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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**# **CNR No. DLHC012144302018**% **Date of decision: 17th August 2026**+ **MAC.APP. 741/2018 & CM APPL. 33207/2018****THE ORIENTAL INSURANCE CO LTD**

.....Appellant

Through: Mr. Pradeep Gaur, Mr. Amit Gaur
and Mr. Kaarrtikey Parashar,
Advocates.

versus

JAHIDA KHATOON & ORS

.....Respondents

Through: Mr. Navneet Goyal, Advocate for R-1
to R-5.

CORAM:**HON'BLE MR. JUSTICE ANISH DAYAL****JUDGMENT****ANISH DAYAL, J (ORAL)**

1. This appeal has been filed by the Insurance Company impugning the judgment/award dated 06th June 2018 passed by the Motor Accident Claim Tribunal, Rohini Courts, Delhi (*'MACT/Tribunal'*) in MAC Petition No.5113/2016, awarding compensation of Rs.17,24,500/- along with interest at 9% per annum in relation to the death of *Md. Rafik (deceased)* in an accident which occurred on 11th July 2013, when the deceased was sleeping under a container truck which was moved by the driver, and he was caught underneath the rear wheel of the truck.

2. *Mr. Pradeep Gaur*, counsel for appellant/Insurance Company, has raised two issues:



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- i. There was contributory negligence on the part of the deceased.
 - ii. The permit of the offending vehicle was not valid and, therefore, the Insurance Company ought to be exonerated from any liability.
3. *Mr. Gaur* has placed reliance upon the testimony of **PW2**, *Iktar Ali*, a co-worker of the deceased, who has narrated the circumstances in which the accident occurred in his affidavit by way of evidence. Further, in his cross-examination by the Insurance Company, **PW2** stated that the truck was correctly parked and had been stationed there for two days prior to the accident.
4. *Mr. Navneet Goyal*, counsel for respondent nos.1-5, to the contrary, also relies upon the testimony of **PW2** to contend that it is a common practice among workers to sleep beneath the truck and that the driver was negligent in moving the vehicle without first checking that no person was underneath it.
5. As regards the issue of the invalid permit, the same can be answered only by the driver and the owner of the vehicle. However, they were served through substituted service pursuant to the order dated 23rd October 2019 but failed to enter appearance and are, accordingly, proceeded against *ex parte*.
6. *Mr. Pradeep Gaur*, counsel for appellant/Insurance Company, relies upon the decisions of various Courts in cases where the deceased was found sleeping by the side of the road and was mowed down by a moving vehicle, and where the issue of contributory negligence was considered, *inter alia*, in *Anita Devi v. Jai Narayan Kumar Singh* 2004 SCC OnLine Pat 406, *Motiram v. Taj Mohammad* 1993 SCC OnLine MP 102, and *Rajni Bai v.*



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Avtar Singh 1996 SCC OnLine MP 119.

7. On this basis, he contends that the deceased was clearly negligent in sleeping under the truck and had contributed to the accident, which would not have occurred otherwise.

8. *Mr. Navneet Goyal* has relied heavily upon the testimony of the eyewitness, *Iktar Ali*, **PW2**, who stated that he, along with his nephew *Mohd. Rafiq* and two or three other persons, was sleeping underneath the parked truck bearing registration No. HR-63-9041, taking shelter from the scorching sun. He further deposed that they were all working as labourers in the casting yard of *M/s Simplex Infrastructure Ltd.* and that “*the labourers and drivers of trucks used to take rest under the standing trucks in the yard*”. He further stated that at about 5:00 p.m., when he woke up, the other persons sleeping underneath the truck had left, while *Mohd. Rafiq* requested him to cook food and went back to sleep. They had gone about 10-15 paces ahead when the driver of the truck came from outside and started the truck. They signalled the driver to stop and called out aloud, but he did not stop and instead moved the truck forward. As a result, the right rear wheel of the truck passed over the chest and stomach of *Mohd. Rafiq*, who died on the spot.

9. In the cross-examination, **PW2** gave the names of all the persons who were sleeping under the truck, namely *Mohd. Raruf*, *Umesh*, *Dinesh*, *Rafiq* and himself. He stated that the offending vehicle had been correctly parked and had arrived two days prior to the accident.

10. He further stated that the driver of the offending truck did not blow any horn before moving it. He further stated that *Mohd. Rafiq*, the deceased



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and one *Umesh* were sleeping under the offending truck at the time of starting of the truck by the driver.

11. He denied the suggestion that, upon starting the truck, the noise generated would have been sufficient to wake a person sleeping underneath it. He also denied the suggestion that the accident occurred due to the negligence of *Mohd. Rafiq* in sleeping underneath the truck.

12. In support of his submissions, *Mr. Goyal*, counsel for claimants, relied upon the decision of the Madhya Pradesh High Court in ***Shakuntala v. Ghanshyam Dhakad*** 2008 SCC OnLine MP 110, wherein, in an identical situation, the plea of contributory negligence was raised by the Insurance Company when the deceased was sleeping in the shade beneath a tractor-trolley loaded with sugarcane and the driver started the tractor, resulting in his death. A Division Bench of the High Court rejected the plea of contributory negligence, holding that merely because the deceased was sleeping at the time of the accident, it could not be said that he had contributed to the accident. The Court observed that, “*on the contrary, the driver of the tractor had full opportunity to avoid the accident, either by awakening the deceased or by taking the tractor forward*”. The Division Bench, therefore, reversed the Tribunal’s finding that there was 50% contributory negligence on the part of the deceased.

13. This Court is inclined to agree with the view taken by the Division Bench of the Madhya Pradesh High Court, particularly in the circumstances before us.

14. By the testimony of **PW2**, few aspects are quite clear, **firstly**, that the truck which was a long-body truck, had been parked in the yard for last 2



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days; *secondly*, that there was scorching sun and, therefore, several labourers used the shadow of the truck to sleep under the truck; *thirdly*, that the driver did not take any steps before starting the truck to check if anybody was sleeping under the truck; and *fourthly*, despite **PW2** and the others shouting and signalling to the driver to stop, he continued to drive the truck forward.

15. Based on this categorical testimony, the Court is of the view that the issue of contributory negligence will not arise. It must also be noted that truck drivers, particularly those who have parked their vehicles for a couple of days, would, in the ordinary course wiser with practical experience, be aware that labourers occasionally use the space beneath the truck to rest, especially on very hot days. Such knowledge must be attributed to the driver of the vehicle, who ought to have ensured, by making an appropriate check, that no person was sleeping beneath the truck before moving it.

16. This is more important in the case of a long-body truck, as the driver, while seated in the cabin, may not have clear visibility of any obstruction, either person or animal present or goods lying underneath the body of the vehicle.

17. It is also noted that the driver clearly ignored the signal made by **PW2** and his co-workers to stop the truck. Further, neither the driver nor the owner of the truck appeared before the MACT to testify.

18. Although the Insurance Company raised the plea of contributory negligence in its written statement, the same was not corroborated. The driver and the owner have also not appeared before this Court and were served through substituted service.



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19. For lack of any contrary evidence, on behalf of the driver/owner, the plea of the Insurance Company would be difficult to accept. Accordingly, the plea of '*contributory negligence*' is rejected.

20. On the *second plea* that there was '*no valid fitness certificate*', the plea of the Insurance Company is dealt with by settled law, *inter alia*, in ***National Insurance Co. Ltd. v. Challa Upendra Rao*** (2004) 8 SCC 517, wherein the Supreme Court categorically held that, considering the beneficial object of the Act, it would be appropriate for the insurer to satisfy the award, though, in law, it has no liability.

21. A similar view has been taken in ***Amrit Paul Singh v. TATA AIG General Insurance Co. Ltd.*** (2018) 7 SCC 558.

22. Moreover, the accident had occurred in the yard of the factory where the container was stationed, and not on a public road. This would also be a relevant factor while considering the issue relating to the permit.

23. In any event, in its written statement, the Insurance Company has raised the issue regarding the permit and has stated that, as per the verification report forming part of the DAR, the fitness certificate was found to be fake at the time of the accident.

24. However, no one has appeared for the driver and owner to counter the statement. Accordingly, the statement of the Insurance Company is taken on record.

25. *Mr. Gaur*, points out that the notice under Order XII Rule 8 of Civil Procedure Code, 1908 ('*CPC*'), was also sent to the driver/owner, but they failed to produce any valid fitness certificate.

26. The evidence of the Insurance Company was led through R3W1, its



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Assistant Manager, whose testimony was not rebutted by the driver/owner.

27. **R3W2**, SI, *Vishnu Singh*, the Investigating Officer (**‘IO’**), also testified and stated that, upon verification, the fitness certificate was found to be fake. The verification report was exhibited as **Ex. R3W2/1**.

28. Moreover, it is noted that the charge-sheet under Sections 279/304A/468 and 471 of the Indian Penal Code (**‘IPC’**), has been filed against the driver/owner of the offending vehicle.

29. In light of the matter, Insurance Company will have the *right of recovery* against the driver and owner of the vehicle, i.e. respondent nos.6 and 7, respectively.

30. Statutory deposit, if any, shall be refunded to appellate/Insurance Company only upon deposit of the enhanced amount along with the accrued interest.

31. Appeal is, therefore, disposed of. Pending applications, if any, are rendered infructuous.

32. Judgment be uploaded on the website of this Court.

ANISH DAYAL, J

AUGUST 17, 2026/RK