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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision:13th December, 2024***

\+ **MAC.APP. 866/2019, CM APPL. 48685/2019 (stay)**

Mr. KRISHAN (OWNER)
S/o Sh Giri Raj .....Appellant

Through: Mr. Kamal Deep, Advocate.

versus

1. M/S ORIENTAL INS CO LTD .....Respondent No. 1

2. SH. RAM NARESH (DRIVER
S/o Sh. Khetpal Singh ....Respondent No. 2

3. PUSHPA PANT
W/o Late Sh.Tribhuwan Chand Pant ...Respondent No. 3

4. MS. MAMTA PANT
D/o Late Sh. Tribhuwan Chand Pant ....Respondent No. 4

5. DEEPAK PANT
S/o Late Sh. Tribhuwan Chand Pant ....Respondent No. 5

6. SMT. MAYA PANT
W/o Late Sh. S.N. Dixit (Mother of deceased)
...Respondent No. 6

Through: Mr. J.P.N. Shahi, Advocate for R-1.

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\+ **MAC.APP. 868/2019, CM APPL. 48758/2019 (stay)**

KRISHAN (OWNER)
S/o Sh Giri Raj .....Appellant

Through: Mr. Kamal Deep, Advocate.

versus

1. M/S ORIENTAL INS CO LTD .....Respondent No. 1

2. SH. RAM NARESH (DRIVER
S/o Sh. Khetpal Singh ....Respondent No. 2

3. SH. KARAN SINGH
S/o Late Shri Phool Singh ....Respondent No. 3

4. SH. VED PRAKASH
S/o Karan Singh ...Respondent No. 4

5. SH. GYAN CHAND
S/o Shri Karan Singh ...Respondent No. 5

6. SH. KANHAIYA
S/o Shri Karan Singh ...Respondent No. 6

7. SMT. USHA
D/o Shri Karan Singh ...Respondent No. 7

8. SMT. SUNITA
S/o Shri Karan Singh ...Respondent No. 8

9. SMT. ANITA
D/o Shri Karan Singh ...Respondent No. 9

Through: Mr. J.P.N. Shahi, Advocate for R-1.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

1. Both the Appeals under Section 173 of the *Motor Vehicles Act, 1988*

('M.V. Act' *hereinafter*) have been filed on behalf of the Appellant/Owner of the offending vehicle, ***to challenge the recovery rights granted to the Insurance Company against him,*** *vide* the Award dated 22.07.2019 whereby the compensation in the sum of Rs.5,00,000/- along with the interest @6% p.a., has been granted in the Petition under Section 163A of the Motor Vehicles Act, 1989 *(hereinafter referred to as* "MV Act"*)* on account of demise of Mr. Tribhuwan Chand Pant, aged about 50 years and Ms. Beena Devi, aged about 48 years, in the road accident on 26.05.2010.

2. ***Briefly stated,*** on 26.05.2010 at about 11:30 p.m., the deceased, Ms. Beena and Mr. Tribhuwan Chand along with some other persons, left from Sangam Vihar for Haridwar for taking holy bath, in the offending Tata Tempo No. DL-1LG-7938, which was driven by the Respondent No. 3, Mr. Ram Naresh. When the Tempo reached near Zatholi Gate, Meerut Bypass at around 01:30 a.m., the Respondent No. 3/Driver because of some high beam which came from the opposite direction, got perplexed and lost the control and collided in the pole on the side of road, which resulted in death of Ms. Beena and Mr. Tribhuwan Chand.

3. *DD No. 26 dated 27.05.2010* was registered at Station Kankarkhera, Meerut. The Panchnama was prepared and the post-mortem of the deceased persons was conducted at PL Sharma Chikitsalya, Meerut.

4. A Claim Petition under Section 163-A of the MV Act, 1988 was filed by the Claim Petitioners/Respondent No.3-6 herein.

5. **The learned Tribunal** after appreciating the evidence recorded on behalf of the Claimants and also the evidence of Driver-R3W1, Mr. Ram Naresh, concluded that the two deceased were travelling as *"gratuitous*

passengers" in the Offending Tempo and consequently, while granting the compensation to the Claimants, allowed the Insurance Company to recover the same from the owner.

6. The *sole ground of challenge* by the Appellant/owner of the offending vehicle, is that the two deceased persons were not ***"gratuitous persons",*** but had accompanied their articles for going to a Bhandara in Haridwar. They were carrying the utensils, etc. and they cannot be termed as gratuitous passengers.

7. *Learned counsel on behalf of the Insurance Company* has argued that *in fact,* they were gratuitous passengers as is evident from the testimony of R3W1, Mr. Ram Naresh himself, who has admitted that only Rs.500/- were taken for filling of diesel. It is submitted that the learned Tribunal has rightly appreciated the facts to grant *recovery rights* against the Appellant.

8. **Submissions heard and record perused.**

9. *The* ***sole issue*** *for consideration is whether the two deceased, who were travelling in the offending vehicle and died on account of the accident, were in fact the gratuitous passengers.*

10. For this, it is pertinent to refer to the testimony of *PW-2, Sh. Naresh*, who according to the claimants was travelling in the Offending Vehicle and was the eye witness. He deposed in his Affidavit of evidence, Ex.PW-2/A about the accident, as already narrated above. He further deposed that his Mausi, Smt. Beena and one Mr. Tribhuvan Chand Pant (Pandit ji) were travelling in the offending vehicle/tempo from Sangam Vihar, New Delhi to Haridwar, for taking a holy bath in river Ganga and to do some charity for which they were carrying some goods. Each of them had paid Rs.500/- for

travelling in the Tempo along with their goods, to the driver, Sh. Ram Naresh.

11. *PW-2, Sh. Naresh* in his cross-examination on behalf of Driver/Owner, had explained that he was sitting on the front seat and that his Mausi and Pandit ji were also sitting alongside him.

12. In his cross-examination by the Insurance Company, he reiterated that the goods i.e. religious articles were being carried in the Tempo for the purpose of charity. He denied the suggestion that they were travelling as gratuitous passengers.

13. There are some contradictions in his testimony as he claimed to be sitting in the Cabin along with the two deceased, while *R3W1, Sh. Ram Naresh, driver of the offending vehicle deposed that only two deceased were present with him in the Cabin, thereby creating a doubt about him also being present in the Cabin.*

14. Even if his testimony is overlooked, then too the next material witness is *R2W1, Sh. Krishan Lal, who was the owner of the offending vehicle*. He explained how and for what purpose the Tempo got hired from him. He deposed that a group of persons, ***through their representative, Sh. Sumit Kumar***, had approached him to avail the services of TATA Tempo, for carrying their goods to Haridwar for conducting Bhandara. He, therefore, booked the offending vehicle for a consideration of Rs.2,500/- on 26.05.2010. The amount of Rs.2,000/- was paid to him while the rest of the amount i.e. Rs.500/- was for getting the diesel filled in the vehicle.

15. He further deposed that both Sh. Tribhuwan Chand Pant and Smt. Beena, were sitting in the cabin to accompany their goods for Bhandara

which included Atta, Chawal, Sujee, Kale Chaney, Refined Oil, Hawan Kund, Hawan Samagari woods for Hawan, fruits, Desi Ghee, utensils like *Thalies, Katories, spoons etc. and Flowers relating to the Hawan,* which belonged to Smt. Beena and Sh. Tribhuwan Chand Pant, who was also a Pandit by profession.

16. In the cross-examination, only suggestion given was that he in his Written Statement, had denied that any such accident had happened with his vehicle. There is no suggestion whatsoever given to him by the Insurance Company, that the two deceased were travelling in the tempo as gratuitous passengers.

17. The testimony of *R2W1, Sh. Krishan Lal* was fully corroborated by *R2W2, Sh. Sumit Kumar*, through whom the Tempo was booked by the deceased persons. He deposed that he had approached Sh. Krishan Lal, the owner of the offending vehicle and booked TATA Tempo for carrying goods to Haridwar for conducting Bhandara on 26.05.2010 for which he paid Rs.2,500/- to him. He further deposed that Sh. Tribhuwan Chand and Smt. Beena were accompanying the articles of Bhandara in the Tempo, when the vehicle met with an accident.

18. *Mr. Sumit Kumar* in his cross-examination by the Insurance Company, clarified that he had never worked as a driver for Sh. Krishan Lal, the owner of the Tempo, but he knew him as he had been working at the same stand for a number of years where he was also available. He further clarified that he did not pay any amount for booking of the vehicle to Sh. Krishan Lal and had simply booked the vehicle without any payment.

19. From his testimony, it emerges that he had been approached by the

two deceased persons for arranging a vehicle for them to go to Haridwar, for the purpose of holy dip and also to perform the Bhandara. He in his testimony, fully corroborates that the Tempo had been organized by him on account of his acquaintance with the owner, Sh. Krishan Lal for the Deceased to transport their Bhandara Samagri to Haridwar and they had accompanied the Goods.

20. The last material witness is *R3W1, Sh. Ram Naresh, the driver of the offending vehicle.* He also deposed that his employer had been approached by group of persons for going to Haridwar for conducting Bhandara and accordingly, the vehicle was booked for 26.05.2010.

21. He further deposed that on the said date, he as a driver was accompanied by Sh. Tribhuwan Chand and Smt. Beena, in the Tempo with the goods for Bhandara which were put in the back of the Tempo. Since the vehicle was full of the aforesaid items, both the persons sat with him in the cabin and there were some other persons, who also accompanied the Tempo in their respective cars on the date of accident. He further deposed that both the deceased were owners/authorized representatives of the goods for the purpose of performing Bhandara, which were being carried in the Tempo.

22. This witness was also consistent in his deposition that the owner of the Tempo was approached by his former driver for carrying the passengers from Delhi to Haridwar and had promised that in consideration, they would get the diesel of Rs.500/- put in the vehicle, which was handed over to him at the time when the request was made to the owner to carry these three passengers.

23. The testimony of *R3W1, Sh. Ram Naresh* was sought to be discredited

by confronting him with his earlier testimony recorded on 28.04.2014 wherein he had stated that *there were three more persons in the vehicle excluding him and one person was sitting with him in the cabin while the lady was sitting in the open body of the vehicle with her belongings.* He however, had deposed even then that they were travelling to Haridwar for Bhandara.

24. Even though he deposed in his testimony on 28.04.2014 that the Lady was sitting in the Open body, while in his testimony recorded again on 28.11.2018, he deposed that the lady was sitting in the Cabin and not open body, but this apparent contradiction in two statements is of little significance as he was consistent in his deposition that aside from him, one man travelled in the cabin while one man and lady were travelling in the Open Body of the Tempo along with their Bhandara material.

25. The testimony of *R3W1, Sh. Ram Naresh, the driver of the offending vehicle* is also consistent in not only about the manner in which the Tempo got hired by the two deceased persons, but also that they both were travelling in the Tempo along with the Bhandara articles. These Bhandara articles were not commercial goods but were the goods which belonged to the two deceased persons, for the purpose of which the Tempo had been engaged. There is no inherent contradiction in his testimony recorded on 28.04.2014 and again on 28.11.2018.

26. From the testimony of the all the aforesaid witnesses, it is clearly established that the Tempo had been engaged for the purpose of carrying Bhandara Articles belonging to the two deceased persons, for which the charges agreed were Rs.500/- for putting the diesel in the vehicle. It is

nowhere the law that there must be a substantial amount agreed to be paid by the owner of the goods while engaging a vehicle for the transportation of their Goods.

27. It is thus, concluded that the testimony of all the aforesaid Witnesses establishes that the two deceased were accompanying their articles of Bhandara, in the Tempo. They cannot, therefore, be termed as gratuitous persons but in fact, were the owners of the goods, which were being transported in the Tempo.

28. Therefore, the learned Tribunal had fallen in error in concluding that the two deceased persons were the gratuitous passengers. Consequently, the liability to pay the entire compensation rests solely on the Insurance Company and no recovery rights are liable to be granted against the Appellant/owner.

Conclusion:-

29. *The impugned Award dated is 22.07.2019, is hereby modified and it is held that the Insurance Company, who is liable to pay the compensation, is not entitled to the recovery rights.*

30. The Appeals along with Pending Application(s) are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 13, 2024/RS