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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 9th February, 2015

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MAC.APP. 1276/2012

ORIENTAL INSURANCE CO LTD Appellant

Through: Mr.A.K. Soni, Advocate

versus

SANGEETA AND ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The only ground of challenge raised in the instant appeal is that no negligence or rashness on the part of the driver of the offending bus no.DL-1PA-1999 was proved, and, therefore, the Appellant Insurance Company could not have been fastened with the liability.
2. The Claims Tribunal while dealing with the issue of negligence observed as under:-

“Issue No. 1

7. The aforesaid petition was instituted u/s 166 of the Act, it is incumbent upon the petitioners to

prove factum of rashness and negligence on the part of erring driver Sohtaj Kumar of the offending vehicle (bus). In order to prove this fact, petitioners by virtue of their affidavits respectively made statement inconsonance with the submissions made in the petition and deposed on oath that accident in question was a result of rash and negligent driving of respondent No. 1 and that the respondent No.1 was responsible for the accident which occurred on 27.08.2005. The medical legal report bearing no.111459 of victim reveals history of RTA at around 2.14 am patient brought by Head Constable Azad Kumar. The postmortem report shows the cause of death is septicemia consequent to multiple injuries produced by blunt force impact. All injuries were antimortem in nature.

8. In deciding the case of United India Insurance Co, Ltd.. Vs. Neena Somani and Ors. decided on 13.09.2011, the Hon'ble High Court has thrashed the provisions of section 122, 126 and 127 of IPC inter-alia providing statutory liability of stationary and unattended vehicles. In para no. 9 and 10 of the aforesaid judgment, the Hon'ble High Court has taken the cognizance of the fact that the driver of the alleged vehicle who left the vehicle in unattended manner was not produced in the witness box so as to depose on the compliance of statutory provisions. The Hon'ble High Court upheld the findings of Tribunal based on preponderance of probabilities of drawing adverse inference against the driver into the witness box.

9. Reverting back to case in hand, neither owner nor erring driver stepped into the witness box as to explain how the accident happened without negligence on part of erring driver – respondent no.1. The evidence of the driver is the best evidence. If the driver is not produced, it

would amount to withholding of best evidence. Moreover, there is no iota of evidence on record to show that driver of bus had taken appropriate precautions which can avoid accident, thereafter, in given situation, the driver of bus (respondent no. 1) is held to be negligent on preponderance of probabilities in causing fatal injuries to victim namely Abhishek Kumar. Hence, issue no.1 is decided in favour of petitioners”.

3. It is urged by the learned counsel for the Appellant that although FIR No.512/2005 was registered against the driver of the bus, yet the case was sent as untraced as no negligence on the part of the driver of the bus could be established. The learned counsel for the Appellant has also handed over a copy of the site plan prepared by the police.
4. The accident in question had taken place at 2.14 a.m. on the main road. The Claims Tribunal noticed that the driver of the offending bus was not produced to prove as to in what manner the bus was parked. It is nowhere the case of the Appellant Insurance Company that there was any indication of bus parking by any glowing sign or otherwise so as to show where the bus was parked in the dead of night. The IO of the case was not produced to prove the site plan regarding the position of the bus although the bus has been shown on the *kacha* road in the site plan prepared by the police and the site plan placed on record by the claimants shows the position of the bus on the main road. In any case, the accident had taken place at 2.14 a.m. when it is completely dark. It was the duty of the driver and the owner to

at least give visible indication regarding parking of the bus.

5. In view of this, the finding as to the negligence reached by the Claims Tribunal cannot be faulted. The appeal therefore, has to fail. The same is accordingly dismissed.
6. The statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.
7. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 09, 2015

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