



2024:DHC:10045



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 10th December, 2024+ MAC.APP. 566/2023, CM APPL. 66275/2023,
CM APPL. 66276/2023, CM APPL. 27730/2024**SH. ANIL KUMAR**S/o Sh. Ishwar Singh
R/o D-11/28, Block-D,
Pocket-II, Sec-7, Rohini,
Delhi-110085.

.....Appellant

Through: Mr. Gaurav Manuja Advocate.

versus

1. **NEW INDIA ASSURANCE CO. LTD.**

O/A Arya Samaj, New Delhi-110005.

Also at:

Unit 121403, 1st Floor, New India Centre,
17/A Cooperate Mumbai,
Maharashtra-400001.2. **SMT. NISHA NAGPAL** (Mother of Deceased)
W/o Sh. Anil Kumar Nagpal3. **SH. ANIL KUMAR NAGPAL** (Father of Deceased)
S/o Sh. Kewal Krishan Nagpal,
Both R/o H.No.23, Anand Vihar,
Saraswati Vihar, Pritam Pura, Delhi.Permanent R/o H.No.122,
Tarun Enclave, Pitampura, Delhi.4. **SH. RAJESH KUMAR** (Driver)
S/o Sh. Upender Mehta
R/o Village Kopa, Sonbarsa,

Signature Not Verified

Digitally Signed By: IKAS
ARORA**MAC.APP. 566/2023**Signing Date: 24.12.2024
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Post-Fulwaria Dodi,
P.S. Sonbarsa, Distt. Saharsa,
Bihar.

.....Respondents
Through: Mr. Krishan Kumar, Mr. Seemant K.
Garg and Mr. Nitin Pal, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (Oral)

**Application No.66275/2023 under Section 5 of the Limitation Act for
condonation of delay of 1580 days in filing the present Appeal:**

1. The counsel for the Insurance Company has sought condonation of delay in filing the Appeal on the ground that that a Review Petition was filed on 29.11.2019 i.e. after a period of six months to seek the review of the Award dated 05.04.2019. However, the said Review Petition was dismissed on 01.11.2023 along with an Application for condonation of delay in filing the Review Petition.
2. It is submitted that the delay in filing the Appeal, may be condoned.
3. For the reasons stated in the Application, the delay in filing the Appeal, is condoned.

MAC.APP. 566/2023:

4. An Appeal under Section 173 of the Motor Vehicle Act, 1988 has been filed by the Appellant/Owner of the Offending vehicle to challenge the Award dated 05.04.2019 vide which the recovery rights have been granted to the Insurance Company to recover compensation granted in the sum of Rs. 10,20,000/- along with interest @8% p.a. to the Claimants, parents of deceased Dhruv Kumar Aggarwal, as the Driver of the offending



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vehicle/Respondent No.4 was found under the influence of alcohol.

5. Submissions heard and record perused.

6. *Briefly stated*, on 03.10.2016, at about 6 pm, deceased-Dhruv, aged 11 years, was going along with his mother on their scooty bearing Registration no. DL-8SAT-8805 for tuitions in Pitampura, New Delhi. The Offending Vehicle – Truck bearing no. HR-55X-8682 driven by Driver/ Rajesh Kumar in a rash and negligent manner, came from the opposite side and collided with the scooty. The deceased was dragged by the truck for about 20-30 meters on the road and died on the spot.

7. *The FIR No. 947/2016 u/s. 279/304-A IPC 1860* was registered against the driver/ Rajesh Kumar, was registered at P.S. Mangol Puri, pursuant to *DD Entry No. 36A*.

8. The *DAR- Ex. PW1/1* was filed along with the accompanying documents i.e. investigation report, postmortem report, etc. and the Chargesheet, Ex. PW1/4.

9. The Learned Tribunal after consideration of the evidence and the documents observed that the rashness and the negligence on part of the driver stands established. The quantum of computation was assessed as Rs.10,20,000/- along with interest @ 9% p.a., in favor of the claimants.

10. While ascertaining the liability and the breach of Insurance Policy, the Learned Tribunal granted recovery rights to the Insurance Company by observing that though there was a valid Insurance Policy for the Offending Vehicle, the breach was committed as the driver of the offending vehicle *was under the influence of alcohol as per the MLC Ex. R3W1/4*.

11. Aggrieved by the grant of recovery rights, the Owner had filed a Review Petition and sought to place reliance upon the FSL Report filed by



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the IO in the criminal case against the Driver, which revealed that no alcohol content was found in the blood of the applicant. However, the Review Petition was also dismissed *vide* Order dated 01.11.2023 on the ground that the FSL was not placed on record before the Learned MACT and even otherwise, the FSL has been discarded by the Criminal Court while convicting the applicant for offence *U/s 279/304 (ii) IPC and 185 MV Act 1988 vide* judgment dated 05.10.2020.

12. *The sole ground of challenge is the present Appeal it that the Ld. MACT has incorrectly ascertained the quantity of alcohol to hold that the Driver was intoxicated.*

13. To appreciate the above argument, it would be beneficial to reproduce the relevant paragraph of the Impugned Award which is as under: -

*“27. R3Wl Sh. N. K. Saxena, Assistant, M/s. The new India Assurance Co. Ltd. deposed in his testimony that the R-1/ driver of the offending vehicle was under the influence of alcohol which was beyond permissible limits as depicted from the MLC. The MLC bearing no. 14945/16 drawn by SGM Hospital Ex. R3Wl/4 clearly shows the **alcohol to be 0.250mg/ltr** (sic) **(50 mg/100ml)** much beyond the permissible limits. Neither the R-1 and R-2 led any evidence nor rebut the testimony of R3Wl. Both of them did not step into the witness box. Therefore, adverse inference has also been drawn against R-1. Accordingly, there is a breach of insurance policy which has also been proved. Therefore, in terms of Sec. 149 (1) MV Act, the insurance company is liable to indemnify the insured subject to its recovery from other respondents. **Accordingly, the compensation amount as awarded be paid by R-3 initially with recovery rights to recover the same from R-1 and R-2 jointly and severely.**”*



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14. Evidently, the learned tribunal has erroneously interpreted the content of alcohol as **0.250/liter** and has further incorrectly converted the same to 50mg/100ml to hold that the driver was intoxicated and there was a breach of insurance policy.

15. The *MLC No. 14945/2016* of the Driver/ Rajesh Kumar shows that the alcohol meter reading was **0.250 mg/dl i.e. 0.250 mg/100ml** (since 1 dl = 100 ml), which is much lesser than the permissible limit of *30 mg/dl or 30 mg/ 100 ml* as per Section 185 of the Motor Vehicle Act, 1988.

16. Further, without getting into the hyper technicalities pertaining the delayed filing of FSL, it is observed that even the appraisal of the FSL report dated 15.11.2016 reflects that *no ethyl alcohol could be detected in the blood sample* of the Driver.

17. The non-stepping of the Driver in the witness box would be of no consequence when there is sufficient evidence to establish otherwise.

18. In light of the above, it is hereby observed that the Insurance Company is not entitled to any recovery rights as there was no breach of Insurance Policy no. 1214031150100180658.

19. ***The Appeal is allowed and it is held that the Appellant/ Driver/ owner is not liable indemnify the Insurance Company and the recovery rights are hereby set aside.***

20. The Appeal is disposed accordingly along with pending Application(s) if any.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 10, 2024/va