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

% Judgment delivered on: 02.03.2022

+ MAC.APP. 29/2022

THE ORIENTAL INSURANCE CO LTD Appellant

versus

SMT SARITA NAYAK MUKHERJEE & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. A.K.Soni, Advocate (through VC)

For the Respondent: Mr. S.N.Parashar, Advocate (through VC).

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns award dated 11.10.2021 whereby the claim petition has been allowed and compensation awarded.
2. Subject claim petition was filed contending that the husband of claimant No. 1, father of claimant No. 2 and the son of claimant No. 3 & 4 was going towards Shadipur Chowk from Hero Honda Chowk on his motor cycle at a normal speed wearing a helmet and on the correct side of the road. When the motor cycle crossed Hero Honda Chowk a Trola (a long body truck) which was being driven by its driver at a very high speed rash negligently in a zig-zag manner and without applying proper lookouts and without giving any horn came from the

back side and hit the motor cycle with a great force as a result of which the deceased fell on the road along with his motor cycle and the back wheel of the offending trolly passed over his head on account of which he sustained fatal crush injuries and expired on the spot.

3. Learned counsel for the appellant/insurance company submits that the Tribunal has erred in not appreciating that the deceased was himself contributory negligent and further the Tribunal has erred in not discussing the manner in which the accident has taken place in the impugned judgment.

4. Learned counsel further submits that the Tribunal has erred in taking the father of the deceased as a dependent and accordingly has erred in not reducing the salary appropriately for personal expenses.

5. Learned counsel for the appellant further contends that Tribunal has erred in awarding a sum of Rs.1,60,000/- towards '*loss of consortium*'.

6. Learned counsel appearing for the respondent/claimants submits that the testimony of the eyewitness, who had appeared as PW-2 and who was also accompanying the deceased on another motor cycle has been unrebutted. He submits that there was no effective cross-examination to the said eyewitness, said eyewitness had taken the photographs at the site and duly proved the same in evidence.

7. Learned counsel further submits that the father of the deceased was a senior citizen and physically handicapped and completely

dependent on the deceased and there is no cross-examination or rebuttal to the evidence led by the claimants.

8. Perusal to the testimony of PW-2, who was an eyewitness, shows that he had categorically and explicitly explained the manner in which the accident had taken place and there is virtually no cross-examination to the mode and manner of the accident. The eyewitness has categorically stated that the motor cycle was being driven in the middle lane and which shows that the Trola which was supposed to be kept in the extreme left lane had crossed over to the middle lane which is meant for motor cycles and slow moving vehicles.

9. There is also no other evidence produced by the Insurance Company to rebut the testimony of the eyewitness and further the testimony has remained unshaken in the cross examination.

10. In so far as the finding of dependency of the father is concerned, the wife of the deceased, in her evidence, has categorically stated that the mother of the deceased is a housewife and has been suffering from diabetic, hypertension, thyroid and is a heart patient and the father of the deceased is a senior citizen, physically handicapped and suffering from other physical ailments and has no other source of income whatsoever. It is specifically deposed that all the claimants were fully dependent upon the income of the deceased as he was the sole bread earner of the family. There is no rebuttal or cross-examination on the said aspect.

11. Further, in view of the judgment of the *United India Insurance Co. Ltd. vs Satinder Kaur @ Satwinder Kaur*, 2020 SCC OnLine SC 410 the award of sum of Rs. 1,60,000/- on the ground of 'loss of consortium' **also** does not warrant any interference.

12. On perusal of the evidence which had been brought on record, particularly the testimony of the eye witness PW-2 and the documents exhibited, I am of the view that the Tribunal has not committed any error in returning a finding of negligence on the part of the driver of the Trola which was insured with the appellant/insurance company and also with regard to the computation of income of the deceased and the dependency. Further, there is no material whatsoever to even suggest that the deceased was negligent so as to apply the principle of contributory negligence.

13. In view of the above, I find no infirmity in the impugned award, and consequently no merit in the appeal.

14. The appeal is accordingly dismissed.

15. Tribunal is accordingly directed to disburse the amount as per the scheme of disbursal.

SANJEEV SACHDEVA, J.

MARCH 02, 2022

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