



2024:DHC:10106



\$~10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 18th December, 2024***+ **MAC.APP. 925/2019**

1. Ms. BIJENDERI
W/o Sh. NirdoshAppellant No. 1
2. Ms. GEETA
D/o Late Sh. NirdoshAppellant No.2
3. Ms. BHAVNA
D/o Late Sh. NirdoshAppellant No.3
4. Ms. ANJANA
D/o Late Sh. NirdoshAppellant No.4
5. Ms. RASHMI
D/o Late Sh. Nirdosh ...Appellant No. 5
6. Master GURU ARJUN
S/o Sh. NirdoshAppellant No. 6
7. Smt. RAJ BALA
W/o Sh. SUKHBIR SINGHAppellant No. 7
8. Sh. SUKHBIR SINGH
S/o Late Sh. Ganga PrasadAppellant No. 8
Through: Mr. Kunwar Arish Ali, Mr. Zubair Ali, Mr. M. Raja, Mr. Yamin, Mr. Tafseer and Mr. Yaseer Wali, Advocates.

Versus

1. SHYAMVEER SINGH
S/o Sh. Bal Swaroop SinghRespondent No.1



2024:DHC:10106



2. BAL SWAROOP
S/o Ramji Lal ...Respondent No. 2
3. M/S ICICI LOMBARD GENERAL INSURANCE
COMPANY LIMITED BIRLA TOWERRespondent No.3
Through:

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T (Oral)

1. The Appeal under Section 173 of the *Motor Vehicles Act, 1988* ('M.V. Act' *hereinafter*) has been filed on behalf of the Claimants/Appellants, against the Award dated 13.09.2017, whereby the Claim Petition under Section 166 and 140 of the M.V. Act, has been dismissed on the ground that the rashness and negligence has not been proved on the part of the driver of the offending vehicle.
2. An Application bearing C.M. No. 52419/2019 under Order 41 Rule 26 CPC, has been filed for filing the additional document i.e. Postmortem Report of the deceased, Mr. Nirdosh.
3. The document being relevant are taken on record.
4. *Learned counsel on behalf of the Appellants*, have argued that though Mr. Nirdosh had died in the road accident but inadvertently, the Post mortem that was placed on record, was of Mr. Rajeshwar Nand instead of Mr. Nirdosh. Learned counsel has further submitted that there was cogent evidence on record to prove not only the involvement but also the negligence on the part of driver of the offending vehicle. The impugned Award which has been dismissed on account of non proof of negligence is,



2024:DHC:10106



therefore, liable to be set-aside.

5. *Learned counsel on behalf of the Insurance Company* submits that the cogent reasons have been given by the learned Tribunal, to conclude that the involvement of the vehicle was not proved as the FIR was registered against another vehicle, though the Charge-Sheet was filed against the offending vehicle. There is no eyewitness examined. The Ld. Tribunal held that the claimants had failed to establish that the deceased had died on account of injuries sustained in accident which took place on 26.04.2012 due to rash and negligent driving of vehicle bearing registration No. UP 14 BQ 1872. Therefore, it has been rightly dismissed by the learned Tribunal.

6. Submissions heard.

7. *Briefly stated*, on 26.04.2012 at about 8:30 p.m, Mr. Nirdosh, the deceased along with other person were going from Bulandshahar to Dibai, in the EECO (Maruti Car). When they reached near Kali Temple Dibai, Duraha, Bulandshahar, UP, a Xylo Car No. UP 14 BQ 1872, came from the opposite side after overtaking a standing tractor trolley, at a very high speed and rash and negligent manner and hit the ECCO (Maruti Car). After hitting the Maruti Car, Xylo car over turned. Resultantly, Mr. Nirdosh received the serious injuries in the accident and died.

8. FIR No. 18/2012 under Section 279/304A/338/427 of the *Indian Penal Code, 1860* was registered at Police Station, Debai, District Bulandshahar, UP and eventually, the Charge-Sheet, Ex. PW1/3 was filed against the *offending vehicle* bearing Registration No. UP 14 BQ 1872.

9. The Claim Petition under *Section 166 and 140 of the M.V. Act*, has been filed on behalf of the Appellants for seeking compensation on account



2024:DHC:10106



of death of Mr. Nirdosh in the road accident.

10. The *first ground of appeal* is that the Ld. Tribunal erred in dismissing the Claim Petition on the ground of want of evidence and did not appreciate the fact that due to mere inadvertence, the Postmortem that was placed on record, was of Mr. Mr. Rajeshwar Nand instead of Mr. Nirdosh. Further, the Death report of Deceased/Nirdosh from B.L. Kapoor Hospital (Annexure A/4), has been placed on record along with his Death Certificate (Annexure A/5). Therefore, the factum of his death in the said accident, is not in question.

11. The contention of the Insurance Company that the learned Tribunal has set forth clear and compelling reasons to conclude that the vehicle's involvement was not proven since the FIR was registered against another vehicle, is not tenable in light of the Chargesheet that has been filed against the offending Vehicle/ Xylo Car.

12. In the present case, it has clearly emerged from the FIR that the Xylo Car had overtaken the tractor trolley and thereafter hit into the vehicle in which the deceased was travelling in EECO Maruti Car. Initial registration of FIR against the tractor trolley is, therefore, comprehensible.

13. Pertinently, the driver of the offending vehicle has neither contested the Petition nor has he come forth for any defence. In the present case, the FIR was registered against the driver of the tractor trolley, but after due investigations the driver of the vehicle Xylo No. UP 14 BQ 1872 namely Mr. Shyamveer was made an accused and chargesheet was filed against him in the Court in which he is facing trial.

14. In the case of National Insurance Co. vs Pushpa Rana 2009 ACJ 287



2024:DHC:10106



Delhi, it has been held that filing of Chargesheet is sufficient proof of the negligence and involvement of the Offending Vehicle. The Apex Court has opined in the judgment of Mangla Ram vs. The Oriental Insurance Company Ltd., AIR 2018 SC 1900 that the key-point of negligence of the driver as set up by the Claimants is required to be decided on the touchstone of preponderance of probabilities and not by the standard of proof beyond reasonable doubt. Thus, filing of chargesheet against the driver of the offending vehicle *prima 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 Raj, MAC Appeal no. 831/2015 decided on 19.11.2022).

15. The circumstances as emerged from the Charge-Sheet and the doctrine of *res ipsa loquitur* proves the negligence of the offending Xylo Car in causing the accident. While making an assessment of negligence of the driver of the offending vehicle, it cannot be overlooked that this is an enquiry and not a civil or a criminal trial wherein strict provisions of evidence and burden of proof, are applicable. The entire Objection of this enquiry is, to adjudge fair and reasonable compensation that may be payable to the injured/dependents of a deceased in a road accident. The hyper technicalities as have been agitated by the Insurance Company, are totally unacceptable.

16. In the same context, it is pertinent to observe that there is no challenge to the demise of Mr. Nirdosh in the road accident but merely because the post-mortem report of the other deceased, Mr. Rajeshwar Nand, were placed



2024:DHC:10106



on record instead of that of deceased Mr. Nirdosh, the learned Tribunal could not have concluded that Mr. Nirdosh *in fact* had not died in the accident.

17. It is, therefore, held that there is sufficient evidence on record to establish that the accident was caused due to rash and negligent driving of the Xylo Car, the offending vehicle by its driver, Mr. Shyamveer Singh.

18. In view of the aforesaid, the impugned Award is erroneous and requires reconsideration.

19. In view of the aforesaid, the Appeal is allowed and the impugned Order dated 13.09.2017 is hereby set-aside.

20. The Appeal is remanded back to the learned Tribunal, for adjudication of the just and fair compensation payable to the Appellants.

21. The parties are directed to appear before the learned Tribunal on 07.01.2025.

**NEENA BANSAL KRISHNA
(JUDGE)**

DECEMBER 18, 2024/RS