

(2022) 08 DEL CK 0085
In the Delhi High Court
Case No : MAC.APP. No. 82 Of 2021

Reliance General Insurance Co Ltd

APPELLANT

Vs

Bharat Singh & Ors.

RESPONDENT

Date of Decision : 16-08-2022

Acts Referred:

Citation : (2022) 08 DEL CK 0085

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : A.K. Soni, Bharat Singh

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J

1. Appellant – Insurance Company impugns award dated 26.11.2020 whereby claim petition has been allowed and compensation awarded.

2. As per the claimants, on 10.05.2018 at about 6.20 a.m. the deceased had gone to drop her daughter at the bus stop across the road opposite main gate of Vivekanand Apartment at Dwarka, Sector-5. After helping her daughter board her school bus, the school bus remained stationary and was parked inside the solid/continuous white line on the left side of the road. For the purposes of crossing the road, the deceased moved a few meters ahead of the bus, keeping to the extreme left edge of the road, to see across the right outer edge of the school bus checking for any oncoming traffic.

3. Suddenly an over-speeding white bus, (the offending vehicle) being driven by its driver in a rash and negligent manner, improperly overtook the said school bus and swerved left to avoid some school children who were running across the road from the divider of the right side, hit the deceased. The deceased was thrown on the road and died at the spot.

4. The contention of learned counsel for the appellant-Insurance Company is that

the deceased herself was liable for the accident because she had attempted to cross the road from in front of a parked bus without looking out for oncoming traffic and as she crossed the road, she was hit by the offending vehicle which was being driven in a proper manner.

5. To prove the case, the claimants examined the husband of the deceased Bharat Singh as PW-1, Archana Gulati as PW-2 to prove the income of the deceased and one Ashok Kumar PW-3 who was produced as an eye witness.

6. No evidence was led on behalf of the Driver or owner of the offending bus or by the appellant i.e. the insurer of the offending bus.

7. The eye witness of the accident i.e. PW-3/Ashok Kumar deposed that he was present at the spot at the time of the accident and he saw one lady after dropping her child moved in front of the bus towards left of the road and the offending bus came at a fast speed and the driver of the offending bus overtook the stationary school bus. The offending bus overtook the stationary school bus. There were children on the divider who started running on the road and to avoid them, the over-speeding bus suddenly took a left turn and hit the deceased.

8. The Tribunal has referred to the site-plan filed along with the DAR, which is as under:

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(Intentionally left blank)

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9. Referring to the red encircled portion in the site plan which represents the spot of accident, the tribunal has held that the accident happened on the left side of the road and thus concluded that the deceased was near the pavement when she was hit by the offending bus.

10. The Tribunal has noticed that there was a slight difference in the version recorded in the Charge Sheet and the deposition before the Tribunal. In the charge-sheet it has been mentioned that the deceased was hit by the negligently driven high-speed offending vehicle while crossing the road. In his deposition before the Tribunal, PW-3, Ashok Kumar has deposed that the deceased was standing in front of the school bus and the high-speed offending vehicle swerved to the left to avoid running school children.

11. The Tribunal has observed that what remained constant in both the versions of the eye witness is that the offending vehicle was coming at 'high speed' and hit the deceased.

12. The finding of the Tribunal is further substantiated from the fact that the spot of the accident is on the left side of the road and the version of the Insurance Company is that the deceased was trying to cross the road from in front of the school bus. Even if this version is to be accepted, then the offending bus would

have had to swerve to the left in front of the standing school bus to hit the deceased. This further corroborates the version of the eye witness that the offending bus, which was being driven at a high speed, swerved to the left to avoid hitting some school children who were attempting to cross over from the right side of the road and hit the deceased.

13. The Tribunal has also relied upon the screen grab of 'Google earth' to note "that the spot of accident is on a road sandwiched between two big crossings/ red lights with residential societies and DDA markets on both sides of the road. The road is straight. Thus, if one was to start driving from one of the red lights, the entire road, all the way up to the other red light and even beyond, would be within the ambit of vision of the driver. The point to note is that whether the deceased was about to cross the road or was standing on the left side, it is inconceivable that the driver of the offending vehicle would not have seen her from a considerable distance. Then just how high the speed of the vehicle was that the driver could/ did not stop it in time and hit the deceased. No doubt, 'mere high speed' is not considered rashness or negligence but the proposition is qualified by the word 'mere'. There is no blanket immunity that high speed can never tantamount to negligence. Hence, high speed is to be viewed in the light of the area in which the vehicle is travelling and the kind of vehicle itself."

14. Noticing that the area where the accident had taken place is dotted by residential societies and markets and the offending vehicle was a bus, the Tribunal held that when high speed was added to these surrounding circumstances, the negligence on part of the driver of the offending bus was apparent. Further, coupled with the fact that school children were present, the negligence of the offending driver stood magnified a thousand times.

15. The Tribunal has further held, and rightly so, that the burden of proving any alleged contributory negligence on part of the deceased and to show how it was instrumental in causing the accident was on the driver, owner and insurer of the offending vehicle but they have not led any evidence.

16. The Tribunal has further held that nothing material to this effect had even come forth in the cross-examination of the eye-witness.

17. Even before this court nothing has been pointed out to contradict the version of the claimants and the eye witness. Relying upon the principle of preponderance of probabilities, the Tribunal has rightly held that the accident has occurred on account of the negligence on the part of the driver of the offending bus. Consequently, there is no merit in the appeal on the said account.

18. The other contention of learned counsel for the appellant is that the Tribunal has incorrectly computed the salary of the deceased and erred in including certain reimbursable allowances and has erred in taking the husband as a dependent and erred in deducting 1/3rd of the income towards personal expenses instead of 1/2 .

19. While assessing dependency, the Tribunal has noticed that the deceased had left behind two legal heirs i.e. husband and a minor daughter.

20. The Tribunal applying the ratio of the Judgment of the Supreme Court in *Sarla Verma & Ors. vs DTC & Anr.* (2009) 6 SCC 121 held that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.

21. The tribunal has considered the evidence produced on behalf of the claimants to show that the deceased was spending a considerable portion of her earnings on her family which included, inter-alia, her daughter's education expenses, Rs.22,000/- per month as rent for their residence in terms of lease agreement dated 29.03.2018 (Ex.PW-1/20) and other expenses towards utilities. The husband of the deceased had also annexed statements of accounts showing such payments in order to substantiate his submissions. The claim on behalf of the claimants remained uncontroverted.

22. The Tribunal has correctly held that dependency is a relative term and includes much more than mere survival. Even a person having independent income may be dependent upon the deceased for meeting the household expenses.

23. It is not uncommon for both the husband and wife to share the burden of the household expenses. Even if a husband is having independent income, he could still be dependent upon his wife for meeting the household expenses.

24. Even in a case where the wife was a homemaker the Supreme Court of India in *Kirti & another vs. Oriental Insurance Company Limited* (2021) 2 SCC 166, recognised the services rendered by the homemaker and held that effort should be to assess the notional income so as to award just and fair compensation.

25. In the present case, evidence has been led by the claimants to show that even though the husband was earning, the deceased wife was having substantial income and was spending a substantial portion of her income towards meeting the household expenses and the daughter's education.

26. In view of the uncontroverted evidence led by the claimants that the deceased was spending substantial portion of her income for the family including her husband, the Tribunal has correctly held that the husband would be a dependent member of her family and as such the deduction for personal expenses would be 1/3rd and not half of her income.

27. With regard to the contention of learned counsel for the appellant that the Tribunal has incorrectly computed the salary of the deceased and erred in including certain reimbursable allowances, it is noticed that the submission is in itself erroneous for the reason the Tribunal has computed the income based on

evidence of the employer as well her pay slips. The inadmissible allowances have been disallowed by the Tribunal itself.

28. The deceased was employed as Director with VIACOM 19 Media Pvt Ltd. PW2 Archana Gulati, Director, HR, VIACOM 18 Media Pvt. Ltd, had deposed that the deceased was posted as Director BE (Brand Engagement) and Integrated Network Solutions since 23.10.2017 and she proved the appointment letter, salary structure and pay slips qua the deceased (Ex. PW-2/A).

29. The Tribunal has assessed the income of the deceased based on the monthly and annual components of the income as evidenced from her pay slips.

30. The Tribunal has done threadbare analysis of the various benefit plans availed of by the deceased as well as the compensation structure.

31. With regard to the Variable Pay of the deceased, the Tribunal has noticed that the same has been duly established by the evidence on the part of the claimants and there was nothing in the cross-examination of PW-1 or PW-2 which would show that the deceased would not have been entitled to the said component of variable pay.

32. With regard to the Mobile and Conveyance Reimbursement the Tribunal has held that the said payment was without requirement of producing any bills and neither of the witnesses was cross-examined on this aspect.

33. The Tribunal after assessing the income of the deceased based on her pay slip and the evidence led by the claimants, applied the ratio of the Judgment of the Supreme Court in National Insurance Company Ltd., vs Pranay Sethi, (2017) 16 SCC 680.

34. In view of the above, there is no infirmity in the impugned award or any merit in the appeal. Accordingly, the appeal is dismissed.

35. Order Dasti under the signatures of Court Master.