

(2013) 04 DEL CK 0447
In the Delhi High Court
Case No : Mac. App. No. 163/2012

Bajaj Allianz General Insurance Co. Ltd.	APPELLANT
Vs	
Smt. Som Wati and Others	RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : (2013) 2 ACC 850

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Judgement

Suresh Kait, J.

MAC. APP. 163/2012

1. The present appeal has been filed against the award dated 01.09.2011 passed by the learned Tribunal, whereby the appellant/Insurance Company was held liable to pay the compensation amount in favour of the respondents/claimants. Brief facts of the case, as narrated by PW-2 Sh. Nem Singh who alleged to be an eye witness of accident, are that on 16.10.2007, he along with deceased Veer Bhan were going on the motorcycle bearing registration no. DL3S-AS-6914. Sh. Veer Bhan was driving the motorcycle at a very moderate speed observing traffic rules and regulations and he was the pillion rider. They were going from Rama Park towards Khajoori Khas. At about 10 PM when they reached near CRPF Camp, Main Road, Khajoori Khas, Delhi, a TSR bearing registration no. DL-1RG-8170 came from front side at a very high speed and it was driven in a rash and negligent manner without observing any traffic rules. It violently struck against the motorcycle and due to the impact deceased fell on the road and received grievous injuries all over his body and became unconscious. He was removed to GTB Hospital from where he was referred to Safdarjung Hospital and deceased died on 17.10.2007 in Safdarjung Hospital.

2. Learned counsel appearing on behalf of the appellant/Insurance Company has drawn the attention of this Court to annexure A-5 at Page 67, statement of PW 2

Sh. Nem Singh, who in the cross-examination has stated that he did not know which vehicle had hit the motorcycle as he was not fully conscious at that time and he had seen the motorcycle lying there.

3. Learned counsel has submitted that PW 2 Sh. Nem Singh was pillion rider on the motorcycle and since he was unconscious, his testimony could not be believed upon, therefore, the learned Tribunal has erred while believing the testimony of this witness.

4. He further submitted that PW 2 Sh. Nem Singh was not an eye witness and has been planted to be an eye witness by the respondents/claimants. He submitted that the respondents/claimants have not examined Sh. Shiv Kumar, actual eye witness of the accident. Further submitted that the respondents/claimants ought to have relied upon the statement Ex. R2W2/Y of the injured Sh. Shiv Kumar recorded U/s 161 Cr.P.C.

5. Also submitted that number of the offending vehicle was recorded as DL1RG-7181, whereas the number of the alleged TSR/offending vehicle is DL1RG-8170. Since, the said TSR was not involved in the accident, therefore, the appellant/Insurance Company cannot be made liable to pay any compensation to the respondents/claimants.

6. Learned counsel for the appellant/Insurance Company has also drawn the attention of this Court to annexure A-6 page 68, statement Ex. R2W2 of ASI Kunwar Pal Singh, who deposed that on 21.10.2007 during investigation, he had recorded statement Ex. R2W2/X of eye witness Sh. Shiv Kumar U/s 161 Cr.P.C. At the time of producing him in the Court, he tried to trace the said witness but could not trace despite his best efforts. In this respect, he had given a report Ex. R2W2/Y. He also proved the MLCs of the injured Shiv Kumar and Nem Singh as Ex. R2W2/Z and Ex. R2W2/Z1 respectively, which he had obtained from GTB Hospital.

7. He further stated that Sh. Shiv Kumar had told him the correct number of the offending vehicle as DL1RG-8170, but inadvertently, while noting down the number in his statement, it was recorded as 7181.

8. Moreover, during investigation, R2W2 ASI Kunwar Pal Singh had issued a notice U/s 133 of the Motor Vehicles Act, 1988 to respondent No. 1 Sh. Ram Ashre (respondent No. 8 herein), to which he replied in his own handwriting on the notice that he is the owner of TSR bearing No. DL1RG-8170, which is Ex. R2W2/A. On 16.10.2007 at about 10 PM he was driving the TSR at CRPF Centre, Khajoori Road, Pushta and met with an accident. Thereafter, due to fear he left the TSR at the spot and ran away.

9. Learned counsel for the appellant/Insurance Company has pointed out that R2W2 has stated that during investigation he did not come to know about any Surender Singh that he was also present in the offending TSR.

10. Learned counsel further submitted that Sh. Ram Ashre, driver of the

offending vehicle was not having valid driving license at the time of the accident.

11. However, he has admitted that the driver was having the learner licence and that is valid only if he was driving the vehicle with the person who was having a valid driving licence. The alleged Surender Singh is a planted witness and has been produced by the respondents/claimants themselves even without issuing the summons.

12. Since the said witness was not summoned, therefore, the appellant/ Insurance Company did not cross-examine him on the aspect whether he was with the driver of the offending vehicle at the time of the accident or not.

13. Learned counsel argued that the learned Tribunal has considered 50% inflation in salary, whereas it should have been maximum 30%. The deceased at the time of the accident was aged 42 years, as stated by PW 1 widow of the deceased in her affidavit Ex. PW 1/A.

14. Learned counsel further submitted that the claimants have not filed any document on record to prove the income of the deceased, therefore, the learned Tribunal has considered the loss of income of the deceased as per the minimum wages fixed by the Government for an unskilled person, which on the date of the accident was Rs. 3,516/- per month.

15. In Para 14 of the impugned award dated 01.09.2011, the learned Tribunal has recorded as under:-

14. Accordingly, loss of dependency in the present case would be Rs. 4395/- per month $\{(Rs. 3516 + 3516 + 1758)/2\}$ and Rs. 52740/- per annum.

16. Learned counsel has relied upon a case of Santosh Devi Vs. National Insurance Company Ltd. and Others, , wherein the Supreme Court has held that it should have been maximum 30%.

17. Lastly, he submitted that since the witness Surender Singh, who is planted and not a genuine witness, in view of that, at least recovery rights should have been given to the appellant/Insurance Company against the owner of the offending vehicle.

18. On the other hand, learned counsel for the respondents/claimants regarding involvement of the vehicle has submitted that criminal case against the driver of the offending vehicle has proved the involvement of the vehicle. In reply Ex. R2W2/A to notice U/s 133 of the Motor Vehicles Act, 1988, it is stated by Sh. Ram Ashre, owner of the TSR bearing registration No. DL1RG-8170 that he was driving the said TSR on 16.10.2007 at about 10 PM, at the time of the accident at CRPF Centre, Khajoori Road, Pushta. Due to fear he had left the TSR at the spot and fled away from there.

19. Learned counsel submitted that in view of the above, the learned Tribunal has come to the conclusion that PW 2 was also injured in the same accident, which was caused by the TSR in question.

20. I have heard Id. Counsels for the parties.

21. On noting down wrong number of the TSR, R2W2, Investigation Officer of the case has stated that on 21.10.2007 he had recorded the statement Ex. R2W2/X of the eye witness Sh. Shiv Kumar. He has proved the MLCs of injured Sh. Shiv Kumar as Ex. R2W2/Z and that of Nem Singh as Ex. R2W2/Z1, which he obtained from GTB Hospital. In Ex. R2W2/X, number of the offending vehicle has been mentioned as DL1RG-7181. R2W2 certified that the eye witness Sh. Shiv Kumar had told him the correct number of the offending vehicle as DL1RG-8170, but while writing his statement, he had, inadvertently, noted down its number as 7181. In view of above, there is no substance on the plea taken by the appellant. Even this fact has been proved for the reasons that the police has recovered the TSR bearing No. DL1RG-8170 not DL1RG/J-7181.

22. The offending vehicle was recovered by the police from the spot itself and the driver of the TSR fled away for the reasons one person resulted into fatal injuries. This fact has been proved by R2W2 ASI Kunwar Pal Singh and PW 2 Nem Singh, who was examined on three dates of hearing i.e. on 03.02.2010, 10.02.2010 and 15.09.2010. On 03.02.2010, the said witness stated that he had also sustained injuries in the accident. On 10.02.2010, he stated that the accident had occurred with the TSR, which came from the opposite side. Finally on 15.09.2010, he deposed that he did not know which vehicle had hit the motorcycle as he was not fully conscious at that time.

23. I note, at that stage, the learned Tribunal put a query to this witness as to whether he had seen the accident or not, to which he replied that he had seen the accident.

24. Regarding the issue of valid driving licence, it is not disputed that the driver of the TSR was having learner licence. The only issue which remains in the instant appeal is that whether Surrender Singh was with Sh. Ram Ashre, the driver of the offending vehicle at the time of the accident.

25. Surrender Singh has filed his affidavit Ex. R1W1/X, wherein it is stated that he was a driver by profession and earned his livelihood by driving. On 16.10.2007, he was sitting with Sh. Ram Ashre, driver of the TSR No. DL1RG-8170, which was driven by said Ram Ashre under his supervision.

26. In cross-examination, this witness has deposed that on 16.10.2007, said Ram Ashre had a learner licence and with his help, he was achieving perfection in driving the TSR.

27. R1W3 Sh. Rajesh Kumar, MLO, Transport Department, North East Zone, Loni Road, Delhi had produced the computerized print Ex. R1W3/A regarding driving licence No. DL-0520040032124. He stated that the manual record qua the Learners' Licence has been weeded out on 16.09.2009 w.e.f. 01.10.2004 to 28.02.2009. A duplicate licence No. DL-0520040032124 was issued on 20.06.2009, which was valid up to 21.10.2010.

28. R1W2, Sh. Dinesh Kumar, LDC, Transport Department, North East Zone, Loni Road, Delhi had brought the verification of DL-0520040032124 regarding the licence of Ram Ashre. He admitted that document Ex. R1W2/A has been issued from Loni Road Authority and as per this record; the learning licence was issued in favour of Sh. Ram Ashre on 14.09.2007.

29. The claimants have proved their case by producing witnesses and documentary evidence, whereas the appellant/Insurance Company failed to establish any record contrary to the record produced by them. Hence, the learned Tribunal has rightly held liable the appellant/Insurance Company to pay compensation to the claimants.

30. As regards 50% increase in price, learned counsel has submitted that he does not dispute as law has been settled in Santosh Devi's case (supra) that inflation should be 30%, however, it can be increased to 50% considering the facts and circumstances of the case. He submitted that the claimants/respondents have claimed monthly salary of the deceased as Rs. 17,000/- as he was working as a Paper man with M/s. Vijay Printers, D/150, Flatted Factory Complex, Okhla, Phase-II, New Delhi. However, the learned Tribunal has rightly considered the minimum wages of an unskilled worker and correctly granted 50% increase in price/inflation.

31. In view of the above discussion and legal position, I find no discrepancy in the judgment/award dated 01.09.2011 passed by the Id. Tribunal. Therefore, I am not inclined to interfere with it. I find no merit in the instant appeal and the same is dismissed with no orders as to cost.

CM. NO. 2749/2012 (Stay)

In view of the above, instant application has become infructuous and disposed of as such.