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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 17th December, 2024*

+ MAC.APP. 664/2024, CM APPL. 73830/2024 (stay) & CM APPL. 73832/2024 (for impleadment)

ORIENTAL INSURANCE CO. LTD.Appellant

Through: Mr. Kanwar Kochhar, Advocate.

versus

PREETI (DECEASED) THROUGH LRS. SMT. GAJNA AND ORS

.....Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T (Oral)

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CM APPL. 73831/2024 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The Application stands disposed of.

MAC.APP. 664/2024

3. The Appeal under Section 173 of the *Motor Vehicle Act, 1988* ('M.V. Act' *hereinafter*) has been filed on behalf of the Appellant/Insurance Company, against the impugned Award dated 19.09.2024 *vide* which the compensation in the sum of Rs.18,18,485/- along with the interest @7% p.a., has been granted, on account of demise of Ms. Preeti in a road accident, on 24.11.2015.

4. The *main grounds of challenge* are as under:



- i. that the *FIR had been registered against the unknown number* and the alleged offending vehicle insured with the Appellant, was not involved in the accident; and
- ii. that *no rashness or negligence on the part of the driver of alleged offending vehicle*, has been proved from the evidence led by the Claimants;
- iii. that the injured and the deceased were travelling in a commercial vehicle bearing Registration No. UP 13 L 9412, which was also equally involved and negligent in causing the accident.

5. Submissions heard and record perused.

6. *Briefly stated*, on 24.11.2015 at about 09:15 p.m., Ms. Preeti, deceased along with her sister, Ms. Renu along with about 20 occupants, were going to Anup Shahar from Village Kuloli Khurd for ‘*Ganga Snan*,’ in Maz-Pickup bearing Registration No. UP 13 L 9412, which was being driven by its driver, Mr. Kunwarpal at normal speed on the correct side of the road. When they reached near Village Meerpur, G.T.Road, District Bulandshehar, U.P, a truck bearing Registration No. UA 07N 7974 (hereinafter referred to as ‘*offending vehicle*’) in a very high speed and rash and negligent manner, hit the Max Pickup, which overturned resulting in grievous injuries to the occupants. The injured were taken to Surajmal Jatia Hospital, Khurja, District Bulandshehar where Ms. Preeti was declared *Brought Dead*.

7. *FIR No. 1193/2015 dated 24.11.2015* under Section 279/337/338/304A/427 *Indian Penal Code, 1860* (‘*IPC*’ hereinafter) was registered at Police Station Khurja Nagar, District Bulandshehar, U.P. After



due investigation, the *Charge-Sheet* was filed against the Driver, Mr. Dharmendra Kumar, Respondent No. 3.

8. The Claim Petition under Section 166 of the Motor Vehicle Act, 1988, was filed on behalf of the legal heirs of deceased, Ms. Preeti. The compensation in the sum of Rs. 18,18,485/- along with the interest @7% p.a., has been granted to the Respondent Nos. 1 and 2, the parents of the deceased.

9. *The Insurance Company has challenged both the involvement of the offending vehicle and negligence on the part of the driver of the said vehicle.* PW-2, Mr. Sarvesh Kumar was the eye witness cited by the Police, in the Charge-Sheet. However, in his testimony, he failed to depose about the accident and asserted that he knew nothing about the accident and that his Statement was never recorded by the Police.

10. The second material *witness* examined by the Claimants, was PW-3, Ms. Renu, who was also travelling in the vehicle, at the time of accident and had also suffered injuries. She has deposed by way of her Affidavit of evidence, that on the said date, while she along with the other occupants, were travelling in the Max Pickup, the offending Truck came at a high speed and hit their vehicle because of which the accident occurred and all the occupants suffered injuries. Ms. Preeti died on account of the injuries suffered in the accident.

11. PW-3, Ms. Renu, was extensively cross-examined by the Insurance Company wherein she explained that she was sitting on the front side along with the driver. She further explained that there was a divider in the centre of the road on which the vehicle was plying. The offending vehicle came from the wrong side.



12. The testimony of PW-3 Renu is fully corroborated by the Site Plan, which has been prepared during the investigations in the FIR. The Site Plan clearly reflects that the offending vehicle came from the wrong side on the extreme left of the road where the vehicle in which the injured and deceased were travelling, was plying and caused the accident. There is no explanation forth coming either by way of the testimony of the driver of the offending vehicle or any witness to explain as to why the offending vehicle was on the wrong side. *The testimony of PW-3 of the vehicle being on the wrong side, which stands fully corroborated by the Site Plan, establishes the sheer negligence on the part of the offending vehicle.*

13. It is further argued that the FIR was registered in the name of the unknown person and there is no cogent evidence led about the involvement of the offending vehicle, which has been falsely implicated in this case. However, it may be pertinent to mention that the number of the offending vehicle, may have not been mentioned initially in the FIR, but the entire purpose of conducting investigation is to identify the offending vehicle. After due investigation, a Charge-Sheet has been filed against the offending vehicle.

14. In the case of National Insurance Co. vs Pushpa Rana 2009 ACJ 287 Delhi, it has been held that filing of Chargesheet is sufficient proof of the negligence and involvement of the Offending Vehicle. The Apex Court in Mangla Ram vs. The Oriental Insurance Company Ltd., AIR 2018 SC 1900 and N K Bros (P) Ltd. vs. M. Karumal Ammal, 1980 LawSuit (SC) 141 has held that filing of chargesheet against the driver of the offending vehicle *prima facie* points towards the complicity in driving the vehicle negligently and rashly.



15. Furthermore, it has been rightly observed by the learned Tribunal that this is a case which is not only corroborated by the investigations duly conducted in this accident, but also the circumstances as depicted in the Site Plan, which proved the rashness and negligence of the driver. On the doctrine of *res ipsa loquitur*, the circumstances were sufficient to establish the negligence. The learned Tribunal has rightly concluded about not only the involvement but also rashness and negligence on the part of the offending vehicle.

16. It is also pertinent to mention that though, the driver-owner/Respondent Nos. 3 and 4 had filed their Reply, but they chose not to step into the witness-box in support of their defence or even to cross-examine the witnesses examined by the Claimants. The best person to explain alleged non-involvement was the driver, Mr. Dharmendra Kumar, who has chosen not to step into the witness-box. Pertinently, the Insurance Company also did not consider it necessary to examine the driver in their defence.

17. There is no infirmity in the impugned Award which is hereby dismissed.

18. The Appeal is disposed of accordingly along with the pending Applications.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 17, 2024/RS