



2024:DHC:10159



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 23rd December, 2024***+ **MAC.APP. 675/2024 & CM APPL. 75808/2024****SBI GENERAL INSURANCE COMPANY LIMITED**

46, 3rd Floor, PUSA Road,
Karol Bagh, Opposite Metro Pillar No. 129,
New Delhi-110005

.....Appellant

Through: Ms. Heeba Ansari, Advocate through
VC.

versus

1. **SMT ASHA DIVEDI**

W/o Late Shri Prakash Dwivedi

.....Respondent No. 1

2. **AADARSH KUMAR DWIVEDI**

S/o Late Shri Prakash Dwivedi

.....Respondent No. 2

3. **AMIT KUMAR DUBEY**

S/o Late Shri Prakash Dwivedi

.....Respondent No. 3

All residents of: -

R/o CB-116, Ring Road, PS Naraina,
Naraina, New Delhi

Permanent resident of: -

Village Gopalpur, PS Gola Bazar,
District Gorakhpur, U.P.

4. **CHANDER BHAN (DRIVER)**

S/o Shri Bishan Pal,



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R/o Village Nagla Ganesh, Tehsil-Batiyari,
PS Raja Ka Rampur, District Eta, U.P.

.....Respondent No. 4

5. **GYAN PRAKASH GUPTA (OWNER)**

S/o Shri Mata Prasad Gupta,
R/o C-174, Naraina Industrial Area, IARI,
Central Delhi-110012

.....Respondent No. 5

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 75809/2024 (Exemption)

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

MAC.APP. 675/2024

3. The present Appeal under *Section 173 of the Motor Vehicles Act, 1988* has been filed on behalf of the *Appellant/Insurance Company* against the Award dated 22.10.2024 *vide* which a compensation in the sum of Rs. 6,34,860/- along with interest @ 7.5% per annum has been granted to the Respondent Nos. 1 to 3, who are the wife and two children, of Shri Prakash Dwivedi who died in the road accident which took place on 16.10.2013.
4. The *only ground of challenge* by the Appellant/Insurance to the Award dated 22.10.2024 is that there was no FIR registered in regard to the accident and the learned Claim Tribunal has based its findings about the rashness and negligence of the Respondent No. 4-Driver of the offending vehicle on a Report i.e., Rojnamcha Register (Nakal Rapat) dated 17.10.2013, which was lodged on the statement of Respondent



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No. 2-Aadarsh Kumar Dubey, son of deceased Shri Prakash Dwivedi, who was admittedly not an eyewitness. Accordingly, there is no cogent evidence to prove the involvement of the offending vehicle and thus, the impugned Award is liable to be set aside.

5. Submissions heard and record perused.

6. **Briefly stated**, on 16.10.2013 at about 07:00 P.M., the deceased Shri Prakash Dwivedi was travelling in the *TATA Truck* bearing No. DL-1M-2475 from Delhi to Gorakhpur, Uttar Pradesh, which was being driven by Respondent No. 4-Driver/Chander Bhan at a high speed in a rash and negligent manner. When the Truck reached near Shukla Dhaba, District Unnao, Uttar Pradesh, he applied the break suddenly because of which it overturned and deceased Shri Prakash Dwivedi sustained grievous injuries. He was taken to District Hospital, Unnao where he was declared “*Brought Dead*” by the Doctor.

7. PW1/Aadarsh Kumar Dwivedi examined himself as PW1 in support of the Claim Petition and tendered his Affidavit of Evidence Ex. PW1/A. He explained the manner of accident as narrated above, though admittedly he not the eyewitness to the accident. However, he got the complaint (Mark ‘A’) registered at Police Station Achal Ganj, on the basis of which the Handwritten Rojnamcha Ex.PW1/1 was registered (Nakal Rapat) on 17.10.2013, i.e., one day after the accident.

8. It was recorded in the Nakal Rapat, Ex.PW1/1 that suddenly a horse or mule driven cart (*Khad-Khada*) came in front of the TATA Truck and Respondent No. 4-Driver applied the breaks in order to save it from being hit, because of which the TATA Truck lost its balance and overturned.



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Deceased Shri Prakash Dwivedi, who was travelling in the said TATA Truck, suffered fatal injuries. The certified copy of the criminal record of Police Station Achal Ganj, District Unnao is Ex.PW1/3.

9. The witness was examined by the Appellant/Insurance Company, but nothing substantial could be brought in the cross-examination.

10. The learned Claim Tribunal observed that the documents proved by PW1/Aadarash Kumar Dwivedi were not questioned by the Appellant/Insurance Company. There is no denial of the deceased travelling in the truck and that the Truck met with the accident. The testimony of PW1/Aadarash Kumar Dwivedi established the circumstances on the doctrine of *res ipsa loquitur* which demonstrate that the negligence was of the driver of the TATA Truck.

11. Pertinently, the sudden breaks were applied and because the speed was high, the TATA Truck overturned. Had the speed of the TATA Truck been normal, there was no question of the TATA Truck having overturned only because of applying of sudden breaks. The circumstances itself reflect that the Respondent No. 4-Driver of the TATA Truck was driving the said vehicle at a high speed that he was unable to slow the Truck when the cart came in front of the truck, and applied the breaks which made the truck overturn.

12. Furthermore, the other material witness was the Respondent No. 4-Driver who could have explained the circumstances in which the accident happened, but he had failed to step into the witness box to rebut the involvement of the vehicle or the manner in which the accident took place.

13. Therefore, adverse inference has been rightly drawn by the learned



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Claim Tribunal against the Respondent No. 4-Driver in terms of the decision of this Court in Cholamandalam M.S. General Insurance Company Ltd. vs. Kamlesh, 2009 (3) AD (Delhi) 310.

14. The learned Claim Tribunal has rightly concluded that the accident occurred due to the negligence of the Respondent No. 4-Driver of the TATA Truck.

15. There is no merit in the Appeal, which is hereby dismissed along with pending Application.

16. The Appellant/Insurance Company is directed to deposit the entire Award amount along with upto date interest, if not already deposited, before the learned Claim Tribunal within four weeks, to be disbursed to the Claimants in accordance with the Award dated 22.10.2024.

17. The statutory amount be refunded to the Insurance Company, in accordance with Rules.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 23, 2024
S.Sharma