

VLD/sadiq