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

% **Date of decision: 29th April, 2024**

+ **CM(M) 1229/2016 & CM APPL. 44234/2016**

SHRIRAM GENERAL INS CO LTD Petitioner
Through: **Mr. Sameer Nandwani,**
Advocate.

versus

MEENA UPPAL & ORS Respondents
Through: **Mr. Gaurav Vats, Advocate for**
R-1, 2 & 3.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. This petition under Article 227 of the Constitution of India has been preferred by the petitioner/insurance company assailing impugned order dated 22.11.2016 passed by the learned PO, MACT, South East, Delhi (as her ladyship was then) in Suit No. 3599/2016 titled as 'Meena Uppal v. Mukesh Kumar', whereby the application of the petitioner/insurance company under Order I Rule 10 of the CPC¹ besides application for summoning of witnesses, were dismissed.
2. Having heard the learned counsel for the petitioner/insurance company and on perusal of the record, this Court finds that the present Writ Petition is bereft of any merits.
3. Shorn of unnecessary details, the respondents No. 1 to 3 are the widow and two children of deceased Tilak Raj Uppal, who died as a

¹ Code of Civil Procedure, 1908



result of injuries sustained in a motor accident that occurred on 04.01.2013 when the Car in which he was travelling bearing registration No. DL9CQS 3739 driven by the driver Anil Takkar dashed against the Truck bearing registration No. UP81AF-1375² from behind at 03:00 a.m., which was allegedly parked at Delhi-Agra Highway without any parking light indicators, back lights etc.

4. The respondents/claimants filed a claim petition under Section 166 read with Section 140 of the Motor Vehicles Act, 1988³ seeking compensation against the driver and the registered owner of the offending vehicle besides impleading the present petitioner/insurance company as the offending vehicle was evidently insured for third party risks.

5. During the course of proceedings an application under Order I Rule 10 of the CPC besides application for summoning witness from J.P. Infratech Limited were moved as to ascertain at what time the offending vehicle had passed the Toll. The said application came to be dismissed by the learned Tribunal assigning the following reasons:

“Heard arguments and perused the record.

The plea of the driver and owner of the victim vehicle being necessary on the ground of negligence and contributory negligence was a defence taken by the Insurance in its amended written statement that was filed in October, 2013 by the Respondent no.3/Insurance Company. The present application has been moved now at the stage of R.E which is highly belated. More over, the said application does not have any merit for it is a petition filed by the petitioners for claiming compensation on account of death of Sh. Tilak Raj Uppal in a road accident. It is the petitioner who is the master of his case and it is his discretion to array the parties as respondents.

² Offending vehicle

³ M.V. Act



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It is also incumbent to note that the plea of Insurance is only of contributory negligence, which makes the driver and owner of the victim vehicle at best joint, tort feaser in case it is so disclosed. It is a settled proposition of law that it is not mandatory to implead all the joint tort feasers as the liability is joint and several.

The present application which has been field at the stage of Respondent's evidence is nothing but an attempt to delay and drag the case. The respondents have filed their written statement, where no such defence has been taken. More over, no application under Section 170 M.V Act has been filed or lead defence evidence. The present application is without merit and is hereby dismissed with cost of Rs.10,000/- to be paid to the victim.

There is an application for summoning of witnesses has been filed on behalf of the Insurance Company for summoning of Officer In charge/Manager of JP Infra Tech Ltd. who can depose on the basis of their computer records about the reporting of alleged accident and date and time of reporting of the said accident; the Ambulance which was pressed in service, the name of the hospital in which the injured was taken and to bring the Toll records and the receipt of collection of Toll Tax and also to bring the details of the victim car which was removed from the Express Highway and from what mode, any details of inquiry/investigation carried out by the I.O. till the FIR was lodged, whether the accident was informed to the police station and if yes, to bring the said record, to bring the recording procedure in respect of any accident and details of the wireless set information and other details available in regard to the said accident which took place on 04.01.2013.

The information that is sought from the In charge/Manager of JP Infa Tech Ltd. is all part of investigations/investigation procedure. There is no document to show that this record is being maintained till date. The witness from JP Infra Tech Ltd. is not material and is disallowed."

6. At the outset, the aforesaid order does not suffer from any vice of illegality, perversity or incorrect approach and there is no jurisdictional error committed by the learned Tribunal.
7. First things first, the respondents/claimants are the *dominus litis* and as rightly observed by the learned Tribunal the case now being propounded by the insurance company, after amendment of the





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written statement, is about contributory negligence on the party of the driver of the ill-fated car in which the deceased was travelling. The application under Order I Rule 10 of the CPC has been moved at a very belated stage to implead the driver and the owner besides insurer, if any, of the ill-fated car.

8. Learned Tribunal has rightly recorded that even in the case of contributory negligence or for that matter composite negligence, the liability of the joint *tort-feasor* i.e. the driver and the registered owner of the offending vehicle shall not stand diluted and their liability would be joint and several, and the petitioner/insurance company is liable to indemnify the insured.

9. Secondly, as regards summoning the Officer-in-Charge/Manager from the J.P. Infratech Limited, their letter/reply dated 28.09.2016 placed on the record simply responds to the effect that there is no system kept by them to check the movements of the trucks and no data exists in particular the offending vehicle No. UP81 AF 1375.

10. In the backdrop of the investigation conducted by the police soon after the accident, the complicity of the offending vehicle is *prima facie* brought out. The moving of the present application is a desperate attempt by the petitioner/insurance company to wriggle out of its financial liability to indemnify the insured. Looked from all angles, there is no relevancy as regards the record which is now sought to be produced from J.P. Infratech Limited for movement of vehicles including the offending vehicle at Delhi-Agra Express Highway maintained by it.





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11. In view of the foregoing discussion, the present Writ Petition is dismissed.
12. The pending application also stands disposed of.
13. Interim order passed by this Court staying the proceedings before the learned Tribunal is hereby vacated.
14. Nothing contained herein shall tantamount to an expression of opinion on the merits of the case.
15. The parties shall appear before the learned Tribunal for further proceedings on 13.05.2024.
16. A copy of this order be sent to the learned Tribunal/Trial Court for information and necessary compliance.

DHARMESH SHARMA, J.

APRIL 29, 2024

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