



2025:DHC:9598



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

% *Decided on: 31.10.2025*

+ MAC.APP. 1047/2018 and CM APPL. 49207/2018

SHRIRAM GENERAL INSURANCE CO LTDAppellant

Through: Ms. Niyati Jadaun, Advocate.

versus

NISHA SHARMA & ORSRespondents

Through: Mr. S.N. Parashar, Mr. Ritik Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. This appeal, filed by Shriram General Insurance Co. Ltd. [“the Insurance Company”], under Section 173 of the Motor Vehicles Act, 1988, is directed against a judgment dated 10.09.2018 by the Motor Accident Claims Tribunal [“the Tribunal”], which has awarded a sum of Rs. 57,26,896/- to the legal heirs of late Mr. Neeraj Sharma, who passed away in an accident on 11.10.2016.

2. The facts of the case, as recorded in the impugned judgment, are that on the intervening night of 10/11.10.2016, the deceased was travelling on his scooty at Palam flyover towards the airport. His scooty was hit by an auto-rickshaw [TSR bearing No. DL IRQ 6242] when near a bus stop at Palam Village. The TSR was being driven at high speed in a rash and negligent manner. The driver of the TSR fled from the spot. The



deceased was taken to a hospital where he passed away. FIR No. 358/2016 under Section 279/304-A of the Indian Penal Code, 1860, was registered at P.S. Palam Village, District South West, New Delhi.

3. The original claimants, being the wife, two children, and parents of the deceased, filed the claim before the Tribunal, which has been allowed by the impugned judgment.

4. The Tribunal framed the following issues:

“ISSUES :

1. *Whether Neeraj Sharma sustained fatal injuries in a motor vehicle accident dated 11.10.2016 caused due to rash or negligent driving of vehicle (TSR) no. DL IRQ 6242 being driven and owned by Rajiv and insured by Shriram General Insurance Company Ltd. ? ...OPP*

2. *Whether the petitioners are entitled to claim compensation, if so, what amount and from whom ? ...OPP*

3. *Relief.”*

5. The only challenge to the decision of the Tribunal, advanced by Ms. Niyati Jadaun, learned counsel for the Insurance Company, is that the Tribunal has erroneously come to the conclusion that the insured vehicle [TSR bearing No. DL IRQ 6242] was involved in the accident.

6. The discussion in the impugned judgment on this issue rests upon the evidence of PW-2 – Francise Stareckiel Jacob, who stated in his evidence by way of affidavit that he was an eyewitness to the accident.

The affidavit further states as follows:

“2. I say that on 11.10.2016 I was going towards my house by an Auto Rikshaw after attending a party of friend and when at about 2:40 P.M. to 2:50 P.M., when I reached Palam Flyover towards Airport, I saw that a TSR bearing No.DL1-RQ- 6242 came in a very high speed and was being driven in a very rash and negligent manner hit the scooty of the injured from the back side and passes through there. After few paces the driver of the Auto stop his Auto and looked behind and when he saw the injured lying on the road, he fled away from there. At the same time several public persons gathered there but as I was getting



late to my house, I went away from there.

3. That after 5-6 days when I again came to Dwarka for some of my other personal work, I enquired from P.S. Palam and asked about the injured who received injuries on the aforesaid date on Palam Flyover, upon which the police told me that the said injured had already been expired and the file of the said case has already been sent to the Accident Cell, Dwarka Courts, New Delhi regarding the said accident.

4. That thereafter I visited the MACT Cell, Dwarka on 2-3 occasions but on every occasion the concerned officials from P.S. Palam told me that the I.O. is not available and come on the next day. Thereafter on 29.10.2016 my statement was recorded by the I.O. of the present case and asked me to come when he will informed me to join investigation whenever required.

5. That after 4-5 days when again came to Accident Cell, Dwarka, I saw that the driver of the offending vehicle was sitting in front of the I.O. and thereafter I told the I.O. that the said person is the driver of the auto which hit the deceased on the said date.”

7. In cross-examination by learned counsel for Sh. Rajiv, owner/driver of the offending vehicle, before the Tribunal, PW-2 further stated that he did not remember the exact date after the accident when he visited the police station. However, he specifically stated that he remembered the vehicle bearing No. DL IRQ 6242. In the cross-examination by the counsel for the Insurance Company, PW-2 stated that he was also sitting in a TSR, which was travelling in the same direction as the deceased, but that he did not know the exact distance between his vehicle and the offending vehicle. He deposed that the driver-cum-owner of the offending vehicle fled after hitting the scooty of the deceased, and the scooty driver fell down on the spot. PW-2 deposed that he stayed at the spot for four to five minutes. He stated that his statement was recorded later at the office of Deputy Commissioner of Police– Dwarka.

8. Having perused the material on record, I do not find any ground to interfere with the findings of the learned Tribunal on this aspect. It may



be noted that the respondent-claimants did not lead any evidence before the Tribunal. The appellant's contention that the TSR was not involved in the accident is not borne out by the reply filed by the owner/driver before the Tribunal. The following averments in the said reply make it clear that the owner/driver did not contest the claims on the ground that his vehicle was not involved in the accident, but only on the ground that the vehicle was not being driven in a rash and negligent manner:

"2. That also the manner in which the alleged accident took place is wrong and denied by the answering respondent. The respondent No.1 was holding a valid driving license to drive the vehicle in question at the time of accident.

3. That the vehicle in question was not in over speed and neither it was driven in a rash and negligent manner as mentioned in the petition. Hence, respondent No. 1 has no liability to pay any compensation.

4. That however, if anybody is responsible for any claim to the petitioner is the respondent No.2 i.e. the Insurance Company and not the respondent no. 1 is liable to pay any compensation as claimed in the petition.

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DEFENCE OF THE RESPONDENTS:

That all the contents of the detailed accident report are false and hence denied save and except those which are a matter of record as the said accident was not caused due to the rash and negligent driving on the part of the respondent No.1 as he was driving his vehicle in a very slow speed, obeying traffic rules and regulations and also having a valid driving license at the time of accident hence the respondent is not liable to pay any compensation to the petitioners and if anyone is liable for compensation is the Insurance Company i.e. the respondent No.2. The amount of compensation as claimed in the petition is highly excessive according to the age, status and background of the petitioners. The amount spent by the petitioners as stated in the detailed accident report is totally vague, false and far from truth, vague and fabricated and the petitioners be put to strict proof of the same. It is requested that this Hon'ble court may direct the respondent No.2 for the payment of compensation to the petitioners."

9. Ms. Jadaun submitted that, in the FIR, the police mentioned that no



eyewitness was available at the site of occurrence and that the statement of PW-2 was recorded after an inordinate delay of approximately nine days. As far as this aspect is concerned, I am of the view that the cross-examination of PW-2 fails to dislodge the clear and cogent evidence given by him. He has explained that he was present at the spot only for four to five minutes, during which there was no Police Control Room vehicle at the site. He has also clarified in his affidavit of evidence, that he left the spot and returned after a few days for the recording of his statement. The cross-examination, therefore, fails to dent his testimony in this respect.

10. Ms. Jadaun also pointed out that no damage was found in the accident report on the TSR. However, the accident report placed on record is dated 05.12.2016, which is much after the date of the accident. It shows that there was “old damage” on the front mudguard and spot guard of the offending vehicle. The inspection has been carried out approximately seven weeks after the date of the accident. This is insufficient to dislodge the eyewitness’s evidence, particularly in view of the reply of the driver of the TSR, extracted above.

11. In the absence of any evidence to the contrary, the Tribunal’s conclusion on the said issue does not suffer from any infirmity warranting interference in appeal.

12. No other contention having been raised in support of this appeal, the appeal is accordingly dismissed.

13. By order of this Court dated 09.07.2025, 50% of the awarded amount was released to the claimants. The balance amount is still lying deposited with the Registry. As the appeal of the Insurance Company has



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been dismissed, the balance amount will be released to the claimants in accordance with the judgment of the Tribunal dated 10.09.2018.

14. As the parents of the deceased have passed away, their respective shares will be released to their legal heirs, namely respondents No. 1, 2, 3 and 5(a) and 5(b). The shares of respondents No. 4 and 5 will be released in the ratio of $1/3^{\text{rd}}$ each to respondents No. 5(a) and 5(b) and the balance of $1/3^{\text{rd}}$ to respondents No. 1, 2, and 3 collectively.

15. The statutory deposit be released to the appellant.

16. The pending application also stands disposed of.

PRATEEK JALAN, J

OCTOBER 31, 2025

SS/Jishnu/