



2024:DHC:9962



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 06th December, 2024+ MAC.APP. 113/2021& CM APPL. 7966/2021 & 42931/2021

INDRAPRASTHA LOGISTICS PRIVATE LIMITED.....Appellant

Through: Mr. Gurjot Singh, Mr. Rishi Sood and
Mr. Tushar, Advocates.

versus

NAVEEN KUMAR & ORS.

.....Respondents

Through: Mr. Sankar N.Sinha, 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 Vehicles Act, 1988* has been filed on behalf of the Appellant/owner of the offending vehicle to challenge the *Recovery Rights* granted against him in favour of the Insurance Company, *vide* Award dated 18.11.2020.

2. The main ground of challenge is that the *Recovery Rights* have been granted only *because the driver was found drunk*. It is submitted by the learned counsel for the Appellant that the vehicle had been handed over to the driver, at about 6 a.m. while the accident took place at 10.50 AM. The owner cannot be held vicariously responsible for the individual dereliction of the driver. Thus, the *Recovery Rights* have been wrongly granted.

3. Reliance has been placed on the cases of *Bajaj Alliance General vs. Smt. Manju Devi and Ors.*, in MAC. MA No.2332 of 2011 decided on 02.04.2014, wherein the Andhra Pradesh High Court had refused to grant the



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Recovery Rights to the Insurance Company in the similar circumstances. Reliance is also placed on National Insurance Company vs. Smt. Sanpati and Ors, in FAO No. 112 of 2007 decided on 10.05.2010 by the High Court of Himachal Pradesh, wherein the Insurance Company was held to entirely liable in view of the fact that the contents of the report does not establish a safe handling of samples, the safekeeping and sealing, dispatching etc. It was in these circumstances that the Insurance Company was not absolved of its liability on the ground that the driver was drunk.

4. Learned counsel *on behalf of the Insurance Company* has contended that there was 162 mg/100 ml of alcohol found present in the blood of the driver. The fact that the intoxication was a major contributor to the accident, is evident from the fact that the driver caused the accident by hitting two vehicles and thereafter, the pole and then it was stopped because of a wall. Had there been no wall, much more injury/damage would have been caused by the driver of the vehicle. The circumstances itself speaks of the level of intoxication which was the major factor in causing the accident.

5. Learned counsel for the Insurance Company has placed reliance on New India Assurance Co vs. Parvinder Kaur Chawla, 2016 SCC Online 3444, wherein the alcohol content in the blood was found to be 141 mg/100 ml which was beyond the permissible limit of 30 mg/100 ml. It was observed that the driver by driving the vehicle under intoxication not only endangered his own life but also of the people commuting on the road.

6. It is submitted that the learned Tribunal has rightly granted Recovery Rights to the Insurance Company. The Appeal is liable to be dismissed.

7. **Submissions Heard.**

8. **Briefly stated**, on 01.07.2018 at about 10.50 a.m., the Petitioner was



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going from his home to office on his motorcycle bearing No.DL-10SH-1782, when suddenly a Cluster Bus bearing No.DL-1PC-5043 which was being driven by its driver Sh. Dharampal, Respondent No.1, came at a high speed from the side of DPS Mathura Road and hit him with great force because of which he fell and suffered injuries. The driver of the offending vehicle after hitting his motorcycle, hit the parking wall of Humayun Tomb. The injured was taken to Trauma Centre, AIIMS, New Delhi where he was given treatment. ***FIR No.174/18 under Section 279/338 IPC and 185 Motor Vehicles Act*** was registered against the driver.

9. The Appellant/Owner examined the Driver/Dharampal as R1W1 in his examination-in-chief deposed that at the time he was handed over the alleged offending vehicle for Route No.405, his physical condition was checked personally. The *Breath Analyser Test* which is a routine check up at the Depot, was done and it was found that he had not consumed liquor.

10. Respondent/Driver claimed that Breath Analyser Test was done in the morning however, which was the most pertinent document to prove that he was not drunk in the morning, but neither the Driver nor the Owner has chosen not to produce this Report in their evidence, before the Tribunal. The report of the Breath Analyser Test was the best evidence which has not been produced, leading to the inevitable conclusion that no such Breath Analysing Test was conducted on the driver.

11. The MLC of the driver that was filed along with the Chargesheet under Sections 279/338 IPC and *Section 185 of the Act*, mentioned that the alcohol content in the blood of the driver was 162mg/100 ml. This is beyond the permissible limit of 30mg/100 ml as per *Section 185 of the Act*.

12. The lack of control of the Driver on the offending vehicle is also



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evident from the manner in which the accident took place. As per the testimony of PW1 Sh. Naveen Nagar the injured, who deposed that the bus hit him with a huge impact because of which he was thrown in the air and fell ahead.

13. The FIR which was recorded on the statement of Rajesh Kumar stated that the bus ran over his motorcycle and also hit the CPWD Board, BSF Mess Board, and Electric Pole and thereafter, collided with the Humayun Tomb Wall. After breaking the Humayun Tomb parking wall and the railing, it also hit into a bus which was standing in the parking.

14. The manner in which the accident took place further corroborates that the driver was under the heavy influence of alcohol and had no control over the bus or else he would not have hit into so many articles, including the wall of the Tomb and the stationary bus in the parking area of the Tomb, after hitting the motorcycle of the injured. The manner in which the accident has taken place fully corroborates that the driver was under the influence of liquor, which is also reflected from the MLC.

15. In the case of New India Assurance Co vs. Parvinder Kaur Chawla, 2016 SCC Online 3444, it has been held that the driver under intoxication with alcohol content more than permissible limit amounts to not only a penal offence but also fundamental breach of Insurance Policy which gives a right to the Insurance Company for recovery of compensation from the owner and the driver, jointly and severally.

16. In view of the cases of New India Assurance Co vs. Parvinder Kaur Chawla, 2016 SCC Online 3444, the learned Tribunal has rightly concluded that there was fundamental breach of the Insurance Policy and has rightly granted recovery rights to the Insurance Company against the owner and the



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driver, jointly and severally.

Relief: -

17. In the light of the aforesaid discussion, it is concluded that there is no infirmity in the order of the learned Tribunal granting Recovery Rights against the Owner/ Appellant and the Appeal is hereby dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 6, 2024

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Signature Not Verified

Digitally Signed By: IKAS
ARORA

Signing Date: 23.12.2024
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