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

+ **MAC.APP. 358/2014**

THE ORIENTAL INSURANCE CO LTDAppellant
Through: **Mr. A.K.Soni, Advocate.**

versus

SMT GORI RANI & ORSRespondents
Through: **None.**

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

% **ORDER**
05.11.2024

1. Appeal under *Section 173 Motor Vehicle Act, 1988* has been filed on behalf of the Insurance Company against the Impugned Award dated 20.12.2013 *vide* which a total compensation of Rs.35,35,500 @ 7.5% p.a. interest was granted to the Respondents herein. The learned Tribunal held composite negligence of Respondent No.5, driver of Wagon-R bearing No. DL-6CH-7044 and driver of vehicle bearing No.HR-55-AT-7294.

2. On 05.01.2013, while deceased along with his two colleagues was crossing the road he was hit by the first vehicle - Wagon-R bearing No.HR-55AT-7294 because of which he fell in front of the offending vehicle bearing No.DL-6CH-7044 and suffered fatal injuries. Subsequently, FIR No. 04/13 under *Sections 279/304A IPC* was filed at PS IGI Airport against Sh. Himanshu Yadav,



Driver/Respondent No.5 herein.

3. *It is claimed on behalf of the Insurance Company*, that the accident occurred solely due to the negligence of the first vehicle i.e. Wagon-R bearing No.HR-55AT-7294, and not the alleged offending vehicle and the learned Tribunal fell in error in holding that the Wagon R as well as the second vehicle were compositely responsible for causing the accident. It is argued that the sole negligence was of the first vehicle i.e. Wagon R and the impugned Award is liable to be set aside.

4. Despite service none has appeared on behalf of the Claimants.

5. It is not in dispute that the deceased along with his two colleagues was crossing the road on 05.01.2013 at around 6:30 PM when he was hit by the Wagon-R because of which he fell on the front glass of the car and thereafter fell on the road. He was then run over by the offending vehicle. The injuries suffered resulted in his demise.

6. PW-4, Sh. Dinesh Kumar, the eye witness, was examined on behalf of the claimants who deposed about the manner of the accident. A suggestion was given to him that the deceased had jumped and came in front of the offending vehicle which was denied by him.

7. The learned Tribunal referred to the testimony of PW-4, Sh. Dinesh Kumar, the eye witness, to observe that according to him because of being hit by the Wagon-R the deceased fell on the road and as he was trying to stand up he was hit by the offending vehicle from behind. The offending vehicle had stopped after the accident and the driver was nabbed and handed over to the police. From the manner in which the accident took place it is evident that the deceased



may have been hit by the first vehicle i.e. Wagon-R but there is further evidence that he fell on the road and was trying to get up. Other vehicles including the offending vehicle plying on the road are expected to observe due care and caution and ensure that if any person is in the middle of the road is not hit by the person driving the vehicle.

8. The Wagon-R may have hit the deceased in the first instance but the driver of the offending vehicle was expected to exercise due care and caution. It has been rightly concluded by the learned Tribunal that it was a case of composite negligence and the Claimants were at liberty to pursue their complaint against either of the two or both the vehicles.

9. The findings of the learned Tribunal on this aspect do not merit any interference.

10. There is no merit in the Appeal which is hereby dismissed.

11. The statutory amount deposited by the Insurance Company be returned in accordance with law.

NEENA BANSAL KRISHNA, J

NOVEMBER 5, 2024

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