



2024:DHC:8695



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 23rd October, 2024*+ **MAC.APP. 985/2018****SADDEEKAN BEGUM**Appellant

Through: Mr. S.K. Srivastava and Mr. Gurjeet Singh, Advocates.

versus

BHARATI AXA GENERAL INSURANCE CO LTD & ORS

.....Respondents

Through: Counsel for respondents (appearance not given)

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The Appeal under *Section 173 of the Motor Vehicle Act, 1988* has been filed against the Impugned Judgment/Award dated 17.05.2018 wherein the Claim Petition filed by the Claimant under *Section 166 of the Motor Vehicle Act, 1988* was converted to *Section 163A of the Motor Vehicle Act, 1988* by concluding that the Claimants were unable to prove the rash and negligence of the alleged offending vehicle, and compensation granted in the sum of Rs.4,57,833/- @ 9% p.a. on total compensation amount.

2. It is submitted in the Appeal that the appellant had examined PW-2, Mr. Mula Kumar @ Pawan s/o Mr. Naveen Singh, who was an eye witness and also the author of the FIR. He, in his testimony before the Court, had

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deposed about the manner of accident. He had also deposed that the motorcyclist was driving the motorcycle in a drunken condition and was therefore, negligent.

3. The Learned Tribunal considered PW-2 as an interested witness since he and the deceased were working in the same TVS Company. Moreover, the learned Tribunal observed in the Award that the relevant criminal record like Charge-Sheet etc. has not been filed or proved to show that PW-2, Mr. Mula Kumar had been named as a witness present on the spot. However, the certified copies of the Charge-Sheet were filed before the learned Tribunal, which were taken on record *vide* Order dated 13.04.2018. In the Charge-Sheet, PW-2 Mr. Mula Kumar has been shown as a witness.

4. Furthermore, it has come on record that the driver of the motorcycle was under the influence of liquor, which is proved from the evidence of Dr. Jeetesh Lamba, M.O. Indiana Hospital, Bilaspur Gurgaon, Haryana and therefore, it was wrongly concluded by the Learned Tribunal that the rash and negligence on the part of the driver of the motorcycle had not been proved. It is, therefore, submitted that the impugned Award be set-aside and the appropriate compensation be granted under *Section 166 of the Motor Vehicle Act, 1988*.

5. *Learned counsel on behalf of the Insurance Company*, however, has contested the Appeal on the ground that the alleged PW-2, Mr. Mula Kumar was not the eye-witness as his name had been given as Mr. Pawan Kumar, though subsequently, in the Charge-Sheet, he has been mentioned as Mr. Mula Kumar @Pawan Kumar. It is asserted that Mr. Mula Kumar and Mr. Pawan Kumar were two different persons and the PW-2 Mr. Mula Kumar was not an eye witness to the incident. It is thus, argued that the Learned

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Tribunal was right in concluding that there is no cogent evidence in regard to the negligence on the part of the driver of the motorcycle. There is no infirmity in the Order of the Learned Tribunal and the Appeal is liable to be set-aside.

6. Submissions heard.

7. It is not denied that the deceased, Mr. Chote Miyan @ Chote Khan @ Sahil was walking on the foot on the left side of the road on 24.06.2015 at about 8:30 p.m. when he was hit by the offending motorcycle bearing No. HR 76A 1523, which was being driven by the Respondent No. 1, Mr. Kartar Singh Mehra. Because of the accident, Mr. Chote Miyan @ Chote Khan @ Sahil suffered grievance injuries on his legs and was declared dead when taken to the Indiana Hospital, Bilaspur Gurgaon, Haryana.

8. *The sole question for consideration is whether the claimants have been able to produce sufficient evidence to establish that the accident occurred on account of the negligence of the driver of the motorcycle.* Pertinently, the claimants had examined PW-2, Mr. Mula Kumar @ Pawan Kumar s/o Mr. Naveen Singh.

9. Learned counsel for the Insurance Company has sought to challenge the identity of the eye witness by asserting that his name had been given as Mr. Mula Kumar but in the Charge-Sheet, he has been mentioned as Mr. Pawan. The record shows that though initially, his name had been written as Mr. Mula Kumar but subsequently, it was corrected as Mr. Mula Kumar @ Pawan. The name of the father of the witness in the Charge-Sheet as well as in the FIR was given as Mr. Naveen Singh, which clearly establishes that Mr. Mula Kumar and Mr. Pawan, are one and the same person. This aspect has also been explained by PW-2, Mr. Pawan Kumar @ Mula Kumar.

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10. It is abundantly clear from the evidence on record that there is no dispute about PW-2 Mr. Mula Kumar @ Pawan Kumar being the eye witness of the accident. PW-2, Mr. Mula Kumar has produced the copy of the Aadhar Card, Ex.PW-2/1 wherein the name of his father has been reflected as *Mr. Naveen Singh*, which is the same as mentioned in the Charge-Sheet as well as his testimony. Perusal of the Charge-Sheet shows that PW-2 has been examined as a witness. The Id. Tribunal therefore, fell in error is considering his identity to be not established.

11. The Claimants had examined the eye witness, PW-2 Mr. Mula Kumar @ Pawan Kumar, who had deposed about the manner of accident. He had deposed that the offending vehicle which was being driven by Mr. Kartar Singh Mehra at high speed of about 70-75 km per hour, had hit the deceased from behind resulting in injuries, which proved fatal. He and his uncle Bholesh and other persons took Mr. Chotey Khan to hospital in Gurgaon. *In the cross-examination*, he categorically denied that the deceased was walking in the middle of the road, which is fully corroborated by the Site Plan, which shows the point of accident 'A', which is not in the middle of the road but towards the side of the divider. He admitted that he was working as a driver in the TVS Company from April, 2015 to March, 2016. He has further clarified that when the deceased comes from the duty in the same Company, he used to go to his mother's house in Delhi, though he was not aware of the exact address. A suggestion was given that the deceased was walking on the middle side of the road, which was denied.

12. In this context, it would be pertinent to refer to the MLC of Mr. Kartar Singh Mehra wherein it has been indicated that "*there are smell of alcohol from his mouth and in breath.*" The testimony of the eye witness

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was thus, corroborated by the MLC of the driver, as proved by *PW-2, Dr. Jeetesh Lamba, M.O. Indiana Hospital, Bilaspur Gurgaon, Haryana*. Though the witness had been cross-examined but no circumstances could be elicited to show that there was no negligence on the part of the driver of the motorcycle.

13. Ld. Counsel for the Insurance Company had also sought to suggest that *PW-2* and the deceased were working in the same Company and thus, he was a planted witness. However, it has been deposed by *PW-2* that the deceased was working in the same Company prior to his joining. He was going from Jamalpur to TVS Compnay, Gurgaon, where a motorcyclist coming from Farook Nagar side hit the deceased from backside. The accident had happened near the Company premises which rather explains the presence of *PW-2* near the site of accident and infact, him being is a natural witness.

14. Thus, cogent evidence was produced before the learned Tribunal, which is fully supported by the documents filed in the Charge-Sheet, that the accident occurred due to rash and negligent driving of Mr. Kartar Singh Mehra, the driver.

15. The Learned Trial Court, therefore, was not correct in observing that the negligence of the offending vehicle was not established and treating the Claim Petition under *Section 163A of the Motor Vehicle Act, 1988*. The findings on Issue No. 1 are hereby set-aside and it is held that the accident was caused due to rash and negligent driving of the driver, Mr. Kartar Singh Mehra.

16. In view of the aforesaid, finding on Issue No. 2 granting the compensation under Section 163A is hereby set-aside and the case is

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remanded back to the Learned Tribunal, to decide afresh the compensation amount, in accordance with *Section 166 of the Motor Vehicle Act, 1988*.

17. The Appeal is accordingly allowed. The Parties are directed to appear before the learned MACT on 20.11.2024.

18. The compensation, if any, deposited by the Insurance Company under *Section 163A of the Motor Vehicle Act, 1988*, shall be adjusted in the compensation finally adjudicated by the learned Tribunal.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 23, 2024/RS

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