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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 28th November, 2024

+ MAC.APP. 330/2021, CM APPL. 46355/2021 (delay),
CM APPL. 37911/2024 (under Order 5 Rule 20 CPC)

1. SARITA SINGH
w/o Late Shri Pankaj KumarAppellant No.1
2. LUCKY @ MAAN SINGH (MINOR)
s/o Late Sh. Pankaj KumarAppellant No.2
3. VISHU @ VAIBHAV SINGH (MINOR)
s/o Late Sh. Pankaj KumarAppellant No. 3
4. BABY LAVANIYA (MINOR)
d/o Late Sh. Pankaj KumarAppellant No.4
5. SHRI JAY PAL SINGH
s/o Late Sh. Prabhati Singh ...Appellant No.5
6. SMT. SAROJ
w/o Sh. Jay Pal SinghAppellant No.6

Through: Mr. J.A.Chaudhary, Advocate.

versus

1. MOHD IRFAN
s/o Sh. NizamuddinRespondent No.1
2. SHRI VINOD KUMAR
s/o Sh. Sagua SinghRespondent No.2
3. NATIONAL INSURANCE COMPANY LTD.



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....Respondent No.3

Through: Mr. Pankaj Seth, Advocate for R3.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G E M E N T (Oral)****MAC.APP. 330/2021**

1. An Appeal under Section 173 of the *Motor Vehicle Act, 1988* ('M.V. Act' *hereinafter*) has been filed on behalf of the Appellants/Claimants against the Judgment dated 15.04.2019 *vide* which the Claim Petition under Section 166 and 140 of the M.V. Act on account of demise of Shri Pankaj Kumar in a road accident on 13.10.2015, has been dismissed.
2. *Ld. Counsel on behalf of the Appellant* has argued that Claimants were merely supposed to establish their case on the touchstone of preponderance of probabilities and the standard of proof of beyond reasonable doubt is not to be applied in Motor Accident Claims. The *Id.* Tribunal fell in error in concluding that there was insufficient evidence to hold that the accident was caused by the offending vehicle and that the IO had planted the offending car in collusion with the Claimants. Though the liberty has been given to the Claimants to approach DLSA for compensation under its Victim Compensation Scheme, but the involvement of the vehicle has been duly established and they are entitled to compensation under the Motor Vehicle Act.
3. The *Ld. Counsel* for the Appellant has relied on *Bimla Devi & Ors. V. Himachal Road Transport Corporation and Ors.*, 2009 ACJ 1725; *Vimla Devi Ors. v. National Insurance Company & Anr.*, SLP (C) No. 17321 of 2016; *Janabai WD/o Dinkarrao Ghorpade & Ors. v. M/s ICICI Lombard*



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Insurance Company Ltd. SLP (C) No. 21077 of 2019; and Sateena Ikhbal & Ors. v. Mini Babu George & Ors., 2024 INSC 787.

4. *Learned counsel on behalf of the Insurance Company* submits that there is no error in the findings of the learned Tribunal and the Claim Petition has been rightly dismissed.

5. **Submissions Heard and record perused.**

6. *Briefly stated*, on 13.10.2015 while returning to Meerut from Mawana the Deceased/Pankaj, aged 33 years, driving his motorcycle bearing registration No. UP 15 BM 6785 at a moderate speed when it was hit by the offending Wagon-R Car bearing Registration No. DL 2C AC 9300 coming from the wrong side being driven in a rash and negligent manner because of which the deceased sustained multiple injuries. He was taken to Lok Priya Hospital, Meerut where he succumbed to his injuries and died.

7. *FIR No. 16/2015 was registered under Section 279/338/304-A Indian Penal Code, 1860 ('IPC' hereinafter) on 14.10.2015 at PS Ganga Nagar.*

8. The DAR was also filed before the Ld. Tribunal. The *Petition under Section 166 and 140 of the M.V. Act* was subsequently filed for grant of compensation by the Wife, three minor Children and Parents of the Deceased.

9. The basic discrepancy is that the number of offending vehicle mentioned in the FIR was different from the offending vehicle which was eventually identified during investigations and against which the Charge Sheet was filed.

10. The accident had taken place on 13.10.2015 whereas the FIR was lodged on the next day i.e. 14.10.2015 by Mr. Jaipal Singh, father of the deceased who gave the number of offending vehicle as PP 03 CL 9697,



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which was also reiterated in the Site Plan dated 20.10.2015. Admittedly, father of the deceased was not an eye witness and had not personally noted the number of the offending vehicle.

11. The Appellants/Claimants examined the *eye-witness, PW-3 Mr. Pawan Kumar*, who deposed that on the date of accident, he was travelling as a pillion rider on the motorcycle being driven by his friend, Mr. Sunil Kumar and they both saw the accident being caused by the Wagon R, which was being driven in a rash and negligent manner. It hit into the motorcycle that was coming from the front on its own side at normal speed. After the accident, the driver of the offending Wagon R stopped his car and the witness noted the number of offending vehicle as DL 2C AC 9300, but the driver ran away.

12. **PW-5, Mr. Sunil Kumar**, who was driving the motorcycle, has deposed on similar lines. Though, both the witnesses were cross-examined but aside from giving a suggestion that the accident was caused by PP 03 CL 9697 and not by the offending Wagon R, no other evidence has been led on behalf of the Insurance Company or the driver/owner.

13. These two witnesses have explained that though, they were present on the spot and had met the Police who had taken the injured to the hospital, they did not give their formal statements to the Police, which was recorded subsequently.

14. The other material witness is **PW-4, SI Parmod Kumar Huda**, who had prepared the Charge-Sheet, after investigations. He deposed that during the investigations, he recorded the statement of Mr. Pawan Kumar and Mr. Sunil Kumar, the two eye-witnesses and thereafter, seized the offending vehicle and got the Mechanical inspection done. He prepared the Site Plan,



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which is exhibited as Ex.PW-1/3; Post Mortem Report of the deceased is exhibited as Ex.PW-1/5 and the complete Charge-Sheet along with the documents, is exhibited as Ex.PW-1/4.

15. *In his cross-examination, PW-4, SI Parmod Kumar Huda* further explained that the accident occurred on 13.10.2015, but it was informed on the next date i.e. 14.10.2015 by the father, Mr. Jaipal Singh. The information had also been received on the same date i.e. 13.10.2015, from the Control Room. The investigations were assigned to him on 14.10.2015, after the FIR was registered on the statement of the father, Mr. Jaipal Singh who gave the number of the vehicle as PP 03 CL 9697, which also got mentioned in the Site Plan. He has explained that when he went to the scene of crime, no offending vehicle was found on the spot. He also clarified that Mr Jaipal Singh, on whose statement, the FIR was recorded, was not an eye witness. Before March, 2016, nobody told him about being a witness to the accident but subsequently, he met the two eye-witnesses, namely, Mr. Pawan Kumar and Mr. Sunil Kumar and recorded their testimony and ascertained that the offending vehicle had the number DL 2C AA 9300 and not PP 03 CL 9697. Accordingly, on completion of investigations, he filed the Charge-Sheet against the Respondent No. 1/Mohd. Irfan, the driver of the offending vehicle.

16. From the testimony of the two eye witnesses, namely, PW-3, Mr. Pawan Kumar and PW-5, Mr. Sunil Kumar, the number of the offending vehicle was disclosed and after due investigation, the offending vehicle was identified and Charge-Sheet accordingly filed. Initially, the number of the offending vehicle may have been given incorrectly by the father, but it cannot be overlooked that he was not an eye witness to the accident. FIR is



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recorded initially on the basis of first information, which may or not may not be correct. Furthermore, the entire purpose of investigation is to identify the correct offending vehicle and the actual culprit. Therefore, merely because a number of the offending vehicle was mentioned incorrectly initially in the FIR, would not put to naught the entire investigations which led to the identification of the correct offending vehicle.

17. It may also be observed that the driver/owner have failed to step into the witness box or to explain any circumstance, which could show that the offending vehicle has been implicated falsely. The driver of the vehicle was the most material witness to support their defence of their car not being involved in the accident, but has chosen not to step into the witness-box. This leads only to an adverse inference against the driver/owner.

18. There is no reason to disbelieve the testimony of the two eye witnesses and also the investigations which have been independently carried out by PW-4, SI. Mr. Parmod Kumar Huda, the Investigating Officer.

19. 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.

20. The learned Tribunal fell in error in holding that the involvement of the offending vehicle was not proved, even though the evidence on record established the number of the offending vehicle, which had been duly identified after investigations.

21. It is, therefore, concluded that the offending vehicle was involved in the accident and its driver by driving it in a rash and negligent manner, caused the accident which resulted in the demise of Mr. Pankaj Kumar. ***The findings of the learned Tribunal in this regard, is hereby set-aside.***



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22. In the present case, the compensation amount has been assessed by the learned Tribunal in the sum of Rs.51,76,000/- along with the interest @9% p.a. Accordingly, the entire compensation be deposited by the Insurance Company within four weeks along with up-to-date interest and the same be disbursed before the learned Tribunal in the following manner:

23. *Shares of the Claimants in the facts and circumstances of this case are determined as under:-*

24. Rs. 1,76,000/- to be released immediately. Rs.1,00,000/- to Appellant No. 1/Wife and Rs.38,000/- each to the Appellant No.5 & 6/Parents.

25. Out of the remaining Rs.50,00,000/-, the Appellant No. 1 is entitled to 40% of the said amount i.e. Rs.20,00,000/- which is to be kept in FDRs and released over a period of 80 months along with interest in the equal amount.

26. The Appellant Nos. 2-4 are entitled to 15% each, i.e. Rs.7,50,000/- which is to be kept in FDRs and be released to the Appellant Nos. 2-4 on attainment of majority along with the interest. FDRs shall not be released to the Children without the Orders of the Court and no passbook shall be issued to them until they attain majority.

27. The Appellant Nos. 5 & 6 are entitled to 7.5% each i.e. Rs.3,75,000/- which is to be kept in FDRs and released over a period of 36 months along with interest in equal amount.

28. The Appeal along with the pending Application(s), if any, stands disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 28, 2024/RS