



2024:DHC:9398



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

% ***Date of decision: 28th November, 2024***

+ **MAC.APP. 102/2019**

MUNESH & ANRAppellants

Through: Mr. S.N. Parashar, Advocate.

versus

MINENDRA KUMAR & ORS (NATIONAL INSURNACE CO LTD)Respondents

Through: Mr. Manu Luv Sahalia, Advocate for Insurance Company through VC.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (oral)

1. The present Appeal under Section 173 of the Motor Vehicles Act, 1988 (*hereinafter referred to as "MV Act, 1988"*) has been filed on behalf of the Appellants/Claimants seeking enhancement of the Award dated 16.02.2018.
2. The Claim Petition had been filed for compensation on account of demise of Shri Sachin in the road accident which took place on 28.10.2017, in regard to which an FIR bearing No. 0582/2017 under Sections 279/304A of the Indian Penal Code, 1860 was registered at Police Station Dankaur, Uttar Pradesh.
3. It is submitted that the Claim Petition was filed under Section 166 of MV Act, 1988, but the learned Tribunal by disbelieving the testimony of



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PW2/Veerpal, the eye-witness, held that the rashness and the negligence was not proved and treated the Claim Petition under Section 163A of MV Act, 1988 and consequently awarded the compensation.

4. It is argued that despite there being the Chargesheet as well as the testimony of the witness, the learned Tribunal has erroneously held that no negligence is proved and converted the Claim Petition under Section 163A of MV Act, 1988.

5. Learned counsel on behalf of the Insurance Company submits that the appropriate Orders on the basis of the evidence, may be passed.

6. **Submissions heard.**

7. **Briefly stated**, on 28.10.2017, the deceased Shri Sachin, aged 29 years, was going to his work place at Greater Noida from his village by Auto bearing No. UP 13 AT 9341. At about 07:00 A.M., when he reached Greater Noida, Dankar Service Road in front of NRI Gate in the vicinity of Galgotia University, when the offending Vehicle bearing No. DL 8 CAL 3582 which was being driven by Respondent No. 1-Minendra Kumar in a rash and negligent manner at a high speed, turned to its deep right side and dashed against the right front side of the Auto causing accident resulting in fatal injuries to Late Shri Sachin. The aforesaid FIR was registered.

8. The Appellants/Claimants to prove the rashness and negligence on the part of the driver, had examined PW2/Veerpal who deposed about the manner of accident as narrated above. In his cross-examination, though he was unable to disclose as to who informed the Police about the accident and on whose statement, the aforesaid FIR was registered, but in his cross-examination, he reaffirmed that he along with three other persons were travelling in the Auto at the time of accident. A suggestion was also given to



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him that “*it is correct that the deceased Sachin is my nephew*”. *It is correct that the Auto driver was coming from the wrong side.* Volunteered, as the road was one way and the other side of the road was closed, he had no other option”. Further suggestion was given that the accident took place due to the sole negligence of the driver of the Auto Rickshaw.

9. From the deposition of PW2/Veerpal, not only the factum of accident is proved which in any case is not disputed or is also reaffirmed by the registration of the aforesaid FIR, but the manner of accident has also not been challenged.

10. The manner of accident not only is deposed about PW2/Veerpal, but re-confirmed by the site plan which was prepared during the investigations in the FIR, but the Chargesheet had been filed against the driver after completion of investigations.

11. In the case of National Insurance Co. vs Pushpa Rana, 2009 ACJ 287 Delhi, it has been held that filing of Chargesheet is sufficient proof of the negligence and involvement of the Offending Vehicle. Similar observations have been made in the case of United India Insurance Co. Ltd. v. Deepak Goel and Ors., 2014 (2) TAC 846 Del, that if the Claimant was able to prove the criminal case on record pertaining to involvement of the offending vehicle, whereby the criminal records showing completion of investigation by the police and filing of chargesheet under Sections 279/304-A IPC against the driver have been proved, then the documents mentioned above are sufficient to establish the fact that the driver was negligent in causing the accident. Where FIR is lodged, Chargesheet is filed and specially in a case where driver after causing the accident had fled away from the spot, then the documents mentioned above are sufficient to establish the fact that the driver



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of the offending vehicle was negligent in causing the accident particularly when there was no defence available from his side before the learned Tribunal. Similar observations have been made in the cases of Jamanti Devi and Ors. v. Maheshwar Rai, MAC Appeal no. 831/2015 decided on 19.11.2022.

12. The Apex Court has opined in the judgment of Mangla Ram vs. The Oriental Insurance Company Ltd., AIR 2018 SC 1900 that the key-point of negligence of the driver as set up by the Claimants is required to be decided on the touchstone of preponderance of probabilities and not by the standard of proof beyond reasonable doubt. Thus, filing of chargesheet against the driver of the offending vehicle *prima facie* points towards the complicity in driving the vehicle negligently and rashly. The subsequent acquittal of the accused may be of no effect on the assessment of the liability required in motor vehicle accident cases.

13. Further, the acquittal of the Driver in a Criminal Case cannot be a ground for dismissal of the Claim before the Accident Tribunal, as has been held in the cases of N K V Bros (P) Ltd. vs. M. Karumal Ammal, 1980 Law Suit (SC) 141; Delhi Transport Corporation & Anr. vs. Navjyot Singh & Ors., 2015 LawSuit (Del) 1750 and National Insurance Company Ltd. vs. Sarbjit Kaur & Ors., 2018 LawSuit (P&H) 1711.

14. The learned Tribunal fell in error in disbelieving the testimony of the eye-witnesses on insignificant aspect and overlooked that the manner of accident and that his presence in the Auto and he being an eye-witness, was not under challenge. He had clearly deposed about the facts which established the rashness and negligence on the part of the driver of the offending vehicle.



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15. Accordingly, it is hereby held that the accident was caused due to the rash and negligent driving of the offending vehicle by its driver. The findings on Issue No. 1 are accordingly set aside.

16. The Claim Petition is remanded back to Tribunal with the direction to calculate the compensation in accordance with Claim Petition under Section 166 of MV Act, 1988.

17. Accordingly, the parties are directed to appear before the Claim Tribunal on 10.12.2024.

18. The Petition is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 28, 2024
S.Sharma