



2024:DHC:8817



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: 28 October, 2024*

+ **MAC.APP. 255/2018**

1. **SMT. RANI DEVI**

2. **MADHU KUMAR**

.....Appellants

Through: Mr. S.N. Parashar, Advocate

versus

1. **SH. SAUDAGAR KUMAR**

2. **THE NATIONAL INSURANCE CO. LTD.**

.....Respondents

Through: Ms. Neerja Sachdeva, Advocate for
R2

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G 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 Appellants against the Award dated 13.11.2017 wherein the Claim Petition under Section 163A of the M.V. Act, preferred by the legal heirs of the deceased, Mr. Gaurav Kumar, has been dismissed.

2. *Briefly stated* on 18.11.2014 at about 12:45 a.m., Mr. Gaurav Kumar along with Mr. Saudagar Kumar, were travelling on the motorcycle bearing



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Registration No. DL 5S AL 8954, which was claimed to be driven by the respondent No. 1, on which Mr. Gaurav Kumar, the deceased was a pillion rider. When they reached Wazirabad Road, Nanaksar Red light to Khajuri Khas, Delhi, an unknown vehicle hit the motorcycle bearing No. DL-5S AL-8954 from back side. Consequently, Mr. Gaurav Kumar fell and both Mr. Saudagar Kumar and Mr. Gaurav Kumar were taken to the GTB Hospital, Delhi in PCR. Mr. Gaurav Kumar was died during the course of the treatment on 19.11.2014. The FIR No. 1244/2014 under Section 279/337/304-A of the *Indian Penal Code, 1860* ('IPC' hereinafter), was registered at Police Station Khajuri Khas, Delhi, on the statement of Mr. Saudagar Kumar, who was injured in the same accident.

3. The Claimants sought compensation from the Insurance Company/respondent No. 1, under Section 163A of the M.V. Act, on account of death of Mr. Gaurav Kumar.

4. The learned Tribunal observed that though in all the subsequent statements and also in the statement of Mr. Saudagar Kumar, recorded in the Court he stated that the motorcycle was being driven by him at the time of the accident but in mistake, the first statement recorded by the police in the hospital, he had asserted that the motorcycle was being driven by the deceased.

5. It is, therefore, submitted that there is no inherent contradiction in the statement of the injured/eye witness. His consistent stand had been that the vehicle was being driven by him. He has also given an explanation that in the first instance, when his statement was recorded in the hospital on the day of accident, he was overwhelmed on seeing the people injured and was also apprehensive that because the vehicle is registered in his name, he may get



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implicated and had consequently stated that the vehicle was being driven by the deceased. When in fact, it was he who was the driver of the motorcycle.

6. *Learned counsel appearing on behalf of the Claimants* has argued that the injured/eye witness has cogently explained and reiterated that the vehicle was being driven by him, therefore, the learned Tribunal was not right in disbelieving his testimony and dismissing the Claim under Section 163A of the M.V. Act, solely on the basis of the first statement made by Mr. Saudagar Kumar, asserting that the vehicle was being driven by the deceased. It is submitted that the impugned Award is liable to be set-aside.

7. *Learned counsel appearing on behalf of the Insurance Company*, however, has contended that the learned Tribunal has not only rightly relied upon the first statement of Mr. Saudagar Kumar wherein he had categorically asserted that the vehicle was being driven by the deceased but there are also inherent contradictions in the statement of Mr. Saudagar Kumar. Moreover, there was smell of alcohol present in the breath of the deceased. Moreover, Mr. Saudagar Kumar has admitted that he as well as the deceased had consumed alcohol. It is, therefore, rightly concluded by the learned Tribunal that the vehicle was being driven by the deceased under the influence of the alcohol. The claim has been rightly dismissed and the present Appeal is liable to be dismissed.

8. **Submissions heard.**

9. In the present petition under Section 163A of the *M.V. Act, 1988*, the motor cycle on which the deceased was travelling, met with an accident which resulted in his death. The only material in question, which has been claimed by the Insurance Company, is that the motor cycle was being driven by the deceased and thus, he is not entitled to compensation under Section



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163A of the M.V. Act. However, if it is established that the deceased was a pillion rider, then the claimant would be entitled to the compensation.

10. The FIR in question was recorded on the statement of one Mr. Saudagar Kumar, who stated that at the time of accident, the deceased Mr. Gaurav Kumar was driving the motor cycle. However, on 10.12.2015 on the date when the DAR was filed, he stated that the motor cycle was being driven by him at the time of the accident. His statement was recorded separately by the learned Tribunal. Re-investigation was ordered by Order dated 10.12.2015 by the learned predecessor of the Tribunal. Upon re-investigation, IO recorded the statement of Defendant No.1 under Section 164 of the *Code of Criminal Procedure, 1973*. He also recorded supplementary statement of Defendant No.1. Moreover, Defendant No.1 also was examined by the learned Tribunal during the proceedings as a Court Witness.

11. In his statement before the Court, Mr. Saudagar Kumar deposed that on 18.11.2014 i.e. the date of the accident, he had gone to the house of Gaurav and had some liquor in small quantity. In fact he and the deceased had shared one small bottle of beer. He further admitted that it was on his statement FIR was registered. He has given an explanation that at the time of giving the statement, he was not in his senses, as he had suffered injuries on his head and jaw. He further explained that the contents of his statement in the first instance, on the basis of which FIR was registered, was not correct. In fact his statements made subsequently at the time of filing of the DAR and thereafter, that the motor cycle was being driven by him, was correct as has been recorded by the learned MM as well as by the learned Tribunal. He re-affirmed that at the time of accident, he was driving the



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motor cycle while Gaurav was a pillion rider, His supplementary statement is Ex. R2W1/XC1 was made by this witness during the re-investigation.

12. In the Court also it has been explained that because he was the Registered Owner of the offending-motor cycle, he panicked that he would be implicated in this accident and in order to save himself, he erroneously stated that the vehicle was being driven by the deceased.

13. It is evident from the record that the first statement of Mr. Saudagar Kumar was that he was not the Driver of the motor cycle but thereafter during the re-investigation by the IO as well as in his statement recorded by the learned MM as well as Tribunal, he has been consistent in stating that the motor cycle was being driven by him.

14. The learned Tribunal while noting in detail his first statement and also the subsequent statements has erroneously ignored the explanation given by RW1 and has overlooked his statement made on oath under Section 164 Cr.P.C. before the learned M.M. and the Tribunal. The explanation that he panicked, as the motor cycle was registered in his name and apprehending that he may be implicated falsely, he named the deceased as the driver of the offending vehicle, which should not have been overlooked by the learned Tribunal.

15. It is further held that the testimony of R2W1 sufficiently proves that the motor cycle was being driven by him on whom the deceased was travelling as a pillion rider at the time of the accident. It is therefore proved that the alleged accident took place due to rash and negligent driving of Mr. Saudagar Kumar.

16. It is pertinent to note that Respondent No.1 had received injuries, while the injuries suffered by the pillion rider proved to be fatal, it cannot be



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overlooked that the accident was caused by a vehicle having hit the motor cycle from behind, which explains the major impact of the injuries on the deceased as compare to the motor cyclist.

17. In view of the aforesaid discussion, it is evident that the learned Tribunal *wrongly concluded* that the vehicle was being driven by the deceased, therefore, the impugned Award is hereby set-aside and the case is remanded back to the learned Tribunal, to decide the compensation under Section 163A of the M.V. Act, in accordance with law.

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

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 28, 2024
Rs/r