



2024:DHC:9807



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 05th December, 2024***+ **MAC.APP. 312/2021**

DAVINDER GOYAL & ANR.

.....Appellants

Through: Mr. A.K. Mishra and Mr. S.K.
Manan, Advs.

versus

1. VIKRAM SINGH

s/o. Sh. Radhey Shankar

r/o. D-562, Govindpuram, Ghaziabad

Uttar Pradesh

.....Respondent No.1

2. Nishant Bhatia

s/o. Ramesh Bhatia

r/o. H.No.61/2, Mohalla Punjabiyan

Bara Bazar, Dabri

Gautam Budh Nagar (U.P.)

.....Respondent No.2

3. National Insurance Company

Through Its Manager

Division No.10, Flt No.101-106

NI BMC House, Connaught Place

New Delhi.

.....Respondent No.3

Through: Mr. Bhanu Kathpalia, Advocate for
R-1.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. Learned counsel for the Appellants submits that Appellant No.2, Smt. Sunita Goyal, mother of the deceased has expired and the only other legal heir is Davinder Goyal, her husband who is already a party as Appellant No.1.

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MAC.APP. 312/2021



2024:DHC:9807



2. In view of the submissions made, name of Smt. Sunita Goyal is hereby deleted.
3. The present Appeal under *Section 173* of the *Motor Vehicles Act, 1988* has been filed against the dismissal of Claim Petition by order dated 27.07.2021 by the Claimants/parents of their daughter, Jyoti, aged about 25 years who died in a road accident on 13.12.2015. The Claim Petition under *Section 166* of the *Motor Vehicles Act* has been dismissed by the learned Tribunal by holding that the Claimants had failed to prove the rashness and negligence on the part of the driver/Respondent No.1.
4. It is submitted on *behalf of the Appellants* that DD No.18 dated 13.12.2015 i.e. on the date of accident, was recorded on the statement of Respondent No.1 Sh. Vikram Singh, who had explained the manner of accident. He being the driver had tried to save himself and no FIR was consequently registered. It is submitted that from the DD entry, the manner of accident can easily be ascertained. Therefore, the learned Tribunal fell in error in concluding that no rashness and negligence was proved by the Appellant. It is, therefore, submitted that the impugned Award be set aside and the compensation be granted.
5. Learned counsel on *behalf of Respondent No.1*, Sh. Vikram Singh however, submits that the Appellants had filed a private Complaint under Section 156(3) CPC against Respondent No.1, but after due consideration of the evidence adduced therein, the learned MM has rejected the Application. It is submitted that the learned Tribunal has rightly observed that there was no rashness or negligence



2024:DHC:9807



proved on the part of the driver. There is no merit in the present Appeal which is liable to be dismissed.

6. **Submissions Heard.**

7. **Briefly stated** on 13.12.2015 deceased Jyoti along with four other persons, was travelling in Maruti Dzire Car bearing No.UP-16-BB-7902 from Ghaziabad to Murthal, Haryana. At about 5 AM, the car reached in front of Ansal Plaza Mall on G.T.Road when Respondent No.1 lost control over the car which turned turtle several times and fell in a “Gaddha” on the roadside. Jyoti received fatal injuries and died on the spot.

8. The Appellants in support of their assertions had examined PW-2/Davinder Goyal, father of the deceased, who deposed the manner of accident, but admittedly, he was not an eye witness. Likewise, PW-5/Smt. Sunita Goyal, mother of the deceased, had also deposed about the accident and the income of the deceased and had proved the DD entry No.18 dated 13.12.2015 Ex. PW-5/A.

9. The other witnesses examined are in regard to the post mortem, MLC and the salary of the deceased. Admittedly, no eye witness to the incident has been examined. Pertinent question which now arises is whether there is sufficient evidence to establish the rashness and negligence of Respondent No.1, driver of the vehicle.

10. The most significant document is DD No.18, Ex. PW-5/A wherein Respondent No.1 has himself stated that because of the bright lights coming from the opposite vehicle, he was unable to see and he applied emergency brakes because of which the balance of the car was lost which rolled into the Khadda from the road. These facts



2024:DHC:9807



establish firstly that no due care and caution had been exercised by the driver while driving the vehicle in the early hours of morning. Special care needs to be taken while driving the car in the night when there are lights coming from the vehicles coming from the opposite direction. From his own statement, it is established that he had not taken the necessary caution.

11. The *second fact* which emerges is that he had applied emergency brakes and the car rolled over from the road. Had the car speed being normal, the Respondent No.1 would have had sufficient control to apply the brakes. The very fact that merely by applying the emergency brakes, the car overturned and rolled many times and fell into the Khadda, itself speaks of the speed with which the vehicle was being driven.

12. The statement of Respondent No.1 as recorded in DD No.18 itself clearly establishes that the vehicle was being driven by him at a high speed, in a negligent manner and without control. ***The circumstances as brought forth in the DD No.18 are sufficient to conclude the negligence and rashness on the part of the driver.***

13. ***In the light of the aforesaid discussion, the impugned Award is set aside and the case is remanded back to the learned Tribunal to determine the compensation in accordance with law.***

14. Parties are directed to appear before the learned Tribunal on 19.12.2024.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 5, 2024/rk