

(2012) 10 DEL CK 0020
In the Delhi High Court
Case No : MAC. App. 398 of 2012

New India Assurance Company Ltd.

APPELLANT

Vs

Sarab Singh and Others

RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Motor Vehicles Act, 1988 — Section 133, 166
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2012) 10 DEL CK 0020

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : L.K. Tyagi, for the Appellant; Mohinder Malhotra, Advocate for R-1 to R-5, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—Since there is no breach of terms of the policy, the service of Respondent No. 6 is dispensed with. At the request of the learned counsel for the parties, the Appeal is taken up for final disposal.

2. The Appellant New India Assurance Company Limited impugns a judgment dated 13.02.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 6,68,744/- was awarded for the death of Smt. Rajkumari, who died in a motor vehicle accident, which occurred on 14.10.2008.

3. As per the case set up before the Claims Tribunal, on 14.10.2008 at about 7.55 p.m. the deceased along with her husband Sarab Singh was travelling in a Bus No. DL-1PB-3551. When the Bus reached near ISBT, Kashmere Gate, Delhi, the driver of the Bus commanded the passengers to get down from the Bus. While the deceased Smt. Rajkumari was in the process of getting down, the driver Respondent Jagbir Singh suddenly started the Bus, as a result of which the deceased fell down and suffered injuries, which were proved fatal.

4. It was claimed before the Claims Tribunal that the deceased was a vegetable vender. The Claims Tribunal, therefore, took the minimum wages of an unskilled worker; added 50% towards inflation, to award the overall compensation of Rs. 6,68,744/-.

5. The following contentions are raised on behalf of the Appellant Insurance Company:-

(i) Involvement of Bus No. DL-1PB-3551 and negligence on the part of the Respondent No. 6 was not established thus, the Appellant Insurance Company was not liable to pay any compensation.

(ii) Addition of 50% towards inflation was not justified. It is stated that at most addition of 30% could have been made on the basis of Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4) SCA 559.

6. It is urged by the learned counsel for the Appellant Insurance Company that the number of the offending Bus was not mentioned in the statement u/s 161 Cr. P.C. recorded on 15th October, 2008. The investigating officer filed a closure report on the ground that the involvement of Bus No. DL-1PB-3551 was not proved. It is further urged that since the Claimants failed to establish the involvement of the Bus in question, the Appellant Insurance Company was not liable to pay any compensation.

7. The Claims Tribunal dealt with the issue of negligence as under:

PW1 has reiterated the stand of petition and stated that on 14/10/2008 at about 07:45 p.m. near ISBT, Kashmere Gate, Delhi deceased while de-boarding from the Bus was thrown off the Bus due to sudden rash and negligent driving of the offending vehicle by respondent no. 1. Deceased was taken to Bara Hindu Rao Hospital where FIR was lodged, MLC was prepared. Deceased could not recover from her injuries and died therefore, postmortem was conducted. An untraced report for the FIR in question has been filed before the Ld. MM/Delhi. However, he has filed a protest petition and on his protest petition reinvestigation has been ordered. He has also stated that he is the eye witness to the accident in question. In cross-examination he denied the suggestion that he had disclosed the number of the offending vehicle only after 45 days of the accident in question. He volunteered that Police official had told him to compromise the matter with respondent no. 1 for Rs. 2 lakhs in the Police Station on the third day of the accident in question. Respondent no. 1 was also present on the said time. He denied the suggestion that the offending vehicle was at Madhuban Chowk and not at the site of accident on the date and time of accident in question. PW2, IO of the case stated that reinvestigation had been ordered in the present case and that it was presently marked to Inspector Gurmeh Singh for further investigation. R2W1/respondent no. 2 stated that his vehicle has been falsely implicated in the case and against his false implication he had also filed a representation. As per final report involvement of his vehicle was not found in the accident in question. It is stated that the offending vehicle was falsely

implicated in the case. He stated that the vehicle no. DL 1PA 3527 was responsible for the accident in question but stated that he did not know if he had disclosed the said number in his representation to DCP. Respondent no. 1 driver of the offending vehicle has not been examined by the respondents.

No other independent witness has been examined by the parties.

Certified copy of record pertaining to criminal case pending in the concerned criminal court Ex. P1 has also been filed on record. As per FIR a case U/s 279/337 IPC had been registered for the accident in question but the number of the offending vehicle was not mentioned. As per statement of complainant/petitioner no. 1 recorded on 15/10/2008 he had disclosed that the Bus route no. 883 had caused the accident in question. On 19/10/2008 petitioner no. 1 had identified the Bus. As per MLC, deceased had been brought to the hospital with injuries suffered in the alleged road traffic accident. As per postmortem report, deceased had died due to antemortem injuries caused by blunt force impact. As per report on notice U/s 133 MV Act respondent no. 2 had admitted that he was the owner and respondent no. 1 was the driver on the date of accident in question. In the present case it is not disputed that the offending vehicle was plying on the route in question. Respondent no. 2 has stated that the offending vehicle was falsely implicated in the case and at the time of accident in question his vehicle was at Madhuban Chowk, Delhi there was also a quarrel at the said time between respondent no. 1 and driver of the another vehicle plying behind the offending vehicle. Respondent no. 1 has not appeared in the witness box. He was the best person who could have stated about the accident in question. Respondent no. 2 is not the eye witness. Respondent no. 2 has also not produced the time table whereby the probable time and place of the offending vehicle could have been ascertained. Untraced report has been filed by the concerned Police but the same has been sent for reinvestigation. Respondent no. 2 has stated that the vehicle responsible for the accident in question was DL 1PA 3527 but had not mentioned the number of the said vehicle in his reply nor had taken steps to implead the same in the present case. PW1 had identified the driver as well as the offending vehicle. It is recorded in the FIR that at the first instance petitioner no. 1 had not disclosed the number of the offending vehicle but thereafter, on the same day had disclosed the number of the offending vehicle. Even otherwise the standard of proof in a MACT is only of a prima facie nature. On the basis of the statement of petitioner, documents on record and the fact that respondent no. 1 has not appeared in the witness box and no other independent witness has been examined by the parties, it is therefore, prima facie proved that deceased died due to rash and negligent driving of respondent no. 1.

8. I have before me, the Trial Court record. Sarab Singh, (PW1) who was accompanying with the deceased at the time of the accident gave number of the Bus in his statement before the Court.

9. During the investigation of the criminal case, he identified the Bus involved in

the accident. The Bus was released on supurdari to the owner. It is true that initially a closure report was filed by the police. The closure report was not accepted by the Metropolitan Magistrate and Inspector Gurmail Singh was directed to investigate the case further. Thus, the case against the driver of the offending vehicle was not closed. The driver of the offending bus (Respondent No. 6 herein) did not enter into witness box to rebut PW-1's testimony regarding involvement of the Bus. Thus, the Claims Tribunal reasoned that there was no material to rebut PW-1's testimony regarding involvement of Bus in question. The Claims Tribunal further reasoned that although the owner of the Bus stated that it was bus No. DL-1PA-3527 involved in the accident, but the owner admitted that he did not inform the police that the above said bus was involved in the accident. Thus, the finding reached by the Claims Tribunal was logical and well reasoned.

10. It is well settled that in a Claim Petition u/s 166 of the Motor Vehicle Act, the standard of proof is of preponderance of probability. In *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, the Supreme Court held that in a Petition u/s 166 of the Act, the Claimants were merely to establish their case on the touchstone of preponderance of probability and a holistic view is to be taken while dealing with the Claim Petition under the Motor Vehicles Act. Para 15 of the report is extracted hereunder:-

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

11. In the circumstances, in my view the involvement of the Bus and negligence on the part of the driver Respondent No. 6 was sufficiently established.

12. So far as the quantum of compensation is concerned, admittedly, there is no evidence with regard to the deceased's future prospects. Thus, an addition of 50% towards inflation was not justified. (*Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others*, , *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*,).

13. On the other hand, there would be an addition of 30% towards inflation as the deceased was a self employed person on the basis of the judgment in the case of *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCA 559.

14. The loss of dependency thus, comes to Rs. 5,36,244/-(3683 + 30% $\times$ 2/3 $\times$ 12 $\times$ 14).

15. I would further make a provision of Rs. 25,000/- towards loss of love and affection and Rs. 20,000/- towards loss of consortium and loss to estate as

granted by the Claims Tribunal. The compensation of Rs. 5,000/- awarded towards funeral expenses is enhanced to Rs. 10,000/-.

16. The overall compensation thus comes to Rs. 5,91,244/-.

17. The excess amount of Rs. 77,500/- along with proportionate interest and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company.

18. The compensation awarded to Respondents No. 1 to 5 shall be released/held in fixed deposit in terms of the order passed by the Claims Tribunal.

19. The statutory deposit of Rs. 25,000/- be refunded to the Appellant Insurance Company.

20. The Appeal is allowed in above terms. Pending Applications also stand disposed of.