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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 13th December, 2024

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MAC.APP. 244/20191. **LALLI DEVI**

W/o Shri Lallan Nishad

.....Appellant No. 1

2. **LALLAN NISHAD**

S/o Shri Ramdayal Nishad

.....Appellant No. 2

3. **ANKUSH**

S/o Late Manju

.....Appellant No. 3

(Appellant No. 3 is minor through her grandmother & guardian
Appellant No. 1 Lalli Devi)

Through: Mr. Anshuman Bal, Advocate.

versus

1. **SHRIRAM GEN. INS. CO. LTD.**1001, Ground Floor, Arya Samaj Road,
Karol Bagh, Naiwala, Delhi-11005

.....Respondent No. 1

2. **MOHD TAQI NAQVI**R/o Village Moh, Mandi Chowk,
Amroha Mohalla, Amroha Nagar,
Jyotibafal Nagar, Uttar Pradesh

.....Respondent No. 2

3. **RAVINDER CHAUHAN**R/o House No. 54, New Seelampur,
Bhajanpura, Delhi-110053

.....Respondent No. 3

Through: Mr. Sameer Nandwani & Ms. Heeba
Ansari, Advocates for R-1 through
VC.



CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Appeal under *Section 173 of the Motor Vehicles Act, 1988* (hereinafter referred to as “M.V. Act, 1988”) has been filed on behalf of the Appellants/Claimants against the Award dated 04.12.2018 *vide* which the Claim Petition under *Sections 166 and 140 of M.V. Act, 1988* filed on account of demise of Shri Majnu in a road accident which took place on 18.02.2017, has been dismissed by the learned Claim Tribunal.
2. *Learned counsel for the Appellants/Claimants* submits that even though PW2/Rabichandra, the eye-witness was examined, but the learned Claim Tribunal disbelieved his testimony and rejected the Claim of the Claimants by holding that the rashness and negligence on the part of the offending vehicle had not been established.
3. It is submitted that PW2/Rabichandra was, in fact, a passenger, travelling in a TSR along with deceased Shri Majnu and admittedly the accident took place between TSR and TATA 407, the offending vehicle. Furthermore, the Chargesheet has also been filed against the offending vehicle TATA 407.
4. It is, therefore, submitted that there is enough cogent evidence to prove the negligence of the offending vehicle and the impugned Award is liable to be set aside and the compensation in the sum of Rs. 50,00,000/- may be awarded to the Claimants.
5. *Learned counsel for the Respondent No. 1/Insurance Company* has contended that, in fact, PW2/Rabichandra, eye-witness on which reliance



has been placed by the Appellants/Claimants, was never cited as a witness in the Chargesheet nor was he ever stated as an eye-witness. It is further contended that contradiction in his cross-examination also discredited his testimony, as has been rightly held by the learned Claim Tribunal.

6. It is, therefore, submitted that for the cogent reasons, the Claim Petition of the Appellants/Claimants has been dismissed *vide* the impugned Award which does not warrant any interference.

7. **Submissions heard and the record perused.**

8. ***Briefly stated***, on 18.02.2017 at about 02:00 P.M., deceased Shri Majnu was going in an Auto bearing No. DL 1 NCR 0456. When the said Auto reached in front of Sector-126, a TATA 407 vehicle bearing No. DL 1 LX 4075 came from behind at a very high speed and hit the TSR (Auto) because of which, deceased Shri Majnu suffered injuries. He was taken to the Yatharth Hospital from where he was referred to Lok Nayak Hospital, where he died on 01.03.2017.

9. *An FIR bearing No. 72/2017 under Sections 279/338/427/304-A of the Indian Penal Code, 1860* was registered on 07.04.2017 at Police Station Expressway, Gautam Budh Nagar, Uttar Pradesh against Respondent No. 2/Mohd. Taqi Naqvi (*the driver*). After due investigations, the Chargesheet was filed against the offending vehicle TATA 407.

10. The Claim Petition was subsequently filed for *grant of compensation* by the parents and one minor child of the deceased, Shri Majnu.

11. The core question is *whether the accident occurred due to the rashness and negligence of the Driver of the offending vehicle TATA 407?*

12. The Claimants examined PW-2/Rabichandra, *the eye witness* who had deposed that the deceased, Shri Majnu was his *Mausa Ji*. On the day of the



accident, he was going home from Sector-135, Noida to Sector-15, Noida. He boarded a blue-coloured autorickshaw bearing No. DL-1-NCR-0456, at around 12:30 p.m. in which three persons were sitting on the back seat. When the said auto reached Sector-126, one TATA 407 came from behind at a high speed and hit the auto. He further deposed that it was a one-way road and the auto was on the left side of the road. He stated that he was an eye-witness but did not intimate to the police regarding the accident as the police was not present at the scene of the accident. PW-2 took Shri Majnu to hospital in an unknown Tempo vehicle.

13. The Site Plan shows that the accident happened at point 'X' which was on the extreme left side of the road. The testimony of PW-2 is well corroborated with the Site Plan which clearly shows that the offending vehicle hit the TSR (auto) from behind, coming at a high speed.

14. The father of the deceased, Shri Lallan had filed the complaint on the basis of which Mohd. Taqi Naqvi, the driver of TATA 407 was chargesheeted.

15. 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.

16. 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.

17. The driver of the offending vehicle is the most material witness to support their defence that their car not being involved in the accident, but he has chosen not to step into the witness-box. This leads only to an adverse inference against the driver/owner.

18. Thus, the eyewitness, who was present in the same auto as the deceased, provided a clear account of the factum of accident. His testimony was duly corroborated by the subsequent police investigation that led to the filing of Chargesheet against the driver Mohd. Taqi Naqvi. There is no cogent reason to disbelief the testimony of the eye witnesses and also the investigations, which have been independently carried out by the Investigating Officer. The testimony of eyewitness PW-2/Rabichandra and the Chargesheet provided compelling evidence to establish the occurrence of the accident and the entitlement of payment of compensation to the Claimants.

19. It is, therefore, concluded that the offending vehicle was involved in the accident as the same was being driven in a rash and negligent manner by its driver, causing the accident which resulted in the demise of Shri Majnu.

Conclusion:-

20. The learned Tribunal fell in error in dismissing the Claim Petition. Therefore, the impugned Award dated 04.12.2018 is hereby set aside.

21. Accordingly, the matter is remanded back to the learned Claims Tribunal for assessment of Compensation to which the Appellants are entitled. The parties are directed to appear before the Ld. Tribunal on 07.01.2025 for evidence on the aspect of Compensation.

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22. The Appeal is hereby allowed and disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 13, 2024
S.Sharma