

Daya Shankar Vs. Dheeraj Kumar and ors

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Court : Delhi

Decided On : Nov-06-2012

Judge : G.P. Mittal

Appellant : Daya Shankar

Respondent : Dheeraj Kumar and ors

Judgement :

\$~17 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

6. h November, 2012 + MAC. APP.1111/2011 DAYA SHANKAR Through Appellant Mr.Rajnish K. Jha, Advocate versus DHEERAJ KUMAR & ORS Through Respondents Ms. Suman Bagga, Advocate for the Respondent No.3 CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.

(ORAL) 1. The only ground of challenge raised in the instant Appeal is that the Appellant was held to have contributed to the accident on the ground that at the time of his admission in the Hospital, he was found to be conscious, drowsy with the smell of alcohol and thus the Doctor opined that the Appellant was under the influence of alcohol.

2. Admittedly, no test to measure the quantity of alcohol in the Appellants blood was done by the Doctor at the time of his admission. This accident took place at 11:30 pm. The Appellant reached the Casualty of Sanjay Gandhi Memorial Hospital at 12:20 am. He must have been examined thereafter. A perusal of the

MLC placed on record reveals that the Appellant suffered injuries on his head also. An X-ray of the skull was done but it did not reveal any fracture. The Appellant suffered fracture of his ribs left side, clavicle right apart from displacement of his sternoclavicular joint. There could be several reasons for the Appellants feeling drowsy at the time of his examination by the Doctor, particularly when he was examined by the Doctor at midnight. Thus, since alcohol was not measured, the Claims Tribunal was not justified in holding that the Appellant was under the influence of alcohol and thus he contributed to the accident.

3. No other ground has been raised. The Appeal must succeed.

4. The Appellant would be entitled to the entire compensation of `61,046/awarded along with interest @ 7.5% per annum. The compensation shall be deposited with the Claims Tribunal by the Respondent No.3 ICICI Lombard General Insurance Co. Ltd. within six weeks and shall be released on deposit.

5. The Appeal is allowed in above terms.

6. Pending Applications stand disposed of. (G.P. MITTAL) JUDGE NOVEMBER 06 2012 pst

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