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

% *Date of decision: 19th December, 2024*

+ **CM(M) 4122/2024**

SHABANA

.....Petitioner

Through: Mr. Manish Maini, Mr. R.K. Jain and
Ms. Divya Saini, Advocates.

versus

NEW INDIA ASSURANCE COMPANY LTDRespondent

Through: Mr. J.P.N. Shahi, Advocate for R1.

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+ **CM(M) 4125/2024**

SHAMA PARVEEN

.....Petitioner

Through: Mr. Manish Maini, Mr R.K. Jain and
Ms. Divya Saini, Advocates.

versus

NEW INDIA ASSURANCE COMPANY LTDRespondent

Through: Mr. J.P.N.Shahi, Advocate for R1.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (Oral)

CM APPL. 74624/2024 (Exemption) in CM(M) 4122/2024

CM APPL. 74726/2024 (Exemption) in CM(M) 4125/2024

1. Exemption allowed, subject to all just exceptions.
2. The Applications stand disposed of.



CM(M) 4122/2024 & CM(M) 4125/2024

3. The Petitions under Article 227 of the *Constitution of India*, have been filed on behalf of the Petitioners, against the impugned Order dated 29.10.2024 whereby the learned Tribunal has directed the Petitioners/Claimants, to implead the driver of the offending vehicle in the present case, failing which the Petitions, shall be dismissed.
4. *Learned counsel on behalf of the Revisionists*, submits that the driver of the bus against which the Claims have been filed, had died in the accident. Since the driver is not alive, he could not have been made a party to the Claim Petition.
5. It is further submitted that the owner is vicariously liable, has been impleaded as a party and the onus is upon him to disprove that he is not liable to pay the compensation. The Insurance Company is also a party which has the obligation to pay the compensation which may be found due and payable against the owner.
6. It is also submitted that in the case of *Machindranath K. Kasar (Supra)*, it has been held by the Supreme Court that it is the owner and the Insurance Company who are vicariously liable to pay the compensation and, therefore, in the present peculiar circumstances, when the Driver has died and his legal heirs are not easily traceable, the petition is maintainable. The conditional Order made by the learned Tribunal that the Petition shall be dismissed on the next date if the Driver is not impleaded, may be modified.
7. Learned counsel on behalf of the Insurance Company submitted that the primary responsibility is of the negligent driver of the offending vehicle, in absence of whom, no such finding with regard to negligencer can be



fastened upon the Owner on the principal of “vicarious liability” and thereafter, on the Insurance Company.

8. It is further submitted that despite various opportunities, the complainant has not taken steps to implead the representatives of the Driver and therefore, the learned Tribunal has rightly passed the impugned order, which does not merit any interference. Reliance has been placed on Machindranath K. Kasar vs. D.S. Mylarappa & Ors., 2008 ACJ 1964, decided by the Apex Court on 29.04.2008 wherein it has been observed that the Claim Petition under Section 166 of the *Motor Vehicle Act, 1988* (‘M.V. Act’ *hereinafter*) where the finding of the rashness and negligence on the part of the driver, is a pre-requisite to fasten the vicarious liability on the owner and the Insurance Company.

9. Submissions heard and record perused.

10. In the present case, the driver of the alleged offending bus has died. The question now arises, as to who can be impleaded once the driver is dead. Since these are the Enquiry proceedings and the findings on rashness and negligence on the part of the driver, is mandatory, as any liability to pay compensation can be fastened vicariously on the owner and the Insurance Company, the legal heirs of the deceased driver are necessarily required to be impleaded.

11. The concern on behalf of the Revisionists, is that the driver was resident of Sikar, Rajasthan and the Claimants being of limited resources, have no means to trace out the legal heirs of the deceased driver.

12. The grant of compensation under the Motor Vehicle Act is essentially a benevolent legislation intended to provide succor to those who suffer injuries or die in a road accident. The entire process of Detailed Accident



Report has been worked out only to facilitate expeditious disbursement of the compensation. It is the Investigating Officer of the Criminal Case who has the responsibility to trace out the legal heirs of the driver. Moreover, the Owner of the offending vehicle is also under an obligation to disclose the legal heirs of the driver, who was in his employment.

13. Therefore, though the impugned Order does not suffer from any infirmity, but considering the totality of circumstances, the learned Tribunal shall endeavour to get the legal heirs of the deceased driver traced out through the Investigating Officer or the owner who is a party to the present Petition.

14. It is also clarified that merely because of the inability of the Claimants to be able to trace out the legal heirs of the driver, the Claim Petitions may not be dismissed, as observed in the impugned Order.

15. With these observations, these Petitions are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 19, 2024/RS