



2024:DHC:9482



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 14th November, 2024

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MAC.APP. 112/2023 & CM APPL. 10469/2023

SMT SHINY BOBY RAJ AND ANR.

.....Appellants

Through: Mr. S. N. Parashar, Advocate

versus

TATA AIG GEN INS CO LTD. & ANR.

.....Respondents

Through: Ms. Vandana Kahlon and Mr. Rudra
Kahlon, Advocates for R-1.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The present Appeal under *Section 173* of the *Motor Vehicles Act, 1988* has been filed on behalf of **Smt. Shiny Bobby Raj, the owner of Wagon R bearing No.DL5CF-2146** against the Award dated 03.12.2022 wherein the Recovery Rights have been granted to Insurance Company, against the owner of the offending vehicle.

2. It is submitted on behalf of the learned counsel that the **Recovery Rights** have been granted as there was smell of alcohol present in the breath of the **driver of the vehicle, as per his MLC**. It is however, submitted that mere smell of alcohol is not sufficient without the ascertainment of the quantum of alcohol ascertained and cannot be a ground to infer that the driver was intoxicated. Even though *Section 185* of the *Motor Vehicle Act* was added to the Chargesheet against the driver, but there is no cogent proof that on account of alcohol, he was negligent in driving the vehicle.

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3. It is further submitted that in the case of New India Assurance Company Ltd vs. Parvinder Kaur Chawla & Anr, MAC. APP.224/2014 decided on 23.05.2016 on which reliance has been placed by the learned Tribunal, the alcohol content in the blood was found to be 141 mg/100 ml which was beyond the permissible limit of 30 mg/100 ml. In the absence of any finding on the quantity of alcohol in the blood in the present case, there could not have been any finding of there being any breach of the terms of Insurance Policy.

4. It is further argued that even if it is presumed that he was under the influence of alcohol, it may be a punishable offence under Section 185 of the Motor Vehicle Act but it does not amount to violation of the terms of Insurance Policy for which Recovery Rights can be granted in terms of Section 149(2) of Motor Vehicle Act. Therefore, no recovery rights could have been granted against the owner.

5. **Learned counsel on behalf of the Insurance Company** has argued that if a driver is found to be under the influence of alcohol, it amounts to Fundamental breach of Insurance Policy giving a right to the Insurance Company to seek recovery of compensation from the owner.

6. **Submissions Heard.**

7. A detailed Accident Report was filed by the Police corresponding to the investigations carried out in FIR No.79/2017 under Section 279/337 IPC and Section 185 of the Motor Vehicles Act registered at Police Station S.P. Badli with regard to the Motor Vehicle Accident.

8. According to the Detailed Accident Report on 26.01.2017 Sh. Sachin, the injured and his worker Bhola Kumar had gone to G.T. Road near Gurudwara, Siraspur, Delhi for repair of one car bearing No. DL5CF-2146. At about 9 PM while they were repairing the said car which was parked on the extreme left hand

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side of the road with indicators and parking lights on, offending vehicle bearing No. DL8CP-4199 which was being driven by its driver, Bobby Raj Bhaskaran in a rash and negligent manner hit the stationary car from behind because of which the injured and his worker suffered grievous injuries. They were both taken to SRHC Hospital, Narela, Delhi where they were treated for their injuries.

9. The offending vehicle was owned by Smt. Shiny Boby Raj while the vehicle was insured with Tata AIG General Insurance Co. Ltd. The learned Tribunal granted the compensation in the sum of Rs.27,92,000/- along with interest @ 9% per annum. The Recovery Rights have been granted against the owner as the driver was found smelling of alcohol.

10. It is argued that merely because smell of alcohol was present in the breath of the driver, it cannot be held that there was any breach of Insurance Policy and consequently recovery rights against the owner could not have been granted.

11. To appreciate this contention, it would be pertinent to first refer to MLC of the driver, Boby Raj Bhaskaran which reported that there was smell of alcohol in his breath. The moot question is *whether mere smell of alcohol is sufficient to conclude rashness or negligence on the part of the driver in causing the accident.*

12. First and foremost, the accident was caused by the driver of the offending vehicle who had hit into the car which was standing on the roadside from behind. None of the witnesses examined by the Insurance Company or even by the Claimants deposed that the accident occurred on account of the driver being under the influence of the alcohol. Secondly, even though in the MLC, smell of alcohol was found in the breath, but this in itself cannot be a ground to conclude breach of any Insurance Policy.

13. In the case of Parvinder Kaur Chawla, (supra) it was found that the driver

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having more than 141 mg/100 ml liquor content in his blood, by driving the vehicle under intoxication not only caused endangered his own life but also of the people commuting on the road and, therefore, the owner was held liable to pay the compensation to the extent of 30%.

14. Furthermore, in the case of Sujata vs. Bajaj Alliance Insurance Company, in Rev. P. No. 2790 of 2013 decided on 09.03.2015, the NCDRC had observed that intoxication is perceived as a state of mind in which a person loses self control and his ability to judge. As per Section 185 of Motor Vehicle Act, a person is considered intoxicated only if he is tested and found to have more than 30 mg/100 ml of alcohol in his blood. It was held that since no test had been done to ascertain the blood alcohol concentration or that it exceeded the stipulated limit, mere presence of smell of alcohol was not sufficient to infer that the person was incapable of taking care of himself. Thus, mere smell of alcohol was not considered as a contributory factor to the accident.

15. Likewise, in the case of Iffco Tokio Gen Ins Co. Ltd. vs Mithlesh Devi and Others; MAC. APP. 947/2018 decided on 26.09.2019, Coordinate Bench of this court, observed that *“the mere recording of smell of alcohol in the breath would not necessarily mean that the driving skills of the driver had gotten compromised”* in a case where the MLC recorded that there was smell of alcohol in the breath of the accused.

16. In the present case, there is no finding that the alcohol content in the blood was more than the permissible limit. It is also not proved that the driver was intoxicated. Therefore, the judgment on which reliance has been placed by the Insurance Company is not applicable to the facts and circumstances of the present case.

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17. To conclude, merely because there was smell of alcohol in the breath of the Driver, it cannot be held that the driver was intoxicated or was negligent in driving of the vehicle and in causing the accident.

18. The finding of the learned Tribunal entitling Insurance Company to recovery rights against Appellants jointly and severally is hereby set aside.

19. **The Appeal of the Appellants is allowed** and the Recovery Rights granted against the Appellants, jointly and severally, are hereby set aside. It is held that the Insurance Company is liable to pay the entire compensation amount.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 14, 2024

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