



2024:DHC:8975



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

% ***Date of decision: 25th October, 2024***

+ **MAC.APP. 94/2024, CM APPL. 7969/2024**

UNION OF INDIA

.....Appellant

Through: Mr. Sushil Kumar Pandey (SPC) with
Ms. Richa Pandey and Ms. Neha
Yadav, Advocates.
Mr. Sourabh Bhushan, Legal Officer
for CRPF/RAF.

versus

1. **UMESH KUMAR**

S/o Sh. Hosiyar Singh
Rio House No. 926/25,
Ward No. 14, Bahadurgarh,
District Jhajjar, Haryana

.....Respondent No. 1

2. **KRISHAN KUMAR**

S/o Shri Banwari Lal,
Rio Village Dwani P.O. Budhwal,
Tehsil Behroralwar, Rajasthan.

.....Respondent No. 2

Through: Appearance not given.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. An Appeal under Section 173 of *Motor Vehicle Act, 1988* ('M.V. Act' *hereinafter*) has been filed against the Award dated 19.09.2023 *vide* which the compensation in the sum of Rs.2,82,460/- along with interest @ 7.5% has been given to the injured/Respondent No.1 on account of injuries suffered by him in a road accident on 08.10.2016.

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Signing Date: 20.11.2024
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2. *Briefly stated*, according to the statement of the injured, he was going on his motorcycle bearing No.HR-13 6364 and when he reached near H.No.1, in front of Naveen Place Colony, CRPF Camp, Main Jharoda Road, Najafgarh, an Ambulance No.HR 68B 5826 which was being driven by Respondent No.2 and is insured with the Appellant, hit the motorcycle because of which he fell and sustained grievous injuries. He was taken to RTRM Hospital and remained under treatment. The learned Tribunal after referring to the testimony of the injured as PW1 concluded that the accident occurred due to the rash and negligent driving of Respondent No.2 and consequently granted compensation *vide* Impugned Award which has been challenged by the Union of India by the owner.

3. The only grievance of the Appellant is that as per the MLC of the injured, there was smell of alcohol present in his breath which indicates that he was the one who was negligent in driving his motorcycle. Moreover, the Respondent No.2/driver in his affidavit of evidence had explained that the motorcycle was behind the truck, while the Ambulance was also there on the road. In the process of overtaking the truck which was ahead of the motorcycle, it hit the Ambulance. It is claimed that it is a case of contributory negligence and the absolute liability could not have been attributed to the driver.

4. **Submissions heard.**

5. The *only ground* on which contributory negligence is claimed on the part of the injured is that there was smell of alcohol in his breath as is indicated in the MLKC. Merely because there is smell of alcohol, cannot lead to any inference of per se negligence on the part of the injured. *Firstly*, there is nothing to explain if the smell of alcohol was on account of



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consumption of alcohol. *Secondly*, merely because some alcohol had been consumed, cannot lead to *ipso facto* conclusion that there was negligence on the part of the injured in driving the motor-cycle. *Thirdly*, even if for the sake of arguments it is accepted as has been admitted by the injured in his cross-examination that he occasionally consumes liquor, but he had also explained that he used to consume alcohol after his duty hours, but he has also qualified that he was not under the influence of alcohol at the time of accident. He denied the suggestion that he consumed liquor during the working hours or that he was under the influence of liquor at the time of the accident. He categorically denied that it was he who had fallen from the motorcycle under the influence of liquor. Even if for the sake of arguments it is accepted, though not proved on record, that the injured had consumed alcohol, but it cannot *ipso facto* lead to any conclusion of negligence on the part of the injured in the absence of any attending circumstances having been brought on record.

6. There is no iota of evidence that because of the influence of alcohol, the injured had no control or that the accident occurred purely because of his being unable to drive the motorcycle.
7. There is no merit in the Appeal, which is hereby dismissed.
8. The Appeal is disposed of along with the pending Applications.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 25, 2024/va