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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 23.09.2025

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MAC.APP. 426/2023**SOMESH KUMAR BHAGAT****.....Appellant****Through: Mr. Vikram Hegde, Adv.****versus****NITIN MEHTA DRIVER & ORS.****.....Respondents****Through: Mr. Abhishek Gusain and Mr. Harshit
S. Gahlot, Adv. for R-3.****CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Appeal has been filed by the Appellant/Claimant under Section 173 of the Motor Vehicle Act, 1988 seeking to challenge the Order dated 24.05.2023 passed by the learned Presiding Officer – MACT-01, Dwarka Courts, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the learned Tribunal has found that the driver of offending vehicle/Respondent No. 1 was driving in a rash and negligent manner and has awarded the compensation to the Appellant/Claimant in the sum of Rs. 4.2 lakhs along with interest @ 9% per annum.

2. The learned counsel for the Appellant/Claimant submits that this is the second round of litigation. In the first round, the Appellant/Claimant had filed a statement of claim seeking compensation of Rs. 19,54,920/- along with interest at the rate of 18% per annum. The matter was contested before



the learned Tribunal by the parties and an Award dated 17.11.2016 [hereinafter referred to as the 'Original Award'] was passed by the learned Tribunal awarding a sum of Rs. 27,98,625/- along with interest @ 10% per annum to the Appellant/Claimant.

3. The learned counsel for the Appellant/Claimant contends that two findings were given in the Original Award. Firstly, that the Respondent No. 1 was negligent and secondly, that the Appellant/Claimant is entitled to compensation in the sum of Rs. 27,98,625/- along with interest @ 10% per annum.

4. The learned counsel for the Appellant submits that the Original Award was challenged by Respondent No. 3/Insurance Company, which challenge was partly allowed by this Court by Judgment dated 12.07.2017 [hereinafter referred to as "Judgment"], wherein a limited remand was allowed on the aspect of adducing further evidence on the question of negligence including of an additional witness(es).

4.1. However, it is the contention of the learned counsel for the Appellant that when the matter was remanded to the learned Tribunal, the learned Tribunal in addition to examining the new witness and giving a finding of negligence, the learned Tribunal also undertook an examination of the compensation amount and reduced the compensation from Rs. 27,98,625/- to Rs. 4,20,000/-.

5. It is, thus, the contention of the Appellant/Claimant that the subject matter of the remand was only negligence not the quantum and the learned Trial Court could not have re-examined the same, more specifically, when



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there was no challenge to the quantum awarded in the Original Award, by the Insurance Company.

6. The learned counsel for the Insurance Company, on the other hand, submits that the remit of the remand was to adduce fresh evidence, thus, the remand would entail examination on the compensation as well.

7. Briefly the facts that the deceased and mother of the Appellant was a retired Vice-Principal, who passed away in a motor vehicle accident. The deceased was crossing the road near Godhuli Old Age home Apartment, Sector -2, Dwarka on 13.04.2014 at 5:00 PM, when suddenly a white colour Santro Car which was being driven by Respondent No. 1 stated to be driven in a rash and negligence manner, hit the deceased. The Respondent No. 1 fled from the spot thereafter. Thereafter, a diary entry was created by the Police and the deceased was taken to the hospital where an MLC was prepared and the deceased was declared as brought dead. An FIR No. 232/14 Police Station, Dwarka was registered.

8. It is the case of the Appellant that the deceased was 80 years old, retired Vice Principal, drawing a total pension of Rs. 36,019/- per month, which included a monthly pension of Rs. 27,132/- per month and family pension of Rs. 8,887/- per month. The Income Tax Return for A.Y. 2014-15 showed her income at Rs. 7,72,087/- per annum.

9. As stated above, the Original Award was passed giving a finding that the driver of the vehicle [Respondent No. 1] was guilty of rash and negligent driving and also awarded compensation based on the pension of the deceased. It is apposite to extract the relevant extract of the Original Award



below:-

“10. As per law in the present case the claimant need not prove his case beyond reasonable doubt and the case is to be judged on the touchstone of preponderance of probability. In view of criminal record and evidence of PW-1, it is clear that Respondent no. 1 Nitin Mehta while driving Car bearing no. DL 8CAA 2684 in rash and negligent manner caused fatal injuries to Nitin Mehta. Thus, this issue is decided accordingly.”

[Emphasis Supplied]

10. The Original Award was challenged by the Respondent No. 3/Insurance Company by filing an Appeal before this Court being MAC APP. 133/2017 captioned ‘***Bajaj Allianz General Insurance Co Ltd. vs. Somesh Kumar Bhagat & Ors.***’ The Judgment sets out that Original Award was being questioned on the ground of negligence on the part of the driver of the insured vehicle, which was not proved. The examination of the Judgment shows that the remand was indeed limited. It does set out that the decision was being challenged by the Insurance Company on the aspect of negligence.

10.1 The Judgment further sets out that the learned counsel for the Insurance Company requests that the matter be remitted to the learned Trial Court for adducing evidence on the question of negligence, including by examining an eye witness. It further records that the Claimant would also have the opportunity to summon any relevant witness and also the opportunity for rebuttal and passed a direction that a fresh judgment on the new evidence be passed by the learned Trial Court.

11. The Judgment dated 12.07.2017 being brief is extracted below:-

“The insurance company which has been burdened with liability to pay the compensation awarded by judgment dated 17.11.2016, on the claim



case (MAC P No. 67/16), submitted by the first respondent on account of death of his octogenarian mother, Mrs. Chander Kanta, in a motor vehicular accident that occurred on 13.04.2014, questions the decision on the ground that negligence on the part of driver of the insured vehicle was not proved.

After some hearing, learned counsel for the appellant fairly concedes and submits that the appeal may be allowed on above ground though his request is that the matter may be remitted so that he can adduce further evidence on the question of negligence by examining one of the eye witnesses.

The impugned judgment is, thus, set aside. The matter is remitted to the Tribunal for further inquiry in accordance with law. For this the parties shall appear before the tribunal on 14th August, 2017. Needless to add, the claimant shall be entitled to have the relevant witness(es) summoned and after such opportunity is availed, the opposite party shall also have the opportunity for rebuttal. The tribunal, after completion of such exercise shall render a fresh judgment, on the basis of evidence available including the additional evidence now permitted.

The amount deposited by the insurance company in terms of the interim order dated 10.02.2017 shall be presently refunded with statutory deposit.

The appeal is disposed of.”

[Emphasis Supplied]

12. The examination of the Impugned Order shows that the learned Trial Court had in the first paragraph itself acknowledged the fact that the Original Award was set aside by the Judgment. However, the learned Trial Court proceeded to frame fresh issues qua the Award. The relevant extract is reproduced below:-

“1. At the outset, it is to note here that present petition had been decided by Id. Predecessor of this Court vide Award dated 17.11.2016 but same had been challenged by insurance company namely Bajaj Allianz General Insurance Co. Ltd. before the Hon'ble High Court of Delhi. The Hon'ble High Court of Delhi vide order dated 12.07.2017 passed in MAC APP No. 133/2017 and CM NO. 5339/2017 had set aside the judgment/award dated 17.11.2016 passed by Id. Predecessor of this Court and remitted the same to this Tribunal for further inquiry in accordance with law. Further, opportunity was granted to the claimant for summoning the relevant witness (es) and opportunities was also granted to the opposite party for rebuttal. Further, the Tribunal had also been directed to render a fresh judgment on the basis of evidence available including the additional



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evidence then permitted.

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5. ISSUES:

On the basis of the pleadings of the parties, the following issues were framed:

1. Whether Mrs. Chander Kanta Kumar W/o Late Sh. Satish Kumar Bhagat sustained injuries in a motor vehicle accident dt. 13.04.2014 caused due to rash or negligent driving of vehicle no. DL-8C-AA-2684 being drive & owned by Respondent No. 1 and insured by Respondent no. 3?...OPP
2. Whether the petitioner is entitled to claim compensation if so, what amount and from whom? ...OPP
3. Relief.”

[Emphasis Supplied]

13. The learned Trial Court after examining PW-02 Mr. Shabah Khan, who was an eye witness to the accident, gave a finding that the negligence was, in fact, of the Respondent No. 1, the driver of the offending vehicle in the following terms:-

“9. The issue wise findings are as under :

ISSUE No. 1

Whether Mrs. Chander Kanta Kumar W/o late Sh. Satish Kumar Bhagat sustained injuries in a motor vehicle accident dt. 13.04.2014 caused due to rash or negligent driving of vehicle no. DL-8C-AA-2684 being drive and owned by Respondent no. 1 and insured by respondent No. 3 ? OPP

At the very outset, it must be observed that the present petition has been filed U/s 166 and 140 MV Act, 1988 qua the death of Mrs. Chander Kanta Kumar but the language used while framing this issue seems to convey that it is injuries case. **Further it also seems to convey that driver and owner are same but as per DAR, driver and owner are different person Apparently, the above-said errors are typographical errors. Hence, the issue no. 1 is reframed as under:**

Whether Mrs. Chander Kanta Kumar W/o late Sh. Satish Kumar Bhagat sustained fatal injuries in a motor vehicle accident dt. 13.04.2014 caused due to rash or negligent driving of vehicle no. DL-8C-AA2684 being



driven by respondent no. 1 Nitin Mehta, owned by respondent no. 2 Meena Mehta and insured with respondent No. 3- Bajaj Allianz General Insurance Company Ltd.? OPP

The onus to prove this issue was conferred upon the petitioners.

In order to discharge his onus, the petitioner got examined PW02-Mr. Shabah Khan who claimed himself to be eyewitness to the present accident. As per his testimony, that incident happened on 13.04.2014 at around 5.00 P.M near Godhuli Apartment, Sector-2, Dwarka. He sells coconut water beside the road which is around half a kilometre from the place of incident. At the time of incident, he had gone there to smoke cigarette. He saw a lady crossing the road. Suddenly a car came and hit the lady. Later on, the accused stop the car after travelling some distance and run away from the place of incident. The car was white Colour Santro, No. DL and last digit 2684. there was no zebra crossing or red light there, however, people used to cross from that particular place. The fault was of the person who was driving car negligently and at a high speed. There was no fault of the lady who was crossing the road.

It is relevant to pen down here that during the cross-examination, PW02-Mr. Shabah Khan denied the suggestion that he was not present at the site.

It is worthwhile to mention here that the cross-examination was done by ld. counsel for the respondent no. 3/insurance company (since cross-examination on behalf of R1 & R2 was nil as none was present for them) is not suggestive of anything which may discard the claim of the petitioner.

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In view of above decision and considering facts and circumstances of the case, it stands proved that deceased Chander Kanta Kumar sustained fatal injures and died in motor accident dated 13.04.2014 due to rash and negligent driving of offending vehicle No. DL-8C-AA-2684 which was being driven by respondent no. 1 Nitin Mehta, owned by Meena Mehta and insured with respondent no. 3/Bajaj Allianz General Insurance Company Ltd. at the time of accident.”

[Emphasis Supplied]

14. The Impugned Order, however, thereafter proceeds to examine the quantum and gives a finding that since the Appellant could not prove the pension of the deceased, the minimum wages of an unskilled worker would



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be considered and based thereon awards Rs. 4.2 lakhs with interest to the Appellant/Claimant.

15. Thus, despite the remit of the order passed by this Court, being confined to the question of negligence, the learned Trial Court proceeded to examine both the aspect of negligence as well as the quantum of compensation awarded.

16. On the aspect of negligence, the finding of the learned Trial Court has attained finality, as there is no challenge by either party, however, as stated above, the Appellant has stated that the compensation was not the subject matter of challenge nor the remit of the Judgment dated 12.07.2017 and thus, could not be reviewed by the learned Tribunal.

17. Thus, while it is the contention of the Respondent No. 3/Insurance Company that the use of the words 'fresh judgment' in the penultimate paragraph of the judgment dated 12.07.2017 would mean a review of the Original Award entirely. The Appellant contends that the remand of the Original Award to the learned Trial Court was limited to the issue of negligence. The scope of remand did not extend to re-evaluating other aspects of the Original Award, including the quantum of compensation, which remains unchallenged.

18. This Court while examining a similar issue in MAC Appeal 758/2018 captioned *New India Assurance Co Ltd. vs. Ratan Haldar & Ors.*¹ has held that where remit of a judgment is clear and the remit is on a limited extent, it is incumbent upon the learned Tribunal to examine that aspect and pass an



award. The relevant extract is reproduced hereinbelow:-

“16. The Earlier Judgment is clear in its remit. The parties were granted the opportunity to lead evidence and make their contentions qua functional disability of the claimant and how it impacted his livelihood.

17. Once the matter is remitted by the Court on a limited aspect, it is incumbent upon the learned Tribunal to examine that aspect and pass an award. The entire discussion in the Impugned Award is on the aspect of disability. However, towards the end of finding has been given that recovery rights cannot be granted by the learned Tribunal. This finding is beyond its remit especially in view of the fact that there was no challenge by any party on the ground of recovery rights.

18. No doubt, the judgment in **Mukund Dewangan** case has clarified the law including on the fact that no separate endorsement is required on a driving license of a particular vehicle. However, since the recovery rights granted to the Appellant were not subject matter of challenge by either party before this Court or before the learned Tribunal, the finding in this behalf was final. **The finding thus could not be reversed in the manner it has been by given by the learned Tribunal.**

19. In view of the foregoing discussions, the Appeal is allowed. The Impugned Award to the extent of grant of recovery rights is set aside. However, Respondent Nos. 2 and 3 are at liberty to take appropriate steps in accordance with law for redressal of their grievances, if any. Pending Applications also stand closed.”

[Emphasis Supplied]

19. Although, the learned counsel for the Respondent has contended that the remit is for fresh evidence and a fresh judgment, as stated above, the order passed by this Court does not reflect the same. The remit of the Judgment dated 12.07.2017 clearly sets out that since the Insurance Company has been burdened with the liability of the claim, the Insurance Company questions the decision on the ground of negligence.

19.1 Thereafter, the order records that the Insurance Company gave a

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concession that the matter be remanded to the learned Tribunal to adduce further evidence. Based on this concession, the Impugned Judgment was set aside and it was clarified that the Claimant will also be entitled to have witnesses summoned as well as for rebuttal. The '*fresh judgment*' would not mean an examination of the entire matter afresh but in the context of this Award would be interpreted to mean a fresh judgment on the aspect of negligence of the driver of the offending vehicle.

20. Accordingly, and for the reasons as stated above, the appeal is allowed.

21. The Impugned Award to the extent that it re-assesses the quantum is set aside. The findings of the Original Award *qua* compensation are restored.

22. No order as to costs.

23. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

SEPTEMBER 23, 2025/SU/r