$~14 & 15

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 11.01.2023

\+ MAC.APP. 561/2018 & CM APPL. 24527/2018

RELIANCE GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr.A.K. Soni, Adv.

versus

ANJALI & ORS ..... Respondents

Through: Mr.Pawan Kawrani & Mr.Jitesh Talwani, Advs. with R-1 in person.

\+ MAC.APP. 740/2018

ANJALI SHARMA & ANR ..... Appellants

Through: Mr.Pawan Kawrani & Mr.Jitesh Talwani, Advs. with P-1 in person.

versus

RELIANCE GENERAL INSURANCE CO LTD & ORS ..... Respondents

Through: Mr.A.K. Soni, Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. These two appeals, both under Section 173 of the Motor Vehicles Act assail the award dated 13.04.2018 passed by the learned Motor Accident Claims Tribunal, (Shahadara), Karkardooma Courts, New Delhi in MAC No.1036/2016. Vide the impugned award, learned Tribunal has awarded a compensation of Rs.27,74,000/- with interest @ 9% p.a. in favour of the claimants. While the insurance company seeks reduction of the

compensation by way of MAC APP. 561/2018, the claimants seek enhancement of compensation by way of MAC. APP 740/2018.

2. Mr. Soni, learned counsel for the insurer submits that the learned Tribunal has erred in awarding compensation without appreciating the fact that the evidence led by the appellant to show negligence on the part of the driver of the insured vehicle was not reliable and therefore, could not be relied upon. He submits that once there was no independent witness to prove the negligence of the driver, the impugned award is liable to be set aside.

3. On the other hand, learned counsel for the claimant, by drawing my attention to the findings in the impugned award qua the negligence of the driver of the insured vehicle, submits that the said findings are correct. Furthermore, it was not even the case of the insurer that there was any contributory negligence on the part of the deceased and therefore, prays that the appeal of the insurer be rejected. He further submits that on the other hand, the claimant is entitled to seek enhancement of the compensation as the learned Tribunal failed to take into account the salary received by the deceased from his part time job.

4. Before considering the rival submissions of the parties, it would be apposite to note the findings of the Tribunal on the issue as to whether the deceased Sh. Shivam Sharma suffered fatal injuries due to rash and negligent driving of the insured vehicle being DL-3CB-1162. The said findings, as contained in para 9-12 of the impugned award read as under:

> *"9. The mode and manner of proving the rash and negligent driving of the offending vehicle has also been considered in various other judgments and has held that the onus to prove the rash and negligent driving is not to*

*be discharged beyond doubt or in the similar manner as a fact is to be proved in a civil case. Rather it has to be proved on the touchstone of preponderance of probability and holistic view is to be taken while dealing with the Claim Petition based upon negligence. The observation of the Hon'ble High Court made in **New India Assurance Co. Ltd. V. Sakshi Bhutan] & ors, MAC APP, 550/2011 decided on 02.07.2012** is relevant that it has to be borne in mind that the Motor Vehicles Act does not envisage holding a trial for a petition preferred under Section 166 of the Act. Under Section 168 of the Act, a Claims Tribunal is enjoined to hold an inquiry to determine compensation which must appear to it to be just. Strict rules of evidence are not applicable in an inquiry conducted by the Claims Tribunal. Even in **State of Mysore Vs. S.S, Makapur, 1993 (2) SCR 943**, the Hon'ble Supreme Court held that the Tribunals exercising quasi-judicial functions are not courts and are not bound by strict rules of evidence.*

*10. Further, the approach of the tribunal has also been defined by the Hon'ble Supreme Court of India in **N.K.V. Bros. (P) Ltd. v. M. Marumai Ammal, 1980 ACJ 435 (SC)**, that the Accidents Claims Tribunal must take special care to see that innocent victims do not suffer and persons liable do not escape liability merely because of some doubt here and some obscurity there. The court should not succumb to niceties, technicalities and mystic maybes. The court is bound to take broad view of the whole matter. As such, the case of the injured has to be decided in view of the above said legal proposition in this case.*

11. PW5 Maneesh Kaushik is an eye witness of this accident and has duly proved that on 08.12.2012, at about 03.00 pm, deceased Shivam Sharma Yadav was going to Meerut from Noida by his Motorcycle No. UP-14AZ 3020 and he was also going by his own and separate motorcycle behind him to Meerut and reached at near Kanawani Pulia towards Hindon side, Indirapuram and saw that the Respondent No. 1 driving the offending vehicle bearing No. DL-3CBW- 1162 in rash and negligent manner struck

against the motorcycle of the deceased and resulted into sustaining fatal injuries by the deceased. It is further stated that the deceased was removed to Shanti Gopal Hospital by him along with public persons but died during the treatment. PW1 has also corroborated that the Postmortem was conducted on the dead body' of deceased in mortuary of District Hospital, Ghaziabad, UP after his death and cause of death has corroborated the version of the PW5 that the death of the deceased was result of road accident. It is further proved that the police were Informed and FIR No. 1539/12 (Crime No 1767/2012) u/s 279/304A IPG was registered with PS Indrapuram and Respondent No-1 was arrested and charge-sheeted. PW5 also informed the Petitioner No 1 about this accident as corroborated by the PW5. As such, PW5 has proved that the Respondent No. 1 has caused this accident by his rash and negligent driving of the offending vehicle and PWl has corroborated it. The name of the PW5 is mentioned in the charge sheet filed before the Criminal Court and there is no reason to doubt his testimony. On the other hand, Respondents have not disputed this accident except stating that the offending vehicle has been falsely implicated in this case. Though Respondents have disputed that no accident took place by the offending vehicle, yet Respondent No. 1 is the driver of the offending vehicle and criminal case is pending against him. Even he removed the deceased to the hospital and also paid an amount of Rs.20,000/- by his credit card as stated in WS itself and has proved that he was involved in this accident. Even otherwise he has not made any complaint against the police or the complainant against his false implication in this case and it may be presumed that driver was involved in causing this accident.

12. Further, the offending vehicle was seized during investigation and was subjected to mechanical inspection which has also corroborated that the offending vehicle met with accident and suffered damage which was only possible only by an accident. Even the vehicle was got release on superdari after its seizure. Site plan has proved

> *the spot of accident and that the deceased was going by his side whereas the Respondent No. 1 came from the opposite direction which was not his lane of driving and came to the vehicle of deceased to strike. As such, it has proved that the Respondent No 1 was driving the offending vehicle in rash and negligent manner and caused this accident. As such, Petitioners have proved the Issue No. 1 and the same is decided in their favour."*

5. A perusal of the aforesaid findings show that the learned Tribunal has rightly opined that in dealing with matters of claims for compensation in cases of motor accidents, the question of determining rash and negligent driving is to be tested on the touchstone of preponderance of probabilities. The learned Tribunal has examined the evidence in detail and come to a categoric conclusion that the accident occurred on account of the insured vehicle being driven in a rash and negligent manner. The learned Tribunal, in my view, rightly rejected the vague plea of the insurer that there was no negligence on the part of the driver. I, therefore, find no reason to interfere with the findings of the Tribunal and therefore the appeal preferred by the insurer being MAC APP 561/2018, is meritless and is accordingly, dismissed.

6. At this stage, learned counsel for the claimant submits that even though the deceased was in fact, engaged in a part time job besides his regular job but taking into account that this Court is rejecting the appeal, he has instructions not to press the said plea any further.

7. In the light of the aforesaid stand taken by the learned counsel for the respondent, the appeal being MAC APP. 740/2018 is disposed of as not pressed.

8. Even though the awarded amount is, in terms of the impugned award,

payable to the respondent/claimant only in instalments as per the disbursal scheme, taking into account that the impugned award was passed almost five years ago, it would be in the interest of justice to release the awarded amount in favour of the claimant by retaining only a sum of Rs. 6,00,000/-, which would be payable to the respondent in annual instalments of Rs. 1,00,000/- along with accrued interest between January, 2024 to January, 2029.

9. The Registry is, accordingly directed to release the awarded amount deposited by the appellant along with accrued interest thereon in favour of the respondent by retaining a sum of Rs.6,00,000/-. The amount in terms of this order be remitted in the respondent no. 1's UCO Bank Account No. 20780110134245 at Karkardooma, New Delhi. The retained sum of Rs.6,00,000/- will be, as directed hereinabove, released in favour of the respondents/claimants, with accrued interest thereon, in six annual instalments of Rs.1,00,000/- each between January 2024 to January, 2029.

10. The Registry is further directed to refund the statutory amount of Rs.25,000/- with accrued interest thereon to the appellant

(REKHA PALLI)
JUDGE

JANUARY 11, 2023
gm