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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 18<sup>th</sup> December, 2024***+ **MAC.APP. 176/2024****SHRI RAM GEN. INS. CO. LTD.**

1001, Ground Floor, Naiwala,  
Arya Samaj Road; Karol Bagh,  
New Delhi 110005.

.....Appellant

Through: Mr. Mohd. Mustafa, Advocate.

Versus

**1. SH. SWAPAN SAHA**

S/o. SH. Dhiren Saha  
R/o H.No B-148 J J Colony  
Sawada Mubarakpur, North-West Delhi

**2. SMT. AMITA SAHA**

W/o Sh. Swapan Saha.  
R/o H.No B-148 J J Colony  
Sawada Mubarakpur, North-West Delhi

**3. SH. SOMEN (DRIVER)**

S/o Sh. Manik Haldhar  
R/o H.No B- 612, Svada, Naglaoi  
Delhi 110081.

**4. SH. CHANDAN BISWAS (OWNER)**

S/o Sh. Chandi Charan Biswas  
Rio H. No 40B, Garhwali Mollaha  
Lax.mi Nagar Delhi 110092.

.....Respondent

Through: Mr. Pankaj Gupta for Respondent no

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1 &amp; 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* has been filed on behalf of the Insurance Company against the Award dated 19.10.2023 *vide* which the compensation in the sum of Rs.27,68,000/- along with interest @7.5% per annum has been awarded to the Respondent No.1 and 2, the parents of the deceased- Sumit Saha.
2. The *sole ground* on which the Award has been challenged is that the deceased was travelling as a pillion rider on *motorcycle No.DL7SCH-8686* which was being driven by Respondent No.3/Shri. Somen. The accident occurred as the motorcycle had slipped. There is no rashness or negligence proved on behalf of the driver and, therefore, the compensation should have been calculated under Section 163-A of the Motor Vehicle Act and not under Section 166 of the Motor Vehicle Act, 1988.
3. *The learned Counsel for the respondents submits* that the negligence stands proved by the Detailed Accident Report and Investigation documents and the Ld. Tribunal has passed a well-reasoned Order with does not warrant any inference. Thus, the appeal is liable to be dismissed.
4. **Submissions heard and record perused.**
5. The *sole challenge* of the Appellant is that despite there being no evidence on record of the accident having been caused due to the rash and negligent driving of Sh. Somen (who was driving the motorcycle/Offending Vehicle), the learned Tribunal has erred in granting compensation under



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Section 166 of the Motor Vehicle Act, 1988.

6. To consider whether the negligence of the Driver/Somen is established, reference may be made to the testimony of PW-1/ *Sh. Swapan Saha*, the father of the deceased has deposed that on 04.08.2019, deceased Suraj, aged 22 year was travelling as a pillion rider on the motorcycle bearing No.DL-7SCH-8686 (Apache) driven by his friend Somen, and they were going towards ITG from Laxmi Nagar. The driver/Somen was driving the Offending Vehicle/ Motorcycle at a very high speed, rashly, negligently and in a zig-zag manner. Though he was cautioned many times by the deceased, but driver did not pay any heed to advice/ warning given to him and continued driving the said motor cycle carelessly without observing the traffic norms. At about 04:50 a.m., when the motor cycle reached near Yamuna Pull towards ITO, Vikas Marg, the driver Somen lost his control over the motor cycle and slipped on the road. As a result of this, both sustained grievous injuries.

7. The deceased Sumit was taken to LNJP Hospital, New Delhi, by PGR, where his MLC No.113224500/2019 was prepared and he succumbed to the injuries during the course of treatment on 12.08.2019.

8. The Insurance Company had cross-examined *PW-1* extensively on the manner in which the accident had occurred and he admitted that he was not the eye-witness. Aside from these questions, no further questions on the aspect of rashness and negligence were put in the cross-examination.

9. *PW-2/Saroj Kumar*, was the summoned who had called the PCR, who was the eye-witness to the accident. He had stated that he was going on his motorcycle and on hearing of loud noise come from his backside, he looked



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back and saw that the offending vehicle/motor cycle had slipped on the road and both driver and pillion rider had fallen. He has further emphasized that he had found that both of the injured were drunk and he assumed that the motorcycle driver was at fault in driving his vehicle.

10. During his cross-examination, he stated that there was no other vehicle on the road at the time of the accident and there was no sand on the road because of which the motorcycle could slip.

11. The *FIR No.80/2015 u/s. 279/338/304-A IPC, 1860* got registered at P.S. Shakurpur, against the driver of the offending motorcycle/offending vehicle.

12. The manner of the accident is also reflected in the *Seizure Memo* of the offending Motorcycle which also records that on 14.08.2019, the driver/Somen produced his offending vehicle in the Police Station and informed that on 03.08.2019, he along with his friend deceased Sumit had consumed alcohol at Laxmi Nagar and then decided to drive towards India Gate. Though he was warned by his deceased friend multiple times to drive safely and observe traffic rules, he could not pay attention to the same as he was under the influence of alcohol. At about 4:30 am on 04.08.2019, when they reached under the Yamuna Bridge, their bike suddenly slipped due to the high speed of the offending vehicle and they both fell on the road. Some bystander called the PCR van and also helped him to intimate his family members and they were taken to LNJP Hospital.

13. The *MLC dated 04.08.2019* of Sh. Somen/Driver reflects "*smell of alcohol positive*" further supports the version of the PW-2/Saroj Kumar, Unfortunately, the IO has not conducted the medical examination of the



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Driver to prove that he was under the influence of alcohol.

14. However, the surrounding circumstances and the manner of accident in itself show that the driver was driving the offending vehicle in a rash and negligent manner, and the motorcycle slipped because of high speed and lack of control of the driver who was under the influence of alcohol.

15. The driver/Somen has not disputed that he was driving the motorcycle on the date of the accident and no explanation of the circumstances and manner of accident has come on record by him. He also did not file any Written Statement.

16. Further, the manner of accident can also be deduced from the Site Plan *Ex. PW2/I* filed along with DAR which depicts that the motorcycle was going towards ITO and the accident has occurred at the extreme left side of the road at Mark "A". The mechanical Inspection Report dated 21.08.2019 also reflects that also shows that accidental condition of the offending vehicle and the damages sustained.

17. The factum of accident is further proved from the *Post Mortem Report Ex. PW-1/5*, which shows that the injured was admitted in the Hospital after the accident and expired because of the brain damage consequent upon blunt force trauma to head.

18. The Chargesheet has been filed against the Driver/Somen which is sufficient proof of the negligence and involvement of the Offending Vehicle as has been observed in the case of National Insurance Co.,vs Pushpa Rana 2009 ACJ 287 Delhi. The Apex Court has opined in the judgment of Mangla Ram vs. The Oriental Insurance Company Ltd., AIR 2018 SC 1900 that filing of Chargesheet against the driver of the offending vehicle *prima*



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*facie* points towards the complicity in driving the vehicle negligently and rashly. Similar observations have been made in the case of United India Insurance Co. Ltd. v. Deepak Goel and Ors., 2014 (2) TAC 846 Del, Amanti Devi and Ors. v. Maheshwar Rai, MAC Appeal no. 831/2015 decided on 19.11.2022)

19. Thus, the learned tribunal has rightly observed that there is enough cogent evidence and material on record to conclude about the manner in which the accident occurred and it clearly points to the negligence of the driver/Somen in driving the Offending vehicle/motorcycle. ***There is no infirmity in the Impugned Award dated 19.10.2023.***

20. There is no merit in the preset Appeal, which is accordingly dismissed along with pending Application(s) if any.

21. The statutory amount deposited be returned to the Appellant in accordance with law.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**DECEMBER 18, 2024**  
*va*