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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: 09th December, 2024**

+ **MAC.APP. 119/2020**

1. **SMT. ANITA**
W/o Late Sh. Rohit
2. **MASTER HARSH RANA**
S/o Late Sh. Rohit
3. **SMT. JAGWATI**
W/o Sh. Raj Kumar
4. **SH. RAJ KUMAR**
S/o Sh. Hari Chand
5. **MS. SONIA**
D/o Sh. Raj Kumar

.....Appellants

All R/o: H. No. 41, Mandir Wall Gali,
Satberi South, Delhi- 110074

Also at: 1/8, Rani Garden
Shastri Nagar, Gandhi Nagar
East Delhi - 110031.

Through: Mr. S.N.Parashar, Advocate.

versus

1. **SH. ANSHU LAI SHARMA (Driver)**
S/o Sh. S.H. Sharma,
R/o. 8375, Roshanara Road,
Delhi- 110007
2. **SH. SATISH KUMAR (Owner)**
S/o Sh. Shambhu Dayal Sharma

...Respondent No.1



R/o H.No. 196K, Harolla Makanpur
Sec-05, Noida,
Gautam Budh Nagar, U.P.

...Respondent No.2

3. **THE ORIENTAL INSURANCE CO. LTD.** (Ins. Co.)

A - 2527, Asaf All Road,
New Delhi- 110002.

...Respondent No.3

Through: Ms. Seema Gulati, Advocate for R-3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (oral)

1. The present Appeal under *Section 173* of the *Motor Vehicles Act, 1988* has been filed by the Claimant to challenge the impugned Award dated 25.09.2019 *vide* which the Claim Petition under *Section 173* of the Act filed for compensation on account of demise of Sh. Rohit aged 23 years in a road accident on 15.02.2018, has been dismissed by the learned Tribunal.
2. It is submitted by the Appellants that the learned Tribunal has observed that the vehicle was parked on the extreme left side and there was no evidence to show that the negligence was not of the deceased driver of the car. It was concluded that no negligence was proved on behalf of alleged offending vehicle and consequently the Claim Petition was dismissed.
3. Learned counsel *on behalf of the Appellants* has stated that there is cogent evidence by way of testimony of PW-2 SI Balwinder Singh, the first Investigating Officer, who has admitted that the vehicle was parked on the road side for last 2-3 days as it had broken down. Moreover, his testimony was fully corroborated by PW-3, SI Raj Kumar -the second IO. The two IOs who conducted the investigations, have cogently explained the manner of accident. The FIR was registered against the bus and after investigations;



Charge Sheet had been filed against the bus driver. The learned Tribunal fell in error in concluding that there was no rashness or negligence proved on the part of the alleged offending vehicle. It is, therefore, submitted that the impugned Award be set aside and compensation be granted.

4. Learned counsel *on behalf of the Insurance Company* has submitted that the accident had occurred on a road which was 50 feet wide. There was enough space and indications for the car driver. It is sheer negligence of the car driver which resulted in the offence. It is further submitted that the speed of the car was so high that the stationary Bus got pushed ahead by 20 feet. The learned Tribunal has rightly concluded that the negligence was solely of the deceased driver of the car and the Petition has been rightly dismissed.

5. **Submissions Heard and the Record Perused.**

6. **Briefly stated**, on 15.02.2018 at about 07:45 AM, the deceased was coming towards ISBT from ITO in his EECO car No. DL-14CC-5146. When he reached near Rajghat Bus Depot, Darya Ganj, a Bus bearing No. UP-16AT-9297 was parked on the road in a Break Down condition, without its parking lights on or any other indication to warn the other road users. The deceased was not able to assess the situation and when he reached near the bus; he applied emergency brakes, but could not control the car and rammed into the Bus from behind and suffered grievous injuries. He was taken to the Lok Nayak Hospital and MLC was prepared. He died during the treatment, on 26.02.2018.

7. FIR No. 51/2018 under Sections 283/304-A IPC at P.S. Darya Ganj was registered against the driver of the offending Bus, on 15.02.2018.

8. The Ld. Tribunal observed that the accident was caused by the whole and sole negligence of the deceased driving his car at an extremely fast and



uncontrollable speed, because of which he could not notice the “huge bus”. The Claim Petition was rejected by holding that the Appellants have failed to prove any fault or any negligence on part of the bus driver.

9. The Petitioners have examined *PW-1 Smt. Anita* the wife of the deceased, who was not the eye-witness, *PW-2 SI Baljinder Singh, First IO* and *PW-3 SI Raj Kumar, Second IO*.

10. PW2 S.I. Baljinder Singh, the first Investigating Officer, deposed that on receipt of DD No. 7A between 07:30 A.M. to 07:45 A.M., he reached at Outer Ring Road near Rajghat DTC Bus Depot, where he found the driver in the accidental ECCO Car. About 20 feet ahead of the ECCO Car, a Bus was found standing. He rescued the ECCO Car driver and got him sent to LNJP Hospital.

11. PW2/S.I. Baljinder Singh further deposed that during the investigations, he found that the Bus had been standing on the road side for last two days as it had broken down. It was parked on the extreme left side of the road and had no signs of parking either by way of bricks or otherwise, to indicate that it was a stationary bus. There were skid marks of the ECCO Car on the road. It was further clarified that there was substantial distance between the IP Stadium flyover and the place of accident. He further deposed that he could not tell the speed limit prescribed on the said road.

12. PW2/S.I. Baljinder Singh admitted in his cross-examination that the extreme left side of the road is intended for slow moving vehicles, such as trucks, bus etc. The width of the road of one side was about 50 feet. The ECCO Car had come from the side of IP Stadium Flyover. He further clarified that on the day of accident, the sky was clear and the visibility was good and there was light on the road. He further admitted that the Bus had



moved about 20 feets ahead due to it being hit by the ECCO Car. A suggestion was given to him that if the bus was wrongly parked for last two days, many more accidents should have taken place which indeed did not take place, to which the witness clarified that no other accident was reported. He also admitted that there was no information received in the local Police Station about the bus being wrongly parked or for removing of the bus.

13. The other material witness was *PW3 S.I. Raj Kumar*, the second Investigating Officer, who deposed that after completion of investigations, he filed the Chargesheet under *Sections 283/304-A of the Indian Penal Code, 1860 and Rule 15 (iv) (v) (vii) (x)/177122/177 read with Section 66/192A of the Motor Vehicles Act, 1988* before the concerned learned Metropolitan Magistrate and the Detailed Accident Report before the learned Tribunal.

14. *PW3 S.I. Raj Kumar* clarified that the various provisions of the Motor Vehicles Act, 1988 had been added because the offending bus was parked on the main Outer Ring Road in violation of the provisions of the *Motor Vehicles Act, 1988*. He had recorded the statement of Bus Helper who was sleeping in the bus at the time of accident. He had also recorded the statement of the person who had made the PCR Call.

15. *PW3/S.I. Raj Kumar* further deposed that as per his investigations, the accident had taken place due to the negligence of the bus driver who had wrongly parked the bus on the road. Had it not been so parked, the accident would not have occurred. The witness in the cross-examination admitted that he has not mentioned in the Chargesheet that the bus was parked wrongly without taking necessary precautions as provided under the law.



Admittedly, this fact is also not mentioned in the statement of any of the witnesses.

16. PW3/S.I. Raj Kumar also corroborated that during the investigations, it was revealed that the bus was parked there from 13.02.2018. He also admitted that the extreme left lane of the road is meant for slow moving traffic and he also corroborated that the sky was clear, visibility was good and there was light on the said road.

17. PW3/S.I. Raj Kumar further stated in his cross-examination that the ECCO Car was being driven at a speed of 50 kms per hour to 60 kms per hour. He deposed about the speed on his own and nobody had told him about the speed of the ECCO Car. He denied the suggestion that the ECCO Car was being driven at a speed of 100 kms per hour. He further deposed that it was quite possible that the Bus may have moved 20 feet because of the slope of the road and the bus was parked in neutral. Admittedly, these facts had not been mentioned in the Chargesheet. He further denied that he was deposing falsely at the instance of the family members of the deceased.

18. The testimony of PW2/S.I. Baljinder Singh, the first Investigating Officer, which has been fully corroborated by PW3/S.I. Raj Kumar, the second Investigating Officer clearly establishes that the offending bus was standing stationary on the extreme left of the road for last two days without there being any indicators put around it. The accident has taken place on the Mahatma Gandhi Highway wherein the ECCO Car was being driven by the deceased on the extreme left side. It is a known fact that if there are no indicators put around the stationary vehicle parked on the road, the ongoing traffic may not be able to assess that it is a parked vehicle unless there is an indication given or some bricks etc. put around the stationary vehicle.



19. The driver of any vehicle leaving it parked on the road, whether due to mechanical failure or breakdown or any other emergency, ought to have taken precautionary measures and switched on the parking indicators or he could have intimated the other vehicles by putting leaves/ branches/any other warning indicators. When it is the lack of due care and caution on part of the driver of the offending vehicle which caused the accident, he cannot escape liability by averring that the vehicle was stationery. Moreover, it was the obligation of the bus driver to have not left the bus parked for two days if it had broken down, but should have taken due steps to get the bus removed.

20. Similar observations were made in the recent judgment of Sushma V. Nitin Ganpati Rangole and Ors., Civil Appeal No. 10648-53 of 2024, decided on 19.09.2024, wherein the Apex Court while discussing the liability of the driver who had parked the offending truck in the middle of the road without any parking lights or warning indicators which lead to an accident and ultimately death of 4 persons, observed that “*Common sense requires that no vehicle can be left parked and unattended in the middle of the road as it would definitely be a traffic hazard posing risk to the other road users*”. It was opined that any unattended vehicle, parked in the middle of the road, without any parking lights being switched on and without any markers or indicators being placed around the stationary vehicle so as to warn the incoming vehicular traffic, is a clear violation of law and the entire responsibility for the negligence leading to the accident would be of the driver of the offending vehicle.

21. Further, it has emerged there was skid marks of the ECCO Car on the road, which again establishes that the driver of the ECCO Car had noticed



the stationary bus only after coming to a close distance and despite taken due care and caution by applying the breaks, he was unable to prevent hitting into the back of the bus.

22. It is also pertinent to note that the Chargesheet, in addition to the offences under the Indian Penal Code, 1860, had also been filed under various Sections of the Motor Vehicles Act, 1988 which were about wrong parking of the vehicle on the road side. This further corroborates that it is the Bus which was parked wrongly and was the sole reason of the accident.

23. The investigations conducted by the two Investigating Officers and the Chargesheet which was eventually filed against the driver of the bus for having negligently parked the bus on the road resulting in the accident and the surrounding circumstances, clearly establish the sole negligence of the bus driver in causing the accident.

24. The Id. Tribunal has erred in not appreciating the fact that the offending vehicle was parked on the road for last 2 days. The argument that there can be no negligence of the offending vehicle which was parked on the extreme left side of the road is totally fallacious.

25. Pertinently, the best witness was the driver of the bus to prove the factum of accident, but he has chosen not to appear or controvert the testimony of PW2 S.I. Baljinder Singh and PW3 S.I. Raj Kumar.

26. In view of the above discussion, it is held that the accident occurred due to sole negligence of the Driver of the offending Bus.

Conclusion:

27. The Appeal is accordingly, allowed. Parties are directed to appear before the learned Tribunal on 10.01.2025 for determination of the compensation amount.

2024:DHC:10171



28. The Appeal is accordingly disposed off, along with pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 9, 2024
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Signature Not Verified

Digitally Signed By: AHIL
SHARMA

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