



2024:DHC:6476



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

% **Date of order: 20th August, 2024**

+ **MAC.APP. 436/2024 & CM APPL. 47261/2024 & CM APPL. 47260/2024**

M/S NEW INDIA ASSURANCE COMPANY LTD.Appellant

Through: **Ms.Rakhi Dubey, Mr.Sandeep Kumar Dubey and Mr. Bipin Kumar Dubey, Advocates (Through VC)**

versus

RINKI DEVI AND ORS

....Respondents

Through: **None**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant appeal has been filed by the appellant-Insurance Company under Section 173 of the Motor Vehicles Act, 1988 (hereinafter as the 'MV Act') challenging the order and judgment dated 18th April, 2024 (hereinafter as the 'impugned order') passed by the learned PO, Motor Accident Claims Tribunal, North District, Rohini Courts, Delhi (hereinafter as the 'Tribunal') in MAC No. 29/18.

2. On 8th October, 2017, at around 3:30 AM, Shri Hira Ram, the deceased, had loaded the vegetables in his vehicle bearing registration no.

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HR-55-E-9984 and was heading towards Noida from Reliance Ware House, Sonapat, Haryana at a moderate speed. When the deceased reached in front of CNG Pump Station, ahead of Libaspur Bus Stand, near Delhi Bypass, at around 4:15 AM, one trailer bearing registration no. HR-55-K-5169 (hereinafter as the 'offending vehicle'), which was being driven by its driver ahead of the deceased's vehicle, applied sudden brakes without giving any prior indication. This led the deceased's vehicle to hit the offending vehicle.

3. The deceased was immediately rushed to the hospital, where he died during the treatment on 12th October, 2017.

4. An FIR bearing no. 559/17 was subsequently registered under Sections 279/337A of Indian Penal Code, 1860 with Police Station Bhalswa.

5. Accordingly, a claim petition bearing no. 29/18 was filed before the learned Tribunal, seeking compensation for the alleged accident in question due to rash and negligent driving of the offending vehicle and the same has been granted by the learned Tribunal vide impugned order by awarding Rs.22,92,000/-, which is to be recoverable from the appellant.

6. Aggrieved by the impugned order, the instant appeal was filed.

7. None appeared on behalf of the respondents.

8. Learned counsel appearing on behalf of the appellant submitted that while passing the impugned order, the learned Tribunal failed to take into account that there was transfer of ownership of the offending vehicle due to the passing of one Late Mr. Kuber Nath Rai, the owner in whose name the policy was subsisting when the accident occurred and therefore, the insurance policy is deemed to be void due to non-disclosure of such material



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facts as per Section 149(2)(b) of the MV Act.

9. It is vehemently submitted that the offending vehicle has no valid permit and fitness certificate as on the date of accident as the same was in the name of deceased Mr. Rai, which is in contradiction with Section 82 of the MV Act.

10. It is further submitted that the deceased failed to maintain a reasonable distance from the offending vehicle and that the negligence of the deceased led to the accident. In light of this submission, he has relied on the ratio of the judgment dated 27th April, 2018 passed by the Hon'ble Supreme Court in the case of *Nishan Singh & Ors. vs. Oriental Insurance Company Ltd.*, AIR 2018 SC 2118 in Civil Appeal No. 10145/2016, submitting to the effect that the deceased was negligent in driving his vehicle rashly and negligently thereby causing the accident.

11. In view of the foregoing submissions, the learned counsel for the appellant submitted that the impugned order passed by the learned Tribunal is contrary to the settled law and therefore, it is prayed that the instant appeal be allowed.

12. Heard learned counsel appearing on behalf of the appellant and perused the contents of the instant appeal.

13. The instant appeal is admitted.

14. It is the case of the appellant that the learned Tribunal failed to consider that at the time of the accident, the offending vehicle was being driven without a valid permit due to the transfer of the ownership, thereby making the insurance policy infructuous and that for not maintaining a



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sufficient distance from the offending vehicle, the deceased was negligent in causing the accident at hand. Hence, it is prayed that the instant appeal be allowed.

15. Therefore, the limited question for adjudication before this Court is whether the learned Tribunal erred in passing the impugned order without considering the material facts on record.

16. For the purposes of convenience, this Court will firstly address the issue of voidability of insurance policy on account of non-disclosure of material facts and then address the issue of negligence of the deceased.

17. It is the case of the appellant that the transfer of the ownership of the offending vehicle was not intimated to the appellant, thereby making the insurance policy void on the account of non-disclosure of material facts.

18. In order to prove the same, the learned counsel for the appellant relied upon the deposition of the Transport Inspector i.e, R3W1 as well as the offending vehicle's permit, which are appended as **Annexure E (Colly)**. In his deposition, R3W1 brought forward the extracts of online permit details and online registered vehicle details of the offending vehicle. However, the said deposition does not substantiate the case of the appellant regarding the voidability of the insurance policy and therefore, this Court finds no substance in the same for the redressal of the said issue.

19. Upon perusal of the documents annexed to the instant appeal, all the documents pertaining to the offending vehicle reflects the name of Late Mr. Kuber Nath Rai as the owner of the said vehicle. While he was alive, permit bearing no. 3472/NP/2010 of the offending vehicle was issued in his favour



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with renewal upto 18th April, 2020. However, Mr. Rai passed away on 18th January, 2017 as per the death certificate appended at **Annexure D**. After his demise, the certificate of fitness was issued to the driver of the offending vehicle on 4th March, 2017 and the insurance policy was further renewed on 15th March, 2017, which are appended at **Annexure E (Colly)**. It is also pertinent to note that the accident took place on 8th October, 2017, which occurred during the subsistence of the policy and before the transfer of the ownership.

20. Although it cannot be made out when the transfer has taken place, this Court finds that the offending vehicle was insured at the time of the accident. Moreover, the insurance policy covered the period of accident and the same was never cancelled by the appellant. It is important to observe that Section 149 of the MV Act deals with the duty of insurers with respect to third party risks and their benefits cannot be compromised due to the transfer of ownership of the offending vehicle as the liability of the insurance company towards the third party is not contractual but statutory. This principle has been laid down in catena of cases such as *National Insurance Co. Ltd vs Swaran Singh, 2004 (3) SCC 297*.

21. In light of the foregoing discussion, this Court finds no merit in the appellant's case with respect to the policy being void. The appellant being an insurance company has a statutory liability in discharging its duty towards the third parties i.e., the victim's family herein.

22. It is also the contention of the learned counsel for the appellant that the deceased was negligent in not maintaining a reasonable gap with the



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offending vehicle and the said failure led to the occurrence of the accident. With regard to the same, the learned counsel relied upon the ratio of *Nishan Singh & Ors. vs. Oriental Insurance Company Ltd. (supra)*, wherein the deceased-driver was held accountable for rash and negligent driving.

23. In order to prove the same, sufficient evidence is required and at this juncture, this Court asked the learned counsel for the appellant to produce any evidence pertaining to the aforesaid submission, to which the learned counsel for the appellant failed to show any evidence in support of the same.

24. Therefore, this Court is of the view that mere reliance on a judgment is not sufficient when there is no means of establishing the case *via* evidence. Moreover, it is important to understand that the MV Act is a welfare legislation, which was formulated and promulgated by the legislature to further the benefits of the victims of motor vehicle accidents.

25. After perusing the records, contents made in the appeal as well as the submissions advanced by the learned counsel for the appellant, this Court is of the opinion that the instant appeal is nothing but a gross misuse of process of law and by filing the instant appeal, the appellant-insurance company is not only making the victim's lives more miserable by dragging them to the Court for an indefinite period of time but also derailing the very objective of the MV Act. Therefore, the reasoning given by the learned Tribunal while passing the impugned order are in detail and in accordance with law.

26. Taking into account the observations made hereinabove, the instant appeal is liable to be dismissed, being devoid of any merit.

27. In view of the above facts and circumstances, this Court does not find



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any error in the impugned order and judgment dated 18th April, 2024 passed by the learned PO, Motor Accident Claims Tribunal, North District, Rohini Courts, Delhi in MAC No. 29/18 and the same is upheld.

28. Accordingly, the instant appeal stands dismissed, along with the pending application(s), if any.

29. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 20, 2024
gs/mk/ryp

Click here to check corrigendum, if any

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