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

% *Reserved on: 08th October, 2024*
Pronounced on: 08th January, 2025

+ **MAC APPL.NO.314/2021 & CM APPL. 43140/2021, CM APPL. 43142- 43143/2021, CM APPL. 22031/2023, CM APPL. 56387/2024**

NEW INDIA ASSURANCE COMPANY LTD.

Through its duly constituted Attorney, Manager,
New India Assurance Co. Ltd.,
Delhi Legal-Hub, Core-3,
First Floor, Scope Minar, Laxmi Nagar
District Centre, Delhi-110092.

..... Appellant

Through: Mr. Abhishek Gola, Advocate.

versus

1. **RUPIN**
W/o Late Sh. Vishal
2. **KABIR**
S/o Late Sh. Vishal
3. **OM BIRI**
W/o Sh. Subhash
4. **SUBHASH**
S/o Sh. Mangu,

All R/o Village Dallupura, Chahat Ram &
Bhandan Mohalla, Delhi.
5. **JAI SINGH**
S/o Sh. Nathi Singh



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R/o Village Fauladpur, PS Dehat Bulanshahar,
District Bulandshehar, U.P.

6. **ABDUL FARID**

S/o Shri Abdul Hameed
R/o Village Chitson, Shikarpur, P.S. Salempur,
District Bulandshehar, U.P.
At present : Village Morowala, Claimant Down,
Dehradoon, Uttarakhand.

.....Respondents

Through: Mr. Pankaj Kumar Deval, Advocate
for R-1-4 /Claimants.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. An Appeal under *Section 173* of the *Motor Vehicles Act, 1988* has been filed on behalf of the *Insurance Company* to challenge the Award dated 12.08.2021 *vide* which compensation in the sum of Rs.19,05,000/- along with interest 8% per annum has been granted on account of demise of Shri Vishal in a road accident, on 18.03.2015.
2. The main ground of challenge of the Award is that *the alleged offending vehicle was not involved in the accident.*
3. It is submitted *on behalf of the Appellant* that the learned Tribunal has failed to consider the admission and non-declarations in the evidence of PW2/Shri Ashok Kumar, who despite his assertion that he had remained on the scene of crime for about 15 minutes and had met the Police, but has admitted that his name did not feature in the List of Witnesses in the



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Chargesheet.

4. According to R3W1 the registration Number of the offending Car was revealed by PW2/Ashok Kumar, but the name of PW2/Ashok Kumar does not find mention in the List of Witnesses annexed along with the Chargesheet.

5. The R3W1/Sub Inspector Pramod Kumar has deposed that though the accident took place on 18.3.2015, the investigations were handed over to him on the next day i.e. 19.03.2015 and the Site Plan was prepared on 25.03.2015. During the investigations, he did not record the statement of any person present on accident spot.

6. Furthermore, the Site Plan does not mention or mark the place where the motorcycle or the dead body was found lying. The only place marked is the place of accident. There is no Seizure Memo of the motorcycle and no inspection has been carried out. Moreover, no enquiry leading to the ownership of the motorcycle of the deceased has been conducted. The I.O deposed that he came to know about the offending vehicle from his informer and on the basis of this information; he went to the house of the registered owner, who gave a Letter admitting that the accident was caused by his vehicle.

7. It is argued that the testimony of Ashok Kumar cannot be believed and is not trustworthy. Furthermore, from the testimony of the I.O./R3W1 it is evident that he was not a witness to the accident and that no eye witness had approached him for recording of statement.

8. Furthermore, statement of Prashant Kumar Rathee was recorded under Section 165 of the Indian Evidence Act, on 16.10.2019, wherein he



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stated that he had reached the spot at about 09:45 P.M. and came to know that the accident has taken place 2-3 minutes earlier. The details of the car were not disclosed by anyone on the spot.

9. It is thus, argued that there was no cogent evidence to prove the involvement of the offending vehicle. The reliance has been placed on United India Insurance Co. Ltd. vs. Gurmeet Singh & Ors. [FAO-2999-2020 (O & M) decided on 056.10.2021], wherein it was observed that the Doctrine of Preponderance of Probability of Evidence does not mean that the Tribunal is not required to apply basic test of whether a particular fact is proved or not. Though, the standard of proof in civil cases is lower, but still the requirement is not dispensed with. It is, therefore, submitted that the impugned Award dated 12.08.2021 is liable to be set aside.

10. ***The learned Counsel on behalf of the Claimants*** has argued that there is testimony of PW2/Ashok Kumar which clearly establishes not only the involvement but also the negligence of the offending vehicle. Merely, because he has not been cited as a witness in the criminal case, does not take away his credibility of being an eye witness. It is submitted that the learned Tribunal has rightly concluded the involvement of offending vehicle and the Appeal is without merit.

11. **Submissions heard and record perused.**

12. ***Briefly stated*** on 18.03.2015 at about 09:30 P.M., Shri Vishal (deceased) was going to his village on his motorcycle bearing registration No.UP-15-BC-7332. When he reached near Ralpro Residentia, Meerut, U.P, he was hit by an unknown vehicle which was subsequently identified as vehicle bearing registration No.UP-13-G-0175. The FIR No.126/2015 under



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Sections 279/304A/427 IPC was initially recorded. After due investigations, the Charge sheet was filed against the Jai Singh, driver of the offending vehicle.

13. The sole ground of challenge by the Insurance Company is to the involvement of the offending vehicle in the accident.

14. The Claimants, to prove the involvement of the vehicle, had examined PW2/Ashok Kumar who was the eye witness to the accident. He deposed that on 18.03.2015 while he was returning to his house at Village Nangli, Azamabad from Meerut, he noticed one person going in the same direction on his motorcycle bearing registration No.UP-15-BC-7332. All of a sudden a Maruti Zen Car bearing registration No.UP-13-G-0175 came from the front side at a high speed and hit the motorcycle. The driver of the offending vehicle stopped near the spot and came to see the injured. In the meanwhile, public persons gathered and before the Police arrived at the spot, the driver along with the offending vehicle fled away from the spot. This witness was duly cross-examined by the Insurance Company who in his cross-examination admitted that there were no street lights installed on the road, where the accident took place and that there was a residential colony in the vicinity. He further deposed that the Police officials came in his presence and took his signatures on two blank papers before they left the spot. Nothing contradictory could be established from his cross-examination conducted by the Insurance Company, to demolish the testimony of the eye witness.

15. The main ground of challenge to the testimony of PW2/Ashok Kumar is that though he was claimed to be an eye witness, but had it been so his



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statement would have been recorded by the Police and he would have been cited as an eye witness in the Chargesheet. It is a common knowledge that when an accident occurs many people gather on the spot and this has been deposed by PW2 as well. There may be many persons who may have witnessed the incident, but it is not essential that the Police would make all such persons as eyewitnesses in the criminal case. ***Merely because the Police have chosen not to cite Ashok Kumar as an eye witness, it is not sufficient to discredit his testimony or to hold that he was not an eye witness to the accident.***

16. Furthermore, the Insurance Company has further asserted that the number of the offending vehicle had not been disclosed in the FIR. The FIR was registered on the statement of Prashant Kumar Rathee, relative of the deceased who had been examined as PW1 by the Tribunal. He in his testimony, had deposed that he had reached at the spot a few minutes after the accident and the public persons who had gathered on the spot informed him that the accident was caused by a car. He further disclosed that the details of the car had not been disclosed by anyone at the spot, but during the subsequent inquiry, he came to know the registration number of the offending vehicle as UP-13-G-0175. He further explained that the registration Number was disclosed by PW2/Ashok Kumar who had informed the Police that he was an eye witness to the accident and was also aware of the number of the offending vehicle.

17. R3W1/S.I. Pramod Kumar, Investigating Officer, explained in his testimony that he came to know about the involvement of the offending vehicle from his informer. Further, he admitted that he had filed the



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Chargesheet against the offending vehicle in which eye witness PW2/Ashok Kumar had not been cited as a witness. He also admitted that he did not investigate if Ashok Kumar had made the call to the Police after the accident.

18. The I.O. may have been slack in conducting the investigations properly and may not have made an effort to cite the eye witness to the accident in the Chargesheet, but the fact remains that the testimony of PW2/Ashok Kumar is cogent and no material contradiction has been brought forth in his testimony. Merely because the I.O. did not cite him as a witness, does not attach any kind of discredit to his consistent evidence.

19. Furthermore, the Respondent No.1 had admittedly been Charge sheeted for having caused the accident.

20. In the case of National Insurance Co.,vs Pushpa Rana 2009 ACJ 287 Delhi, it has been held that filing of Chargesheet is sufficient proof of the negligence and involvement of the Offending Vehicle.

21. Similar observations have been made in the case of United India Insurance Co. Ltd. v. Deepak Goel and Ors., 2014 (2) TAC 846 Del, and Jamanti Devi and Ors. v. Maheshwar Rai, MAC Appeal no. 831/2015 decided on 19.11.2022.

22. Furthermore, the best witness to rebut the involvement of the offending vehicle was the driver Jai Singh/Respondent No.1, but he has failed to step into the witness box. Pertinently, Sh. Abdul Farid registered owner of the offending vehicle was given a Notice in writing by the I.O. who gave a Letter stating that his driver/Jai Singh was driving the vehicle at the time of the accident.



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23. There is thus, overwhelming evidence on record to establish that not only the involvement of the offending vehicle, but also that it was being driven in a rash and negligent manner by its driver Jai Singh. *The learned Tribunal has rightly held that the accident occurred due to rash and negligent driving of the offending vehicle by its driver Jai Singh.*

Relief:-

24. There is no infirmity in the findings of the Tribunal. There is no merit in the Appeal, which is hereby dismissed.

25. The Statutory amount, if any, be returned to the Insurance Company in accordance with law.

26. The Appeal is accordingly disposed of. The pending Applications, if any, also stand disposed of.

**NEENA BANSAL KRISHNA
(JUDGE)**

JANUARY 08, 2025

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