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

% ***Date of decision: 28th November, 2024***

+ **MAC.APP. 928/2016, CM APPL. 41347/2016, CM APPL.
41348/2016**

THE ORIENTAL INSURANCE CO LTD

.....Appellant

Through: Mr. A K Soni, Advocate.

versus

MEETA SHARMA & ORS

.....Respondent

Through: Mr. Dr. D.K. Sharma, Mr. Samrat
Panwar and Mr. Kapil Sharma,
Advocates.
Mr. Arun Kumar Singh, Advocate for
R-3 and R-4.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. An Appeal under Section 173 of the Motor Vehicle Act, 1988 has been filed on behalf of the Insurance Company against the Award dated 03.06.2016 vide which the compensation in the sum of Rs.44,29,680/- along with interest @ 9% per annum has been awarded to the Respondent No.1 and 2 on account of the demise of Dr. Manoj Kumar, aged 39 years, husband of Respondent No.1 Smt. Meeta Sharma.
2. The Insurance Company has challenged the Award on the following grounds :



(i) the FIR in regard to the accident was recorded against the unknown vehicle after about one year on the statement of PW3 Ashok Kumar; and

(ii) the Notice **under Section 133 Motor Vehicle Act** was given to one Shri Satish Kumar Sharma, even though the registered owner of the vehicle was Shri Brahmanand.

3. It is argued there is no cogent explanation forthcoming as to why Shri Ashok Kumar the alleged eye witness approached the Police after one year. In fact, the number of the offending vehicle was not known as it was a “hit and run” case, but subsequently the alleged offending vehicle has been involved only for the purpose of claiming compensation.

4. It is further submitted that though PW3 Ashok Kumar and PW5 Sh. Surender Pandey who had taken the injured to the hospital have been examined, but from the circumstances as detailed, it is quite evident that it is not the genuine involvement of the offending vehicle. RW1 Driver Chaman Lal was also examined, who denied having caused any accident.

5. It is further argued on behalf of the Insurance Company that PW5 Shri Surender Pandey in his cross-examination, had admitted that he was not able to disclose if PW3 Ashok Kumar was present on the spot. His testimony clearly reflects that PW3 has been subsequently planted.

6. It is, therefore, submitted that there is false implication of the offending vehicle and the Claim Petition is liable to be dismissed.

7. **Learned counsel on behalf of the Claimants** has explained that the FIR was registered in regard to the accident immediately thereafter, on the same day. The injured had been taken to the hospital by PW5 Shri Surender Pandey. Moreover, PW3 Shri Ashok Kumar was an eye witness who had



chased the offending vehicle and had noted the number of the offending vehicle which he had given to PW5 and thereafter, left the scene of incident. After about one year, he contacted PW5 to enquire about the condition of the injured, when he was informed that the he had died. On a query by PW3 about the number of the vehicle being disclosed to the Police, he was told that PW5 Shri Surender Pandey had failed to do so. Consequently, he approached the Police and disclosed the number of the offending vehicle. Due investigation was carried out by the Police. A Notice under Section 133 of the Motor Vehicle Act was served on Satish Kumar who gave a statement that the registered owner was Brahmanand, but he had purchased the motor-cycle from him in February, 2007.

8. It is further submitted that PW3, the eye witness had even deposed before the learned M.M in the Criminal Case. It is submitted that the learned Tribunal has rightly appreciated the evidence to conclude that the accident was caused on account of the rash and negligent driving of the offending vehicle by its driver, Chaman Lal.

9. **Submissions heard.**

10. *Briefly stated*, on 12.04.2007 the victim Dr. Manoj Sharma while returning to his house from his hospital. When he reached near Khatta G.T. Karnal Road, he was hit by one motor-cycle bearing No.UP-15M-7657 which was being driven at a high speed in a rash and negligent manner by its driver, Chaman Lal because of which he fell and suffered injuries. He was taken to Babu Jagjivan Ram Memorial Hospital, but succumbed to his injuries.

11. In order to prove the factum of accident, the Claimants examined PW3 Ashok Kumar as an eye witness to the accident. He in his testimony



deposed that at about 11 P.M on the date of accident i.e. 12.04.2007 he was going towards Seelampur from Samaypur Badili on his Scooter No. DL-5SL-6853 for supply of hardware goods. At about 11 P.M. when he reached T-point, G.T. Karnal Road, he saw the offending motor-cycle hitting Dr. Manoj Sharma. The Driver of the offending motor-cycle ran away. He tried to chase him, but because of heavy traffic, he was not able to catch him. He took the injured to the hospital in a TSR with help of some passenger whose name was disclosed as Surender Pandey.

12. PW3 Shri Ashok Kumar has explained his presence on the spot, though he had approached the Police after one year but the Claimants have explained that was only because he subsequently made an inquiry and found out that the number of the offending vehicle which he had disclosed to PW5 had not been mentioned to the Police.

13. PW3 Sh. Ashok Kumar was duly cross-examined, wherein the witness reiterated that he was a witness to the accident, but there was nothing material that could be elicited from him.

14. The testimony of PW3 is fully corroborated by **PW5 Shri Surender Pandey** who has deposed in the Court on 31.03.2016 that about 8-9 years ago he saw one person lying on the road in injured condition. There was no vehicle near the spot. He took the injured to the BJRM hospital, and got him admitted. The Police made enquiries from him after about 2 months of the accident. There were several public persons who had gathered on the spot. He further deposed that he had taken the injured to the hospital on his own without being asked by the public persons. He did not know if any person by the name of Ashok was present on the spot.

15. Pertinently, it is not disputed that he was the one who had taken the



injured to the hospital. He had also given his statement to this effect to the Police which was recorded under Section 161 Cr.P.C. The testimony of PW5 Surender Pandey has thus, been rightly relied upon by the learned Tribunal.

16. Pertinently, PW5 Shri Surender pandey had appeared as a witness in the Criminal Trial and had deposed that there was one person present on the spot who had tried to chase the offending vehicle, but was unable to catch the driver. Thereafter, he came back to the spot and requested him to take the injured to the hospital.

17. Furthermore, it is not in dispute that a Notice under Section 133 Motor Vehicle Act was given to one Satish Kumar Sharma, who had disclosed to the Police that was the actual owner of the offending motor-cycle, having purchased it from the registered owner Brahmanand in February, 2007. Admittedly, the insurance of the offending vehicle continued to be in the name of Shri Brahmanand. The Notice under Section 133 M.V. Act was also served upon Shri Brahmanand.

18. Admittedly, the Chargesheet had been filed after due investigations against the Driver Chaman Lal. Though he may have denied the accident, but not only the testimony of the witnesses, but the entire investigation had been undertaken by the Police which culminated into the Chargesheet which prove the involvement of the offending vehicle and also the negligence on the part of the driver.

19. The acquittal of the Driver in a Criminal Case cannot be a ground for dismissal of the Claim before the Accident Tribunal, as has been held in the cases of N K V Bros (P) Ltd. vs. M. Karumal Ammal, 1980 LawSuit (SC) 141; Delhi Transport Corporation & Anr. Vs. Navjyot Singh & Ors., 2015



LawSuit (Del) 1750 and National Insurance Company Ltd. vs. Sarbjit Kaur & Ors., 2018 LawSuit (P&H) 1711.

20. Learned Tribunal has thus, rightly concluded that the Claimants have proved the rashness and negligence on the part of the Shri Chaman Lal driver of the offending vehicle in causing the accident. There is no infirmity in the Award dated 03.06.2016 and the Appeal is hereby dismissed.

21. The Appeal stands disposed of along with the pending application(s), if any.

22. The statutory amount be returned, in accordance with law.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 28, 2024

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