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

% *Date of decision: 06th November, 2024*

+ **MAC.APP. 579/2024, CM APPL. 64768/2024**

THE NEW INDIA ASSURANCE CO. LTD.

.....Appellant

Through: Mr. J.P.N. Shahi, Advocate.

versus

SMT. ANJU RANI AND ORS.

.....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (oral)

CM APPL. 64769/2024 (Seeking Exemption)

1. Allowed, subject to just exceptions.
2. The Application is accordingly disposed of.

MAC.APP. 579/2024

3. An Appeal under Section 173 of the Motor Vehicle Act, 1988 has been filed on behalf of the Insurance Company to challenge the Award dated 27.07.2024 whereby on account of demise of Shri Lalit Tyagi in the road accident, compensation in the sum of Rs.16,66,010/- along with interest @ 6% per annum has been awarded to the claimants from the date of filing of Detailed Accident Report (DAR) i.e. 04.12.2020 till the date of deposit of compensation amount. The Insurance Company has filed the present Appeal



and has challenged the impugned Award on the grounds :

- (i) that the alleged offending vehicle i.e. Truck bearing No. DL 1LY 4890 was not involved in the accident and has been subsequently wrongly implicated in this case; and
- (ii) that the quantum of compensation has not been calculated correctly since the deceased was about 48 years old, while the learned Tribunal has taken the age of the deceased as 40 years and applied the multiplier of 14.

4. **Submissions heard.**

5. The *first challenge* is in regard to the involvement of the offending vehicle in the accident. The main ground to assert the non-involvement of the offending vehicle is that the accident took place on 09.07.2020 while the FIR was registered on 22.07.2020 i.e. after about 15 days of the accident. It is argued that this vehicle was not involved in the accident and has been falsely planted solely for the purpose of claiming the compensation.

6. The claimants have examined PW2, Mahesh - the eye witness, who had deposed that he along with his friend, Dinesh Sharma on 09.07.2020 was sitting in the shop of Sukhpal Tyagi on Sarrorepur Sardana Road at about 04:00 P.M when they saw the deceased Lalit Tyagi walking towards his village on foot. He was hit by the offending Truck which was being driven by its driver in a rash and negligent manner. The Truck fled away from the spot, though he was able to note down the number of the offending vehicle. There is no significant cross-examination of this witness.

7. The learned Tribunal has also observed that in view of the unequivocal testimony of PW2, the eye witness, proved the manner in which



the accident had taken place and his testimony had remained unshaken during the cross-examination. Moreover, it was corroborated by the documents filed along with the DAR. It was observed that according to the principle of *Res Ipsa Loquitur* i.e. the accident speaks for itself, the burden was on the driver/owner to dispel the involvement of the vehicle, but neither the driver has come forward to examine himself in support of his defence nor is there any other evidence led to disbelieve the testimony of the eye witness.

8. Reliance has also been placed on the cases of Teja Singh vs. Suman & Ors., MAC. APP.1111/2018 date of decision 06.12.2019; MAC App. 428/2018 titled as The Oriental Insurance Co. Ltd. vs. Kamla Devi & Ors., Date of decision 08.11.2019 and MAC APP.690/2017 titled as Reliance General Insurance Company Ltd. vs. Mona & Ors. Date of decision 15.10.2019 and Cholamandalam Insurance Co. Ltd. vs. Kamlesh 2009(3) AD Delhi 310, to conclude that the happening of the accident is fully established along with the rashness and negligence on the part of the driver.

9. *Learned counsel for the Insurance Company* has also made a reference to the medical record of Community Health Centre, Saroorpur Khurd, Meerut, where the deceased had been referred. There was an observations made that “*smell alcohol positive*”. It is argued that from the medical record it is evident that the deceased was under the influence of alcohol which reflects the negligence to be that of the deceased. However, aside from the observation of smell of alcohol, there is no evidence led whatsoever nor any suggestion given on behalf of the driver/owner or the insurer that the deceased was in inebriated condition or he was in any manner responsible for the accident. The record clearly reflects that while



the deceased was walking down the road, he has been hit by the speeding offending vehicle.

10. The learned Tribunal has cogently appreciated the evidence in right perspective along with the documents to conclude that not only the involvement of the offending vehicle, but also that it was being driven in a rash and negligent manner by the driver. There is no merit on this ground of challenge.

11. The *second ground of challenge* is that the age of the deceased was 48 years, but has been taken as 44 years to apply the multiplier of 14. However, there is no document whatsoever placed on record, wherein the age of the deceased is reflected as 48 years. The medical record mentions the age of the deceased as 40 years, but the learned Tribunal has taken it as 44 years as asserted in the petition.

12. The only basis on which the age of the deceased is claimed to be 48 years is the Aadhar Card of the wife Anju Rani which reflects her age as 48 years. The wife of the deceased may be of 48 years of age, but that does not gives rise to any presumption that the husband has to be atleast 48 years or older than the wife. There is again no merit in this contention.

13. There is no merit in the present Appeal, which is hereby dismissed and is disposed of accordingly along with the pending Application.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 06, 2024

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