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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 7th November, 2024

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MAC.APP. 95/2020

1. MANJU DEVI

.....Appellant No.1

2. SATVIR SINGH

.....Appellant No.2

Through: Mr. Anshuman Bal, Advocate.

versus

1. UNITED INDIA INSURANCE CO LTDRespondent No.1

2. SH. VIPUL DAS

.....Respondent No.2

Through: Mr. Sankar N. Sinha, Advocate for R-1.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. *An Appeal under Section 173 of the Motor Vehicle Act, 1988* has been filed against the Award dated 09.05.2009 *vide* which the Claim Petition under Section 166 of the Motor Vehicle Act, 1988, filed by the *Appellants/parents* of the deceased Yogesh Chauhan, has been dismissed.

2. ***Briefly stated***, the Claimants/Appellants had filed a Petition under Section 166 & 140 Motor Vehicle Act, 1988 for claiming compensation on account of the death of their son Yogesh Singh in a road accident on 03.11.2016.

3. The facts as narrated in the Petition, are that the deceased Yogesh Singh (*pillion rider*) along with his friend Gaurav Chauhan (*driver*) was coming from village Neemka to Delhi *via* Yamuna



Expressway on his motorcycle. When they reached in front of Sports City, Dankaur, District Gautam Budh Nagar, an Eeco Car bearing No.DL-7CN0824 (*hereinafter referred to as 'offending vehicle'*) which was being driven by *Shri Vipul Das* came from back side at a high speed and hit the motorcycle. Both, Yogesh Singh and Gaurav Chauhan suffered serious injuries and were taken to Kailash Hospital, Greater Noida. Yogesh Singh, the pillion rider, died during the course of treatment. FIR No.725/16, u/s 279/338/304A IPC, PS Dankaur, District Gautam Budh Nagar, was registered.

4. The Petitioners/Appellants claimed compensation in the sum of Rs.50 lakhs, for the demise of Sh. Yogesh Singh.

5. ***The Petition was contested by Respondent No.2/Vipul Das*** the driver/owner of the offending vehicle, who denied that the vehicle was being driven by him in a rash and negligent manner and claimed that no liability of payment of compensation can be fastened on him as his vehicle was not responsible for causing the accident.

6. It is further claimed that the vehicle is duly insured with the Insurance Company and liability, if any, to pay the compensation is that of the *Respondent No.1/Insurance Company*.

7. ***The Respondent No.1/Insurance Company*** admitted that the Insurance Policy which was valid from the period 17.10.2016 to 16.10.2017, was issued by it in a *Private Car Package Policy* category to insure the offending vehicle in the name of Vipul Das, owner of the vehicle. However, it was asserted that as is evident from the contents of the Petition, there were two vehicle involved in the accident; one being the motorcycle driven by the injured and the other being the



offending vehicle. Thus, the Petitioners be put to strict proof of negligence on the part of Respondent No.2 in causing the accident. In regard to all other averments made in the Petition, it was asserted that they are all subject to the proof by them.

8. The Petitioners/Appellants had examined 2 witnesses. *Petitioner No.2/Shri Satvir Singh, father* of the deceased appeared as **PW1** and tendered his *Affidavit of Evidence - Ex. PW1/A* to prove the documents i.e. copy of his Aadhaar Card *Ex.PW1/1*; copy of Aadhaar Card of Petitioner no. 1 *Ex.PW1/2*; copy of Birth Certificate of deceased *Ex.PW1/3*; copy of Admission Card of deceased *Ex.PW1/4*; copy of Provisional Certificate of deceased issued by Guru Govind Singh Indraprastha University *Ex.PW1/5*; Copy of Senior School Certificate of deceased *Ex.PW1/6*; copy of Awards Certificate of deceased *Ex.PW1/7* and copy of Appreciation Letter *Ex.PW1/8*.

9. **PW-2** Sh. Gaurav Chauhan, was the injured and an eye-witness to the accident, who tendered his Affidavit of Evidence as *Ex-PW2/A* and deposed about the manner in which the accident took place.

10. *The Respondents did not examine any witness.*

11. The Tribunal examined **TW-1/HC** Girvar Singh, I.O of the Criminal Case, under Section 165 of Indian Evidence Act, 1872.

12. The learned Tribunal referred to the testimony of **PW1 Shri Satvir Singh, father** of the deceased and observed that he was admittedly not an eye witness. The testimony of **PW2 Sh. Gaurav Chauhan**, the injured was not given much credence about the manner of accident, by observing that he has not explained as to how he was able to see that the vehicle coming from his back side was being driven at a



high speed or in a rash and negligent manner at the time of accident. He had also not explained whether the registration number of the offending vehicle was seen by him. Moreover, the *FIR No.725/16* was got lodged by PW1/Satvir Singh the father of the deceased on 14.12.2016 i.e. after a gap of 42 days. His explanation that he was busy in the last rites of his son, was held to be not acceptable to explain the delay of 42 days.

13. It was thus, concluded that the involvement of the offending vehicle was not proved and thus, the Claim Petition was dismissed.

14. Aggrieved by the said Order, the present Appeal has been preferred.

15. The *main grounds* of the Appeal are that the motorcycle as well as the car involved in the accident, were recovered from the scene of accident, which is corroborated by the Case Diary of the Police, but this fact has been overlooked. Further, the negligence on the part of the offending vehicle stands sufficiently proved from the testimony of the eye witness as well as the Police record exhibited by the Claimants and that no evidence has been led on behalf of the respondents to rebut the evidence of the Petitioners.

16. It is argued that the claims for compensation is a Summary Enquiry and not a criminal trial requiring the standard of proof to be beyond reasonable doubt. The Impugned Award is therefore, liable to be set aside.

17. **Submissions heard and record perused.**

18. It is not in dispute that an accident took place on 03.11.2016, while the deceased Yogesh Singh, pillion rider, was travelling on the motorcycle being driven by the eye witness/Gaurav Chauhan.



19. This is corroborated from the medical papers i.e. *MLC No. 754/16-17/KHL* 03.11.2016 of Yogesh Singh; *MLC No. 755/16-17/KHL* of Gaurav Chauhan dated 03.11.2016 Ex. TW1/D and Post Mortem Report of Yogesh Singh Ex. TW1/E, which reflects that both deceased as well injured were taken to Kailash Hospital and had remained under treatment. Thus, the factum of accident stands established and is also not disputed.

20. *The second aspect* is the involvement of the offending vehicle. It is pertinent to note that as per the documents filed along with the Chargesheet/Ex. TW1/B, wherein it has been specifically recorded that the offending vehicle was recovered from J.P. parking in an *accidental condition* and was lifted by a crane.

21. Pertinently, respondent No.1 and 2 in their Written Statement have also not denied that it was not being driven by the respondent No.2 at the time of the accident.

22. Furthermore, *PW2* Gaurav Chauhan the eye witness has deposed about the involvement of the offending vehicle and his testimony has not been cross-examined on any of this aspect. He has cogently explained the manner in which the accident has taken place, which is fully corroborated by the Site Plan and the investigations carried out in the Criminal Case.

23. The statement of the I.O/HC Girvar Singh had also been recorded by the Tribunal, wherein all the documents filed along with the Chargesheet were proved. Moreover, after conducting the entire investigations, not only was the Chargesheet filed against Respondent No.2 Sh. *Shri Vipul Das*, but the involvement of the offending vehicle



has also been fully established.

24. The learned Tribunal had disbelieved the entire incident merely because there was a delay of about 42 days in registration of FIR. However, PW1/ Shri Satvir Singh, father of the deceased had explained that because he was busy in the last rites of his son aged 22 years in the accident, he was unable to get the FIR registered. The delay on the part of father of the deceased in making the complaint to the Police cannot be of any consequence especially when the incident of accident is proved and the involvement of the offending vehicle has been established. The delay has been sufficiently explained. The learned Tribunal fell in error in rejecting the Claim merely on the ground of delay of 42 days in registration of FIR.

25. *From the aforesaid discussion it is established that the accident was caused due to rash and negligent driving of the offending vehicle by respondent No.2 Shri Vipul Das, the driver/owner which had hit the motorcycle driven by Gaurav Chauhan, from behind.*

26. It is thus, held that the Issue No.1 in regard to involvement and rashness and negligence of the respondent No.1 stands proved.

27. *The matter is remanded back to the learned Tribunal for determination of compensation in accordance with law.*

28. The parties are directed to appear before the learned Tribunal on 19.11.2024.

**(NEENA BANSAL KRISHNA)
JUDGE**

NOVEMBER 7, 2024/va