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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 19th December, 2024***+ **MAC.APP. 666/2024, CM APPL. 74552-74553/2024****RELIANCE GENERAL INSURANCE**

Through Mr. Sahil Gupta (Nodal Officer)

Office at: A-12, Mohan Co-Operative Industrial Estate,

Mathura Road, New Delhi - 110044

.....Appellant

Through: Mr. Nitesh Gupta, Advocate.

Versus

1. SMT. SHEETAL

W/o late Sh. Neeraj Kumar

At K. No. 4/14, Street No. 6,

Village Nathupura, Ground Floor,

Burari, North Delhi, Delhi- 110084

2. MASTER ANSH KUMAR

s/o late Sh. Neeraj Kumar

At K. No. 4/14, Street No. 6,

Village Nathupura, Ground Floor,

Burari, North Delhi, Delhi- 110084

3. SMT. SUMAN

W/o Sh. Rajveer Singh

At Chamrawal, Bhagpat,

Chamrawal, UP-250515

4. SH. SANJEEV BHARTI (DRIVER)

S/o Sh. Narvada Bharti

At H. No. 170, Jhimrowali Gali,

Village Tikripur, Delhi- 110040

5. SH. SACHIN MAN (OWNER)

S/o Jabbar Singh Mann,



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At 159, Tokni Pana, Village Alipur,
New Delhi.

.....Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (Oral)

1. *An Appeal under Section 173 of the Motor Vehicle Act, 1988* has been filed by the Insurance Company to challenge the Impugned Award dated 14.10.2024 whereby compensation in the sum of Rs.28,16,394/- along with interest @ 6% per annum has been allowed to the Respondent No.1, 2 and 3, i.e. the legal heirs of the deceased Neeraj Kumar, who died in a road accident on 14.01.2018.
2. The *sole ground of challenge* is that the evidence, as adduced on record clearly establishes that the Offending Vehicle was duly parked on the service lane on account of the break down with the lights and indicators on. It is evident that *firstly*, this was not the vehicle which was being driven rashly or negligently and all due care and caution was taken by the driver. *Secondly*, there is no rashness or negligence established on the part of the driver, as has been incorrectly concluded by the learned Tribunal. Since, no rashness or negligence on the part of the driver, was proved, no compensation could have been granted and the Award is liable to be set aside.
3. **Submissions heard and the record perused.**
4. *Briefly stated*, on 14.01.2018, a *Tempo bearing registration no. DL-ILP 0318 TATA ACE* had been parked by its driver at the road leading towards Wazirabad Mother dairy. At about 9:00 P.M., one *scooty bearing*



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registration no. DL 11 ST8524, being driven by the deceased Sh, Neeraj, came from the side of Wazirabad roundabout towards Wazirabad Mother Dairy and due to darkness the scooty rider rammed into the stationary Tempo. The scooty was also badly damaged and the rider- Neeraj, sustained fatal injuries in the accident.

5. The injured was taken to the hospital by PCR van to Sushruta Trauma Centre where the *MLC bearing No. 467/2018* was prepared and the injured was declared “*Brought Dead*”.

6. On receipt of the information of an accident *vide* DD No. 52A, ASI Munesh Kumar along with HC Shyam Lal went to the spot of the accident where *Const. Bheem* (eyewitness) was found present and a Tempo TATA ACE bearing registration No. DL- 1 LP- 0318 and a scooty were also found parked on the roadside in accidental condition.

7. Consequently, the FIR No. 10/2018 under section 279/304-A IPC 1860, was registered against the driver of the offending truck/ Sanjeev Bharti, at P.S. Timar Pur.

8. The *Detailed Accident Report* was filed before the Ld. Tribunal on 11.07.2018 along with the documents i.e. Postmortem Report, Mechanical Inspection report, Site Plan, etc.

9. The Claimants to prove the accident had examined *PW-2/Const. Bheem Singh*, who incidentally was present at the picket near the scene of incident and was an eye witness to the accident. He deposed that the Offending Vehicle was stationary in the service lane when the scooty being driven by the deceased, hit the stationary Tempo resulting in the accident. He has further stated that he saw the offending vehicle before the accident, parked in an incorrect spot, without the parking lights on and had even asked



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the Driver/ Sh. Sanjeev Bharti to park the same on the side of the road and switch on the parking indicators.

10. However, it is argued that the lights and indicators of the stationary tempo were on as has been established from the CD of CCTV footage that was placed on record by the I.O along with the Chargesheet.

11. Learned Tribunal has referred to the testimony of *PW2/Const. Bheem* and observed that his testimony which was corroborated by the Site Plan established that the Offending Vehicle had been parked which was protruding and was little out from the other vehicles which were parked there. Evidently, because of the negligent parking of the offending vehicle that the accident occurred. Further, *PW2/Const. Bheem Singh* had deposed that at the time of the Accident, there were no indicators or parking lights switched.

12. The CD placed on record, by the I.O may have reflected that the parking lights were on, but there was nothing to show that it was done prior to the accident. It had been observed by the Ld. Tribunal that the testimony of *PW2/Const. Bheem*, the eye witness clearly established that the parking lights were not on and no indicators had been put around the stationary vehicle. Therefore, the Ld. Tribunal rightly concluded that it was because of the negligent parking of the vehicle in the service lane, that the accident took place.

13. Another argument has been raised by the learned Counsel for the Insurance Company is that no question of rash and negligent driving of the offending vehicle arises since it was a stationary vehicle; rather, it is a case where the injured was driving at a high speed and collided with the offending vehicle.



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14. The argument holds no water as evidently, it was the Offending Vehicle which was protruding out of the line; was incorrectly parked and thus, posing a threat to other vehicles plying in the Service Lane. The driver of the offending vehicle who parked or halted his vehicle on the road, whether due to mechanical failure or breakdown or any other emergency or even otherwise, ought to have taken precautionary measures and switched on the parking indicators or he could have put leaves/ branches/any other warning indicators for the benefit of the other vehicles plying on the road. The lack of due care and caution on part of the driver of the offending vehicle, is clearly established and the driver cannot escape liability by averring that the vehicle was stationary.

15. Similar observations were made in the recent judgment of Sushma V. Nitin Ganapati Rangole and Ors., Civil Appeal No. 10648-53 of 2024, decided on 19.09.2024, wherein the Apex Court while discussing the liability of the driver who had parked the offending truck in the middle of the road without any parking lights or warning indicators which led to an accident and ultimately death of 4 persons, observed that “*Common sense requires that no vehicle can be left parked and unattended in the middle of the road as it would definitely be a traffic hazard posing risk to the other road users*”. It was opined that any unattended vehicle, parked in the middle of the road, without any parking lights switched on and without any markers or indicators being placed around the stationary vehicle so as to warn the incoming vehicular traffic, is a clear violation of law and the entire responsibility for the negligence leading to the accident would be of the driver of the offending vehicle.

16. Pertinently, the Chargesheet had been filed in this case against the



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offending vehicle. In the case of Mangla Ram vs. The Oriental Insurance Company Ltd., AIR 2018 SC 1900, it has been held that filing of Chargesheet is sufficient proof of the negligence and involvement of the Offending Vehicle. This judgement was followed by the Coordinate bench of this Court in National Insurance Co.,vs Pushpa Rana 2009 ACJ 287 Delhi.; United India Insurance Co. Ltd. v. Deepak Goel and Ors., 2014 (2) TAC 846 Del, and Amanti Devi and Ors. v. Maheshwar Rai, MAC Appeal no. 831/2015 decided on 19.11.2022)

17. The other significant aspect is that the driver of the offending vehicle, who was the other best person to explain the circumstances, has chosen not to step into the witness box for which only adverse inference can be drawn against him. Furthermore, no cogent discrepancy had been brought forth in the testimony of the eye witness/PW-2.

Conclusion: -

18. In view of the above, the Learned Tribunal has rightly concluded that the accident occurred due to the rash and negligent parking of the Tempo by its driver/ Sh. Sanjeev Bharti.

19. There is no merit in the present Appeal, which is hereby dismissed along with the pending application(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 19, 2024/ va