



2024:DHC:9871



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

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Date of decision: 05th December, 2024

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MAC.APP. 842/2018, CM APPL. 38491/2018

AYUSH VERMA

.....Appellant

Through: Mr. S.N. Parashar, Advocate.

versus

LRS OF BEERU VERMA & ANR. (UNITED INDIA INSURANCE CO. LTD)

.....Respondent

Through: Mr. Prashant Prakash and Ms. Qausar Khan, Advocates for R-2.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****JUDGMENT (Oral)**

1. *An Appeal under Section 173 of the Motor Vehicles Act, 1988* has been filed on behalf of the injured for *enhancement of compensation* granted *vide* Impugned Award dated 11.04.2018 in the sum of Rs.2,94,625/- along with interest @ 9% per annum, on account of the injuries suffered in the Accident on 22.01.2015.
2. The *main grievance of the Appellant* is that the Claim Petition had been filed under Section 166 of the Motor Vehicle Act, 1988. However, the Learned tribunal has observed that the negligence of the Driver (since deceased) has not been established and thus, the compensation was granted in terms of Section 163A of the Motor Vehicle Act, 1988.



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3. It is submitted that *PW-1 injured/Appellant- Sh. Ayush Verma* himself was the eye witness who had deposed about the manner of accident. The circumstances were also corroborated by the FIR and the investigations carried out by the Police. Therefore, the compensation may be granted in accordance with Section 166 of the Motor Vehicle Act, 1988.

4. ***Learned counsel on behalf of the Insurance Company*** has contended that the injured in his cross-examination, had deposed that he had admitted before the Police that he was not aware of the manner in which the accident occurred. Thus, the Learned Tribunal has rightly not relied on his testimony to conclude that negligence of the Driver of the offending vehicle was not proved.

5. **Submissions heard and record perused.**

6. The *sole challenge* of the Appellant/claimant is that despite there being cogent evidence on record of the accident having been caused due to the rash and negligent driving of Late Shri Beeru Verma (who was driving the motorcycle/Offending Vehicle), the learned Tribunal has erred in granting compensation under Section 163-A of the Motor Vehicle Act, 1988.

7. To consider whether the negligence of the deceased Driver Beeru Verma is established, reference may be made to the testimony of *PW-1/Sh. Ayush Verma*, injured who had deposed that on 22.01.2015, he was travelling as a pillion rider on motorcycle bearing *No. DL5 SAG 4051* which was being driven by Late Sh. Beeru Verma, at a very high speed and in a rash and negligent manner. He warned the driver many a times to slow down his motorcycle and not to drive the motorcycle carelessly without observing the traffic norms, but the deceased driver did not pay heed to his



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requests. At about 2 P.M when they reached near Shyamgiri Mandir, Shashtri Park, suddenly Late Sh. Beeru Verma lost his control over the motorcycle and hit the divider with a huge impact. Consequently, the motorcycle fell and they both sustained grave injuries. They were taken to Sushrut Trauma Centre, Delhi, where their MLCs were prepared. Late SH. Beeru Verma, the Driver of the motorcycle, was declared *Brought Dead*, while the injured sustained fractures and multiple injuries, leading to complete loss of his vision.

8. The Insurance Company had cross-examined *PW-1/Sh. Ayush Verma* extensively on the manner in which the accident had accrued. During the cross-examination dated 07.09.2017, he stated that he did not raise any voice or cry to convey to the public on the road that Beeru Vemra was not heeding to his requests to drive slowly and properly; however, he volunteered that he had asked Beeru Verma to ply the motorcycle at a normal speed. He further explained he met the police after 20-25 days of the accident since he remained unconscious post-accident for 15-20 days and that he was not aware who intimated the Police about the accident or got the FIR registered. He further explained that he was called by the Police on some day which he does not remember, since the accident had taken place three years back. He told the Police that he did not know how the accident happened but he was informed that the motorcyclist Beeru Verma who was his brother-in-law (Jija), had died in the accident.

9. Aside from these questions, no further questions on the aspect of rashness and negligence were put in the cross-examination. Learned counsel on behalf of the Appellant has asserted that huge emphasis has been put by the learned Tribunal on his admission that he did not know how the accident



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took place to conclude that the negligence was not proved.

10. However, the testimony of the Injured established *firstly*, that he has consistently deposed that Beeru Verma was not following the traffic rules and was over-speeding, despite his repeated requests to slow down the motorcycle. *Secondly*, the manner of the accident can be well ascertained from the *FIR No.80/2015* which got registered on the statement of *SI Meghan Singh* on the basis of *DD No.30 dated 22.01.2015 vide* which the information about the accident was received. The factum of accident is well-established from the independent DD entry and the consequent registration of FIR. The factum of accident is also proved from the medical record which shows that the injured were admitted in the Hospital because of the injuries suffered in the accident.

11. Further, the manner of accident can also be deduced from the Site Plan filed long DAR Documents/ Ex. PW1/5 (Colly), which depicts that the motorcycle was going towards ISBT and the accident has occurred at the extreme left side of the road thereby corroborating that the motorcycle hit the divider and fell due to the impact.

12. It is also pertinent to refer to the *Cancellation Report* wherein it was found that the accident had occurred on account of the rash and negligent driving of the motorcycle by its Driver/Beeru Verma. However, since he had died on the spot in the accident, the Cancellation Report had to be filed.

13. Thus, there is enough cogent evidence and material on record to conclude about the manner in which the accident occurred and it clearly points to the negligence of the driver/Late Sh. Beeru Verma in driving the Offending vehicle/motorcycle.

14. It is hereby held that the rashness and negligence on the part of the



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driver of the motorcycle is duly proved.

15. Therefore, the learned Tribunal fell in error in concluding that there was no evidence to prove the rashness and negligence on behalf of the driver of the motorcycle and in treating the Claim Petition under Section 163-A of the Motor Vehicle Act, 1988 for grant of compensation.

16. The matter is remanded back to the learned Tribunal for determination of compensation in accordance with Section 166 of the Motor Vehicle Act, 1988

17. The parties are directed to appear before the learned Tribunal on 23.12.2024 and are at liberty to raise their respective challenges qua the quantum of compensation before the Learned Tribunal.

18. The Appeal is accordingly allowed and disposed of, along with pending Application(s) if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 5, 2024

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