



2024:DHC:8889



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 13 November, 2024***

+ **MAC.APP. 90/2024 & CM APPL. 7879/2024**

THE ORIENTAL INSURANCE COMPANY LTD.
.....Appellant

Through: Mr. JPN Shahi & Mr.Divyanshu
Kumar, Advocates.

versus

- (i) SMT. KUSUM
- (ii) RAJ
- (iii) PREM

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

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The Appeal under Section 173 of *The Motor Vehicle Act, 1988* ('M.V. Act' *hereinafter*) has been filed against the Award dated 22.11.2023 whereby a sum of Rs. 26,17,500/- has been awarded to the Claimants, who are wife and children of deceased Sh. Hari Ahirwal, who had died in the road accident.

2. The Appellant/Insurance Company is aggrieved on the following *grounds*:

- (i) that there was no eye witness examined to prove rash and negligent driving on the part of the driver;
- (ii) *That* there was smell of alcohol present in the breath of the deceased, as is reflected in the MLC which



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establishes his negligence; and

(iii) that the interest granted @9% per annum is on the higher side.

3. **Submissions Heard.**

4. *As per the claimants*, on 26.06.2019, at about 9:30 PM, near Lakhi Ram Park Chowk, NDPL Office, Sector - 22 , Rohini , the deceased Sh. Hari Ahirwal was going on his motorcycle bearing registration no. DL-3SBL-6976, when he was hit by a Truck bearing Registration no. HR -39C- 2841 being driven by its driver in high speed hit the said motorcycle, due to which the motorcyclist fell down on the road and the driver of the truck fled from the spot. FIR No. 282/2019 under Sections 279/337 *Indian Penal Code, 1860* ('IPC' hereinafter) was registered at police Station Aman Vihar, Delhi.

5. During the course of the treatment, Sh. Hari Ahirwal, the motorcyclist died. The offending vehicle was admittedly insured with the Appellant, Oriental Insurance Company Ltd.

6. The *first grievance* of the Appellant- Insurance Company is that no eye witness has been examined by the claimants to establish the rash and negligent driving of the driver.

7. The learned Tribunal in the Impugned Award has in detail, observed that these are Compensation proceedings wherein the Tribunal is not expected to hold a trial and is not bound by the details of evidence or facts to be proved beyond reasonable doubt, as is required in the criminal prosecution.

8. In **United India Insurance Company Limited Vs. Shila Datta & Ors.** (2011) 10 SCC 509 it has been observed by the Supreme Court that the



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Tribunal is not to treat the compensation petition as an adversarial adjudication. It is only an enquiry which is to be held after giving an opportunity to both the parties to determine the amount of compensation.

9. Similarly, in the case of **Dulcina Fernandes & ors. Vs. Joaquim Xavier Cruz & Anr.** (2013) 10 SCC 646, it was noted that even though the driver may be acquitted in the criminal case, but it cannot be overlooked that during the investigation of the case, the driver has been found negligent and put to trial.

10. Similar observations have been made in **National Insurance Company Ltd. Vs. Smt. Pushpa Rana & ors.** 2009 ACJ 287 wherein it is observed that criminal record showing completion of investigation and issuance of Charge Sheet, on the basis of which criminal case is registered, wherein recovery memo and mechanical inspection report of offending vehicle is filed; such documents are sufficient to reach to the conclusion that the driver was negligent.

11. *In the present case*, the claimant had examined PW-2, Investigating Officer of the case, who deposed that he had recorded statement of the eye witness, Mukesh, however, he is not traceable. He proved the DAR Ex. PW1/4, which contains the site plan, mechanical inspection report as well as the Final Report under Sections 279/304A IPC.

12. The Site Plan and the Mechanical Inspection report filed clearly reflect the manner in which the accident had taken place. It cannot be overlooked that there was an eye witness to the accident, who was not traceable and could not be examined. Only because the eye witness is not examined, it cannot be said that there is no cogent evidence of eye witness to explain the manner in which the accident took place. The learned Tribunal



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on the basis of the documents, was correct in holding that the accident took place due to rash and negligent driving of the driver.

13. The *second ground* of challenge by the Appellant Insurance Company is that there was smell of alcohol present breath of the deceased, as is reflected in the MLC. However, mere presence of smell of alcohol is not sufficient to conclude that the deceased was in inebriated condition especially when the extent of alcohol in his blood, has not been specified. and was in any manner responsible for the accident. Presence of alcohol smell can be for multiple reasons which may be like taking of some expectorant or such like medicine. Moreover, even if it is accepted that the deceased had consumed some alcohol, there is no evidence whatsoever that he was not in control of the vehicle or was in any manner, responsible for the accident. This contention of the Insurance Company is also not tenable.

14. The *third ground* of challenge is that the interest paid is on the higher side. This Court finds that the interest has been granted @9% per annum, which is not on the higher side.

15. ***The Appeal is without merit and is accordingly dismissed.***

16. Statutory amount be released to the Insurance Company, in accordance with law.

17. On an appropriate Application filed by the Claimants, the balance amount be released to the Claimants, in terms of the Award.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 13, 2024

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