

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **MAC APP. No.7/2006**

Judgment delivered on: February 28, 2008

Oriental Insurance Co. Ltd. Appellant.

Through: Mr. L.K. Tyagi, Advocate

versus

Sh. Krishan Lal Popli And Ors. Respondents

Through: Mr. K.C. Mannie, Advocate for
Respondent Nos. 1&2

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

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By way of the present appeal the appellant seeks to challenge the impugned award, whereby the entire liability

to pay the compensation amount has been fastened on the appellant despite holding composite negligence of the other offending vehicle.

Brief summary of the facts of the present case are that on 27.11.2003 at about 1.30 A.M., deceased Shri Ashwani Kumar Popli was traveling in a car bearing registration no. UP-16A-3767 from Yamuna Nagar to Delhi which was being driven by respondent no.5 Mr. Gurjinder Singh Virk, and when they reached at Pipli Radaur Road near village Sirsala, Distt. Kurukshetra, the said car collided against truck bearing registration no. HR-38A-9003 which was lying parked on the road. As a result of the accident Shri Ashwani Kumar Popli received fatal injuries.

Counsel appearing for the appellant contends that the Tribunal while deciding Issue No. 1, has clearly held that there was a composite negligence on the part of both the vehicles involved in the accident. The contention of the learned counsel for the appellant is that once the tribunal has given the said finding holding both the drivers

of the vehicles involved in the accident rash and negligent then, the Tribunal should have apportioned the liability to pay the compensation amount on the other offending vehicle i.e., car bearing registration No. UP-16A-3767. Counsel, thus, sought to urge that the driver of the said vehicle was equally negligent in driving his vehicle as he did not care to notice that a truck was parked on the road. Had proper care been taken by the driver of the said car, the said accident could have been averted.

Without denying the fact that the driver and owner of the truck were primarily responsible for such unauthorized and illegal parking of the truck on the road, at the same time, negligence on the part of the driver of the said car also cannot be disputed, counsel for the appellant contends.

Mr. K.C. Mannie, counsel appearing for respondent Nos. 1 and 2 on the other hand contends that the owner and driver of the other vehicle i.e., a car, cannot be held liable to the same extent as that of driver and owner of the truck. Counsel for the respondent further contends that the

insurance company has failed to adduce the best evidence i.e., driver of the offending truck whose deposition could have thrown enough light about the exact events leading to the occurrence of the said accident. Counsel, thus, contends that although the Tribunal has held composite negligence on the part of drivers of both the vehicles, but in the absence of the said evidence of the truck driver, the adverse inference should have been drawn by the Tribunal against the appellant insurance company.

I have heard learned counsel for the parties and have perused the record.

Perusal of the record shows that after detailed discussion, the Tribunal has reached to the conclusion that there was negligence on the part of drivers of both the vehicles. The award further shows that even after holding negligence on the part of drivers of both the vehicles, the Tribunal has not apportioned the liability between the two offending vehicles, but has fastened liability only on the insurance company for the entire award amount. Although, no evidence has come on record as to what was the width

of the road and whether there was enough light on the road so that the driver of the vehicle coming from the opposite direction could notice the said unauthorized parking of the truck in the middle of the road, yet it cannot be ruled out that the driver of the car was also negligent to some extent in not timely noting the presence of the stranded truck on the road. However, considering the fact that the insurance company had failed to produce the driver of the truck in the witness box, therefore, I cannot hold the driver of the said car negligent to the extent of driver and owner of the said truck.

In any case of the matter, I am not inclined to have a different view as far as the finding given by the Tribunal holding the drivers of both the vehicles negligent in causing accident. As already discussed hereinabove, negligence of the driver of the car cannot be attributed to the same extent equivalent to that on the part of the driver of the truck. I, therefore, hold the driver and owner of the said car to be held liable only to the extent of 15% of the award amount.

In the light of the above discussion, the appellant is granted recovery rights to claim the said 15% of the award amount from the owner and driver of the said car who are respondent Nos. 6 and 7 herein after making payment of the entire award amount in favour of the claimants.

With these directions, the present appeal is disposed of.

February 28, 2008
'raj'

KAILASH GAMBHIR, J