



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

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Judgment reserved on : 15 April 2024
Judgment pronounced on : 31 May 2024

+ MAC. APP. 293/2018

DELHI JAL BOARD & ANR Appellants
Through: Mr. Amit Sharma, Adv.

versus

CHANDRA KALA & ORS Respondents
Through: Mr. Udai Bhan Kanwar
Sehrawat, Adv. for claimants.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide the present appeal preferred by the appellants in terms of Section 173 of the Motor Vehicles Act, 1988¹ assailing the impugned judgment-cum-award dated 07.12.2017 passed by the learned Presiding Officer, Motor Accident Claims Tribunal-1, Central District, Tis Hazari Courts, Delhi² in MAC. Case No. 145/2014, whereby the learned Tribunal awarded compensation to the claimants to the tune of Rs. 47,83,000/- with interest @ 9% per annum from the date of filing of the petition till realization and fastened the liability upon the driver and the registered owner to pay the compensation.

¹ Act

² Tribunal



FACTUAL BACKGROUND

2. Succinctly put, it was the case of the claimants being the wife, mother and minor daughter of the deceased that on 20th January, 2008, the deceased-Kirpal Dutt Walia, who was working as an Inspector in the Intelligence Bureau (IB), Government of India, was going back to his home on his motor cycle³ bearing registration No. RJ-26N-0250 and was accompanied by his friend Sh. Vijay Dangwal, who was on his own two-wheeler scooter. At around 11:30 PM, when they reached in between Police Bhawan and Vardhman building, Asaf Ali road, one truck was going ahead of them at a slow pace; and it was claimed that as there was a heap of soil lying on the road, both the vehicles slowed down, when all of a sudden, one tanker belonging to DJB⁴, who is the registered owner⁵, bearing registration No. DL-1M-0311 (*hereinafter referred to as the 'offending vehicle/tanker' for brevity*) came from behind at a high speed, being driven by Ravinder Singh/Appellant No.2 in a rash and negligent manner and hit the motor cycle of the deceased as a result of which, he suffered fatal injuries.

3. It was the case of the claimants that Vijay Dangwal luckily escaped and he along with some public persons prevailed upon the driver⁶ of the offending vehicle/tanker to remove the injured to LNJP hospital, but on reaching the hospital, the injured was declared

³ Section 2(27) "motor cycle" means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle.

⁴ Delhi Jal Board

⁵ Section 2(30) "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.



'brought dead'. Subsequently, FIR No. 12/2008 was registered under Section 279/304A IPC⁷ at PS Kamla Market, New Delhi. Consequently, a claim petition dated 28.07.2008 was filed by the claimants under Section 160 and 140 of the Act seeking compensation of Rs. 1.30 crores.

4. During the course of proceedings, appellant No.2/driver contended that he was driving the tanker at a normal speed and it was due to rain that the mud became slippery and since the deceased was on a motor cycle, he could not control his vehicle and fell down and sustained injuries.

5. *Per contra*, the appellant No.1/registered owner/DJB accepted the fact that although the tanker was being driven by Ravinder Singh, who was their employee, he was on an emergency duty from 4 PM onwards, and when he reached Turkman Gate, Police Bhawan, the deceased tried to overtake the tanker and, in that process, fell down and sustained fatal injuries.

6. Based on the pleadings, the learned Tribunal *vide* order dated 10.12.2008, framed the following issues for consideration:

- (i) Whether the deceased Kripal Dutt Walia received fatal injuries on January 20, 2008 at about 11:30 PM due to the rash and negligent driving of the tanker of Delhi Jal Board bearing No. DL-IM-0311?
- (ii) Whether the claimants are the legal heirs of the deceased Kripal Dutt Walia?
- (iii) Whether the petitioners are entitled to any compensation, if so, to what amount and from whom?
- (iv) Relief.

⁶ Section 2(9) "driver" includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle.

⁷ Indian Penal Code, 1860



IMPUGNED JUDGMENT-CUM-AWARD

7. The learned Tribunal placed reliance upon the testimony of PW-2/Vijay Dangwal, who was an eye witness to the said incident. In his examination-in-chief, he clearly deposed that he saw the tanker coming from behind, being driven in a rash and negligent manner and hit the motor cycle of the deceased. The learned Tribunal was of the view that nothing could be extracted from the records so as to show that PW-2/Vijay Dangwal was not an eye witness to the said incident or the accident had not been caused by the offending tanker.

8. Further, the testimony of R1W1/Ravinder Singh-driver of the offending tanker, was also taken into consideration. He deposed that as sand was lying on the road and since the deceased was driving his motor cycle at a fast pace, he could not control his motor cycle and fell down. It is pertinent to mention here that although the respondent No.1/driver cross-examined PW-2/Vijay Dangwal at length, no question was put to him with regard to the fact that whether the deceased fell down from his motor cycle as a result of rash driving, a defence which has been taken by the driver of the offending tanker.

9. Thus, emphasizing upon the testimony of PW-2/Vijay Dangwal, the learned Tribunal held issue No.1 in favour of the claimants and against the respondents. Insofar as the issue of earnings/income of the deceased is concerned, it is an undisputed fact that the deceased was working in the Intelligence Bureau as an Inspector. In this regard, the statement of PW-6/Kundan Bhardwaj, SSA (UDC), IB, Ministry of Home Affairs, Government of India was found credible, who proved



the salary slip Ex.PW6/1 of the deceased to the effect that the deceased was earning Rs.29,453/- per month.

10. Lastly, considering all the pecuniary as well as non-pecuniary heads of compensation, the learned Tribunal awarded a sum of Rs.47,83,000/- to the claimants. The compensation has been depicted hereunder:

NAME OF THE HEAD	AMOUNT
Loss of income	Rs. 47,12,490/-
Loss of estate	Rs. 15,000/-
Loss of consortium	Rs. 40,000/-
Funeral expenses	Rs. 15,000/-
Total	Rs. 47,82,490/- (Rounded off to Rs. 47,83,000/-)

GROUND FOR APPEAL

11. The impugned judgment-cum-award has been assailed by the appellants primarily on the grounds that the appellant No.2/driver was earlier acquitted by the learned Metropolitan Magistrate (MM). Further, the learned Tribunal wrongly relied upon the testimony of PW-2/Vijay Dangwal as the MLC⁸ shows that he was not present at the spot at the time of the accident. Lastly, an objection was raised that as per the report of the Mechanical Inspector, the front portion of the motor cycle was damaged and no damage could be seen on the backside of the motor cycle, which clearly establishes the fact that it was the motor cycle which was being driven rashly.

ANALYSIS AND DECISION:

12. Having given my thoughtful consideration to the submissions

⁸ Medico-Legal Case



made by the learned counsels for the rival parties and on perusal of the record including the Trial Court Record, I find that the present appeal is bereft of any merits.

13. In arriving at such a decision, it would be expedient to reproduce the relevant observations made by the learned Tribunal with regard to the factum of the accident, which goes as under:

“11. (iv) PW2 in his examination-in-chief categorically deposed that when at about 11:30 PM they reached between Police Bhawan and Vardhman Building, Asaf All Road, he saw that one truck was going ahead to them and there was heap of soil on the road, accordingly, they slowed down their respective vehicle to pass the heap of earth/soil. He categorically deposed that at that time tanker of Delhi Jal Board i.e. offending vehicle came from behind in a rash and negligent manner and hit the deceased. Consequently, his helmet fell down at distance and he sustained grievous injuries. He further testified that due to pressure built by him and public persons, respondent No.1 agreed to take the injured to the hospital. In his cross-examination, he admitted that deceased was his friend since childhood. He further testified that before the accident, he met with the deceased at Jhandewalan Mandir. He further deposed that they remained in the temple for about 15 minutes and thereafter, they left for the residence of deceased, which was located near Red Fort. He clarified that deceased was ahead to him and he was following him. He further clarified that tanker came from behind and after overtaking him, tanker hit the deceased. No doubt, he failed to disclose in which vehicle deceased was taken to hospital but this is not sufficient to cast a doubt over his testimony. He further deposed that he also reached the hospital and doctor declared him dead. Thereafter, he informed the brother of deceased named Mr. C. S. Walia. His first cross-examination was conducted on January 27, 2012. Thereafter, he again graced the witness box on November 26, 2015 for cross examination. In his cross-examination, he admitted that since it was night time, there was less traffic on the road and deceased was 20-25 meters ahead to him. Though he testified that the tanker came and hit the deceased, but deposed that he could not tell from which side the offending vehicle hit the motor cyclist. However, on the last date of hearing, he testified that the tanker came from behind and hit the motor cyclist. Though witness was cross-examined at length, yet nothing could be extracted which may show that either he was not present



at the time of accident or the accident had not been caused by the offending vehicle.

(v) Now coming to the testimony of RIW1 Ravinder Singh. In his examination-in-chief he deposed that he was driving the offending tanker at normal speed. He further deposed that sand was lying on the road and since the deceased was coming at fast speed in a rash and negligent manner, he could not control the motor cycle and fell down. Being the religious person, he extended his help to the injured, but he has been falsely implicated in this case. He also reproduced the observations made by the Ld. Metropolitan Magistrate in the judgment. From the observations of Ld. Trial Court, it appears that during criminal trial, accused examined six witnesses in his defence to prove his innocence whereas during inquiry, accused did not examine them. Though respondent No.1 cross-examined PW2 at length, but no question was put to him that deceased fell down of his own as the sand was lying on the road or that he drove the motor cycle at fast speed in a rash or negligent manner.”

14. Suffice to state that the decision reached by the learned Tribunal that the respondent No.1 was rash and negligent in causing the accident, is clearly substantiated from the testimony of PW-2/Vijay Dangwal as also the photographs of the place of occurrence that goes to raise a strong inference that there was a heap of sand lying on the left side of the road, the direction in which the vehicles were being driven, and due the said heap of sand on the road, there was left a very narrow passage of about 10-12 feet.

15. As a matter of fact, RIW1/Mr. Ravinder Singh in his testimony acknowledged the fact that there was a heap of sand lying on one side of the road and interestingly, he also acknowledged that there was a water trolley attached to the tanker but the backlight or indicators of the trolley were not working. Further, he also testified that there were three persons travelling in the tanker, but none of the other two persons travelling in the tanker were examined by the respondent



No.1/driver or for that matter, by the appellants in their defence.

16. Thus, mere fact that PW-2/Vijay Dangwal was unable to recollect as to which part of the motorcycle was hit by the offending tanker and that there were found no fresh damages in terms of the Motor Vehicle Inspection Reports Ex.PW-6/A and PW-6/B, are not decisive factors so as to exculpate the driver. Such facts do not lead to an inference that there was no fault on the part of the driver of the offending tanker. A mere simple touch or hit by a heavy vehicle such as the tanker in this case, or even a light vehicle, as in this case the motorcycle, might be good enough to make the rider of the motorcycle lose his control and balance over his vehicle. It is not a golden rule that there would always be some scratch marks or damage marks on the body of the hitting/offending vehicle.

17. Lastly, the plea that PW-2/Vijay Dangwal was a planted witness does not cut much ice. Surprisingly, a new twist was sought to be added by the learned counsel for the appellants that the location of PW-2 at the time of incident was elsewhere, which fact was never put to PW-2 in his cross-examination. Again, mere fact that his presence has not been marked in the MLC or the death summary, is hardly of any consequence since he testified that he, along with other public persons, had prevailed upon the driver to remove the injured to the Hospital and he followed them on his own vehicle and reached the Hospital a little late. Also, it is in the evidence that PW-2/Vijay Dangwal also appeared as a witness for the prosecution in the criminal proceedings against the respondent No.1 i.e. the driver of the offending tanker.

