



2024 : D103 : 2577



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

% **Date of decision: 1st April, 2024**

+ **MAC.APP. 114/2024 & CM APPL. 10778/2024**

THE NEW INDIA ASSURANCE COMPANY LTD

..... Appellant

Through: **Mr. Gaurav Nair, Mr. Ishwar
Ahuja and Mr. Rahul Saxena,
Advs.**

versus

SUNITA NAGPAL & ORS.

..... Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. This appeal has been instituted under Section 173 of the Motor Vehicles Act, 1988, by the appellant/Insurance Company, assailing the impugned judgment-cum-award dated 28.11.2023 passed by the learned Presiding Officer, Motor Accident Claims Tribunal-02, Central District, Tis Hazari Courts, Delhi¹.
2. None appeared on behalf of the respondents despite sending advance notice.
3. Learned counsel for the appellant has urged that the learned Tribunal has committed a grave jurisdictional error in overlooking the fact that the motor accident which resulted in the death of Sh. Dushant

¹ Tribunal



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Nagpal, had occurred due to rash and negligent driving of the Alto Car bearing registration No. DL-8CQ-6453, driven by his friend *viz.* PW-2/Shubham. It is urged that the learned Tribunal failed to consider that the driver of the Alto car had not maintained a safe distance from the offending truck, which was hit from behind by the driver of the Alto Car.

4. Having heard learned counsel for the appellant and on perusal of the record, unhesitatingly, this Court finds that the present appeal is bereft of any merits.

5. Shorn of unnecessary details, evidently, the accident occurred when the ill-fated Alto Car being driven by PW-2/Shubham struck the rear side of the offending truck bearing registration No. HR-55H-6637 on 02.04.2018 near village Dashrath Pur, PS: Daurala, Meerut, State of Uttar Pradesh, sometime during the night. The incident led to the registration of FIR No. 202/2018 at PS: Daurala, Meerut, Budh Nagar, Uttar Pradesh under Section 279/337/338/427/304A of the IPC.

6. At the cost of repetition, the bone of contention for challenging the impugned judgment-cum-award is that the learned Tribunal failed to consider the broad implications of Regulation 23 of the Rules of the Road Regulation, which reads as under:-

“Distance from vehicles in front-The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop.”

7. Before examining the implications of the above said Rule, it would be expedient to reproduce the reasons accorded by the learned Tribunal in holding the respondent No.1/driver of the truck guilty of



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rash and negligent driving, which is reproduce as under:-

“12. It is not denied that R-1 was charge-sheeted for the offences punishable under Sections 279/337/338/427/3Q4A IPC in the above FIR, which in itself is a strong circumstance to support the above oral testimony of PW-2 and the case of Petitioner on this issue. The certified copies of FIR, charge-sheet, site plan, Mechanical Inspection Report of the offending vehicle and Postmortem Report of deceased also corroborate the testimony of PW-2.

13. In view of the above, it could be safely assumed that at the relevant time the deceased had died due to the rash and negligent driving of the offending vehicle being driven by R-1.

14. Having ruled so, this Tribunal now proceeds to assess the wrongful act, neglect or default of R-1, if any, in driving the offending vehicle at the relevant time. Admittedly, R-1 has not explained the circumstances under which the accident took place due to his rash and negligent driving. In the absence of any evidence regarding any mechanical defect in the offending vehicle or any material depicting any negligent/sudden act or omission on the part of the deceased, the only inference possible in the given facts and circumstances is that of neglect and default on the part of R-1 while driving the offending vehicle at the relevant time. In view of the above discussion, this Tribunal is constrained to hold R-1 guilty of gross neglect and default in driving the offending vehicle at the relevant time.

15. In view of the postmortem report pertaining to the deceased placed on record by the petitioner, no dispute is left regarding the death of the deceased on account of injuries sustained by him in the above accident.”

8. Challenging the aforesaid reasoning, learned counsel for the appellant/Insurance company alluded to the testimony of PW-2/Shubham. It was pointed out that PW-2/Shubham was driving the ill-fated Alto Car along with the deceased and other passengers while returning from Haridwar to Delhi; and that PW-2/Shubham deposed that he was driving the car on the proper side of the road at a normal speed, periodically blowing the horn and maintaining a safe distance from other vehicles on the road. He further deposed that when the car



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was on the National Highway-58, the driver of the truck in front of the car suddenly and abruptly applied brakes without regard for the traffic on the road and although PW-2/Shubham attempted to avoid the collision by applying brakes himself, but he was unable to prevent the accident.

9. It is urged that although PW-2/Shubham deposed that the accident took place due to the sudden application of brakes by the driver of the offending truck, who was driving in a rash and negligent manner. In his cross-examination by learned counsel for respondent No.3, PW-2 testified that the accident took place on a two way road during night time; and that he was driving the vehicle at a speed of 60-70 kmph as it was a National Highway and there was not much traffic on the road. It was sought to be emphasized that PW-2 then acknowledged that there was a distance of 10-12 feet between his vehicle and the offending truck. He denied the suggestion that accident occurred due to his fault.

10. Much mileage is sought to be taken from the deposition of PW-2 to the effect that the distance between the ill-fated car and the offending truck was hardly 10-12 feet which was not sufficient. There is no gain saying that a motorist plying his vehicle on the road is enjoined upon to keep a safe distance from the moving vehicles ahead of his vehicle and such distance should be sufficient so as to avoid collision in case the vehicle in the front suddenly slows down or comes to a halt. However, those who know little bit of driving, particularly driving on a National Highway, know that a safe distance between two vehicles on the same stretch or road while moving in the



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same direction keeps on changing from place to place and side to side even while driving at a normal speed or otherwise while over taking the vehicle being driven ahead.

11. The distance of 10-12 feet, as deposed by PW-2/Shubham, cannot be said to be insufficient in the absence of any scientific data or mechanical expert report. It is not the case of the appellant/insurance company that the ill-fated Alto car was at high speed. Speed of 60 to 70 kmph is quite normal particularly on a National Highway when evidently there was not much traffic. Given the momentum of the vehicle at such a speed, if the vehicle proceeding ahead suddenly slows down and stops for no reason in the middle of the road, error of judgment are bound to occur, especially during night time, which would make the reaction time to apply breaks slightly delayed. It is but apparent that in such fraction of seconds, it must have been difficult to manoeuvre the vehicle and apply breaks in time.

12. Thus, it is difficult to discern that the driver of the ill-fated Alto car was guilty of composite negligence. Even assuming for the sake of convenience that there was an element of composite negligence on the part of the driver of the ill-fated also car, there is nothing to show that the appellant/Insurance Company moved any application before the learned Tribunal for impleading the driver-cum-owner of such car.

13. In view of the foregoing discussion, this Court finds that the learned Tribunal has neither committed any illegality or perversity, nor adopted an incorrect approach in passing the impugned judgment-cum-award dated 28.11.2023.



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14. The present appeal is dismissed in *limine*. The pending application also stands disposed of.

DHARMESH SHARMA, J.

APRIL 01, 2024

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Signature Not Verified

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KUMAR VATS
Signing Date: 02/04/2024
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