



2024:DHC:8411



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 18th October, 2024***+ **MAC.APP. 64/2022, CM APPL. 11414/2022****IFFCO TOKIO GENERAL INSURANCE CO. LTD****.....Appellant****Through: Mr. Brijesh Bagga, Advocate.****versus****RANVIR & ORS.****.....Respondents****Through: Mr. Navneet Goyal, Advocate for R-1.****Mr. Vaibhav Jain and Mr. Sagar,
Advocates for R-2.****CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. An Appeal under Section 173 of The Motor Vehicle Act, 1988 ('Act' *hereinafter*) has been filed on behalf of the Insurance Company against the Award dated 23.01.2020 seeking setting aside/modification of the Award vide which the respondent No.1/ injured had been granted compensation in the sum of Rs. Rs.4,97,500/- with interest @ 9% p. a. for the injuries suffered by him in an accident dated 06.02.2011.

2. ***Briefly stated***, an FIR No.28/2011 under Section 279/337 IPC was registered at Police Station Adarsh Nagar, in regard to the road accident. However, the offending vehicle was untraced and it was held that there was



no negligence on the part of the Delivery Van bearing No.DL 1LJ 2286 and after due investigations the FIR was closed as 'Untraced'. On the basis of the FIR, Detailed Accident Report (DAR) was filed in the Court with an "Untraced Report" which was closed by the learned Tribunal, vide Order dated 23.03.2011.

3. Thereafter, the injured Ranvir filed the *Claim Petition under Section 166/140 Motor Vehicle Act* in which after the trial, the learned Tribunal held that the accident occurred due to the rash and negligent driving of the Delivery Van bearing No. DL 1LJ 2286 due to which the injured Ranvir/respondent No.1 suffered grievous injuries and granted compensation in the sum of Rs.4,97,500/- with interest @ 9% per annum.

4. Aggrieved by the Award, the Appeal has been preferred by the Insurance Company on the ground that the learned Tribunal committed an error in not relying on the DAR which was closed by the Tribunal. The first ground of challenge is that the Delivery Van which is held to be the offending Vehicle was not so. The evidence of respondent No.1/injured has been ignored, who admitted that there were three persons sitting on the Driver seat in the front of Delivery van reflecting the violation of Motor vehicle Rules. Further, he also admitted his signatures on page 31 of the DAR i.e. his Statement recorded by the I.O, mentioning that one Tempo i.e. the untraced vehicle had hit the three wheeler. He admittedly had not submitted any Application before the I.O or Superior Authority, for rectification of the contents of his statement. It was contended on behalf of the Insurance Co. that the learned Tribunal failed to appreciate the contradictions in the Statement of Claimant and wrongly concluded negligence on the part of the Delivery Van/offending vehicle. Since no



negligence would be established on the part of the delivery van/offending vehicle, the compensation should have been awarded not under Section 166, but under Section 163(A) of the Motor Vehicle Act.

5. The second ground of challenge raised by the Insurance Company was that from the testimony of the injured himself, it is evident that he was a *gratuitous passenger* in the vehicle, which is violation of the terms of Insurance Policy.

6. The *third contention* raised on behalf of the Insurance Company is that the evidence of the I.O has also been ignored that there were three persons travelling on the front seat and is not denied by the Claimant. It has been overlooked that this was also violative of terms and conditions of the Insurance Policy.

7. Fourthly, the Policy in question was an “*Act only Policy*”. The injured was the passenger and is not a third party. No findings have been given by the Tribunal on this aspect.

8. Lastly, the interest @ 9% which has been granted by the learned Tribunal is at higher side than the prevailing interest. A prayer is, therefore, made that he impugned Award be set aside.

9. *The written synopsis has been filed on behalf of the Appellant in support of the assertions.*

10. The injured/respondent has contested the Appeal and has denied that he was a *gratuitous passenger*. It is claimed that he had hired the Delivery van for returning the defective vegetables and for purchasing the vegetables afresh from the vegetable market.

11. It is further argued that the negligence of the Delivery Van was amply proved by the testimony of R1W1 Sh. Mahesh, the eye witness who had



deposed that the vehicle at the time of the accident was being driven by the driver Rakesh/respondent No.2, a fact not under challenge. His testimony is corroborated by that of the injured PW1 Ranveer. The evidence on record, sufficiently proved the rashness and negligence of Respondent No.2 Rakesh the Driver of the Delivery Van which had hit into a Tempo and then a bus. It was thus, argued that the learned Tribunal has rightly granted the compensation. The Appeal is without merit and is liable to be dismissed. The written synopsis have also been filed on behalf of the injured/respondent.

12. Submissions heard.

13. At the outset it is pertinent to observe that the FIR No.28/2011 under Section 279/337 IPC was closed as “Untraced” and was submitted in the Court. The DAR that was filed before the Tribunal on the basis of the FIR, also gave a “Untraced” Report, which was accepted by the Tribunal and the case was closed vide Order dated 23.03.2011. Subsequently, the Claim Petition under Section 166/140 M.V Act was filed by the claimant Ranveer Singh alleging the rashness and negligence of the Delivery Van in which he was travelling. The Insurance Company pertinently despite service, had failed to file any *Written Statement* and consequently bring its defence on record.

14. The *first ground of challenge* raised by the Insurance Company is that the injured was a *gratuitous passenger* who was travelling on the front seat along with two other persons in the Delivery Van/offending vehicle. It is claimed that as per the FIR and the investigations conducted therein, the Delivery Van was not the offending vehicle and it was wrongly concluded that the accident occurred on account of the negligence of the delivery van.



A reference has also been made to the testimony of the injured who has admitted his signatures on his statement recorded by the I.O during the investigations in the FIR and which had ultimately resulted in a “Untraced” Report. It is argued that from the evidence on record it is evident that the alleged offending vehicle had been hit by an Untraced vehicle and there was no negligence on its part in the resultant accident.

15. PW1 injured Ranveer has been categorical in his testimony that he was the owner of the defective vegetable and had hired he had hired the delivery van/offending vehicle, to take back for return, to the vegetable market. He being the owner of the vegetables sat alongside the driver on the front seat. The Insurance Company had not put in any defence. The testimony of the injured clearly establishes that he was travelling the Delivery Van being the owner of the vegetables which were being carted in the delivery van. In such circumstances, he cannot be termed as gratuitous passenger.

16. The *second aspect* was that three persons were sitting on the front seat including the Driver, which is violative of the Insurance Policy. In this regard, testimony of R1W1 Mahesh who was the third person travelling in the delivery van on the date of accident, assumes importance. He has admitted that he along with the driver Rakesh was travelling in the Delivery Van. The injured Ranveer also got into the vehicle and sat on the front seat. He has further deposed that he had got a call on his mobile phone and he had got off and gone towards the bus stand, to attend to the phone call. In the interim, accident occurred and in the process he also got hit by the offending vehicle and he was also hit and he suffered injury on his eye. According to this testimony, at the time of the accident the vehicle was being driven by



the driver Rakesh and only the injured was sitting with him in the vehicle, i.e. only two persons were travelling in the vehicle at the time of accident. In the light of this evidence, it cannot be said that there was violation of any of the terms of the Insurance Policy as is claimed by the Insurance Company.

17. Now addressing to the *negligence on the part of the offending vehicle*, it was claimed that it was an *untraced Tempo* which had hit into the Delivery Van, and that there was no negligence of the Delivery van Driver. Even if it is accepted that the Delivery van got hit by the untraced vehicle, the testimony of PW1 Ranveer Singh injured that the Delivery Van was being driven in a rash and negligent manner by its driver Rakesh who despite his repeated requests, continued to drive the vehicle in a rash and negligent manner and hit into the bus, cannot be ignored, especially when the Insurance Co. failed to bring its defence on record by filing a Written Statement. The testimony of the injured as well of the other eye witness R1W1 Mahesh, has been comprehensively considered by the learned Tribunal to conclude that the negligence of the offending vehicle has fully established.

18. It is evident from the “Untraced” Report as well as from the testimony of the witnesses, that there was involvement of three vehicle, viz. the Tempo which was untraced, the offending Delivery Van as well as the Bus. The negligence of the Delivery Van driver independently stands fully established on record. Therefore, the learned Tribunal has rightly concluded the negligence on the part of the offending vehicle being driven by respondent Rakesh. There is no infirmity in the findings of the learned Tribunal in this regard.



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19. The last ground of challenge is that the interest @ 9% is on the higher side. Though, the accident had taken place in 2011, but it cannot be overlooked that interest is essentially granted in compensation cases to adjust the escalation Inflation Index which takes place over a period of time. It is a discretion exercised by the Court and there is no arbitrariness in grant of the interest @ 9% per annum.

20. There is no merit in the present Appeal filed by the Insurance Company which is hereby dismissed.

21. The Appeal stands disposed of along with the pending application.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 18, 2024
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