

(2013) 11 DEL CK 0230
In the Delhi High Court
Case No : MAC. App. No. 280 of 2012

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Kawal Jit Kaur and Others

RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2013) 4 ACC 865

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Sameer Nandwani, for the Appellant; R.K. Bachchan and Mr. A.K. Mahur, Advocates for Respondent Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—Vide the present appeal, the appellant/Insurance Company has assailed the impugned award dated 08.12.2011, whereby the learned Tribunal has granted compensation of Rs. 25,54,000/- with interest at the rate of 7.5% per annum in favour of the respondents/claimants from the date of filing of the claim petition, i.e., 14.05.2007 till its realization. Learned counsel appearing on behalf of the appellant/Insurance Company submitted that the alleged offending vehicle bearing registration No. DL-1RG-6070 was not involved in the accident as none of the eye witnesses have proved that the accident in question was occurred due to rash and negligent driving of the driver of said vehicle which resulted the death of Jaspreet Singh.

2. Brief facts of the case are that on 03.02.2007 at about 11.50 pm, the deceased Jaspreet Singh was coming from his office to his house at Lajpat Nagar, New Delhi. He hired the offending vehicle, i.e., Bajaj Auto Rickshaw bearing registration No. DL-1RG-6070 from his office at ITO to reach his house at Lajpat Nagar. When the deceased reached near the bus stop of Lajpat Nagar opposite Petrol Pump, Defence Colony, he requested the driver/respondent No. 5 to stop the Three-wheeler Scooter Rickshaw (TSR). Accordingly, the said driver stopped

the TSR near the bus stop of Lajpat Nagar. When the deceased was coming out from the TSR, respondent No. 5/driver of the offending vehicle started the TSR. As a result thereof, the deceased was dragged on the road because his half portion of the body was in the TSR and half was being dragged on the road. Ultimately, after dragging about 50 meters, the deceased fell down on the road and received grievous injuries on his body and head. Thereafter, respondent No. 5 stopped the TSR. The passengers waiting for their buses at the Lajpat Nagar Bus Stop tried to catch the driver of the offending vehicle but he fled away from the spot.

3. Issue No. 1 framed by the learned Tribunal vide order dated 16.01.2009, reads as under:-

Whether deceased suffered fatal injuries in an accident which took place on 03.02.2007 at about 11.50 pm involving Bajaj Auto Rikshaw bearing No. DL-1RG-6070 driven by Respondent no. 2 and vehicle owned by Respondent no. 1 and insured with respondent no. 3? OPP

4. Learned counsel for the appellant/Insurance Company submitted that if the claim petition filed under Sections 166 and 140 of the Motor Vehicles Act, 1988, claimants have to prove the accidental negligence on the part of the driver of the offending vehicle. However, in the present case, none of the witnesses have proved that the aforesaid TSR was involved in the accident in question and the respondent No. 5, i.e., driver of the offending vehicle was rash and negligent.

5. He further submitted that the present case was of a hit and run case, however, the learned Tribunal has over looked all these facts while passing the impugned award dated 08.12.2011.

6. Learned counsel for the appellant/Insurance Company also argued that though the claimants have failed to prove the salary of the deceased, however, the learned Tribunal while granting compensation has assessed the monthly income of the deceased as Rs. 15,000/- without any proof or material on record.

7. On the other hand, learned counsel for the respondents/claimants has pointed out that in reply to para 1 of the claim petition, it is clearly stated that the deceased hired the offending vehicle from his office at ITO to reach his house at Lajpat Nagar. The said vehicle stopped near the bus stop Lajpat Nagar and without noticing even whether the deceased came out or not, driver of the offending vehicle started the TSR inspite of hue and cry raised by the deceased. Resultantly, the deceased was dragged on the road, fell down and suffered grievous injuries on the body and head. The passengers waiting for their buses at bus stop Lajpat Nagar tried to catch the respondent No. 5, but he fled away from the spot. However, in reply, the same were being denied by the appellant/Insurance Company for want of knowledge.

8. He further submits that since the appellant/Insurance Company did not take any defence of hit and run before the learned Tribunal, therefore, this ground

cannot be raised belatedly in appeal. Even otherwise, the number of the offending vehicle was noted in the MLC at the very first instance. Accordingly, the police has filed the challan against the respondent No. 5, who is facing trial.

9. Learned counsel for the respondents/claimants has submitted that in case, the claimants have failed to prove the income of the deceased or the injured, the law has been settled in the cases of K. Suresh Vs. New India Assurance Company Ltd. and Another, and Kavita Vs. Deepak and Others, , wherein it is held that while assessing the damages, some guesswork, some hypothetical consideration and some sympathy come into play but, a significant one, the ultimate determination is to be viewed with some objective standards.

10. On perusal of the trial court record and the impugned award, it is clear that PW1, Smt. Kawal Jeet Kaur and PW2, Shri Jagdish Singh, i.e., wife and father of the deceased respectively have deposed that the alleged accident was occurred on account of rash and negligent driving of the respondent No. 5.

11. PW3, Shri Tarun Goswami, who is a summoned witness, has deposed that he saw a person lying on the road and later on it was learnt that he was hit by a TSR. He, accordingly, called the PCR from his mobile phone and pursuant thereto he got a call from the PCR stating that they were unable to locate the accident site and instructed him to take the injured to the nearest hospital and they will join him there. By the time, he could move the victim, the PCR arrived and the victim was taken to Moolchand Khairati Ram Hospital in his private car along with PCR.

12. In his cross-examination, he specifically stated that he saw the victim for the first time at around 11.00 pm to 12.00 midnight as he came out of his house at about 12.00 hours because he had to go to the printing press located at Okhla to get his printing work checked up.

13. It is pertinent to note that in MLC Ex. PW1/6, number of the TSR, i.e., offending vehicle has been mentioned. Moreover, the claimants have placed on record the certified copies of the chargesheet filed against the respondent No. 5/ driver of the offending vehicle and a criminal case is pending against him. The police investigation has concluded that accident took place due to rash and negligent driving of the offending vehicle by respondent No. 5 wherein deceased Jaspreet Singh sustained fatal injuries. The medical record shows that he was admitted in the hospital at that relevant time with serious injuries and also bears a notation that "history as brought by patient was found lying unconscious on the road, it was told that patient was hit by Auto No. DL-1RG-7070".

14. Therefore, keeping in view the material placed on record, the learned Tribunal has opined that the accident was taken place due to rash and negligent driving of the driver of offending vehicle, i.e., respondent No. 5.

15. So far as the income of the deceased is concerned, the claimants have claimed that the deceased was working as Freelancer Photo Journalist/Chief

Photographer with Qamar Express, Amar Sandesh, Indraprastha Press Club, Press Rashtriya Sahara and Evening Newspaper "Veer Arjun". He was also publishing his own weekly newspapers as "Jassi Times" and earning more than Rs. 30,000/- per month.

16. To prove the above facts, the claimants have proved the identity card of the deceased issued by the Press Rashtriya Sahara, Hindi Daily as Ex. PW1/9, identify card issued by the Delhi Journalists Association as Ex. PW1/10 and the identity card issued by Indraprastha Press Club (Regd.) as Ex. PW1/11. Moreover, PW1 Smt. Kawal Jeet Kaur, wife of the deceased had stated in her cross-examination that she had no proof as to the earning of her husband, but he used to earn Rs. 30,000/- plus other income from other sources and her husband was income tax payee.

17. PW2, Shri Jagdish Singh, father of the deceased had stated in his cross-examination that his deceased son was earning Rs. 30,000/- to 40,000/- per month but he could not adduce any proof of the same. He specifically deposed that his son used to file ITR and he will try to locate the same and will produce the same on the next date of hearing. Thereafter, the appellant/Insurance Company did not insist the said witness to produce the ITR. Therefore, the learned Tribunal keeping in view the profession of the deceased has assessed a sum of Rs. 15,000/- per month as monthly income of the deceased.

18. Since there was no proof of income, therefore, keeping in view the material placed on record, in my considered opinion, the learned Tribunal has rightly assessed the monthly income of the deceased as Rs. 15,000/- per month.

19. In view of the above discussion, I do not find any discrepancy in the impugned award dated 08.12.2011 passed by the learned Tribunal.

20. Consequently, finding no merit in the instant appeal, the same is dismissed. Accordingly, the Registry of this Court is directed to release the statutory amount of Rs. 25,000/- in favour of the appellant/Insurance Company and the balance compensation amount along with upto date interest accrued thereon shall be released in favour of the respondents/claimants.