

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

+ MAC.APP.No.63/2005

Date of Decision: 21st January, 2010

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RAMESH CHANDER VIJ & ANR. Appellants
Through : Mr. Neeraj Gupta, Adv.

versus

SUSHMA BHASIN & ORS. Respondents
Through : Mr. R.S. Reen, Adv. for
 R-1 and 2.
 Mr. Ataul Haque, Adv. for
 DTC.

**CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA**

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

JUDGMENT (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.3,80,000/- has been awarded to claimants/respondents No.1 and 2.
2. The accident dated 18th February, 1987 resulted in the death of B.M. Bhasin. The deceased was survived by his widow and son who filed the claim petition before the Claims Tribunal.
3. The deceased was driving two-wheeler scooter bearing No.DLQ-6699 when he was hit by car bearing No.DEC-4836. The deceased fell down from the scooter and was crushed

under the wheel of offending car No.DEC-4836.

4. The deceased was aged 43 years at the time of the accident and was self-employed earning Rs.2,500/- per month. The learned Tribunal computed the compensation of Rs. 3,80,000/- payable to the claimants.

5. Appellant No.1 is the driver and appellant No.2 is the owner of car bearing No.DEC-4836.

6. The learned counsel for the appellants has urged at the time of hearing of the appeal that the accident in question was not caused by the appellant's car bearing No.DEC-4836. In the alternative, it is submitted that the DTC bus bearing No.DEP-8624 hit the car which in turn hit the scooter of the deceased.

7. The accident in question was witnessed by Charanjit Singh who was sitting on the pillion of the scooter driven by the deceased at the time of the accident. Charanjit Singh also fell down from the scooter and he reported the matter to the Police and also appeared before the Claims Tribunal as a witness. The statement of Charanjit Singh was recorded as PW-1 and he deposed before the Claims Tribunal that the scooter of the deceased was hit by car No.DEC-4836 from behind and simultaneously, the DTC bus bearing No.DEP-8624 also hit the car. PW-1 was not cross-examined by the appellants.

8. The learned counsel for the appellants submit that the FIR registered by Charanjit Singh does not contain the

vehicle number of the car which caused the accident and the mechanical inspection report does not show any damage on the car of the appellants.

9. The learned counsel for the appellants further submit that appellant No.1 was convicted by the learned Metropolitan Magistrate in the criminal case against which appellant No.1 filed the appeal before the learned Sessions Judge which was allowed and appellant No.1 was discharged on the ground that the car hit the scooter after being hit by the bus.

10. From the statement of eye-witness – PW-1 and the judgment of the learned Sessions Judge, this Court is of the view that the accident occurred due to the composite negligence of the appellant's car and the DTC bus and the composite negligence of both of them is held to be 50%.

11. The learned counsel for the appellants submit that the appellant's car was not involved in the accident. This plea is rejected in view of the clear statement of eye-witness – PW-1 who stated categorically that the appellant's car has caused the accident. The appellant has also been indicted by the learned Metropolitan Magistrate as well as the learned Sessions Judge, but has been given benefit of doubt because the appellant's car was hit by the DTC bus. The appellant's negligence is made out because if the appellant had been careful, the appellant could have avoided the accident even after being hit by the DTC bus.

12. There is no challenge to the quantum of compensation computed by the Claims Tribunal. No other ground is agitated before this Court.

13. The appeal is partially allowed and the award of Rs.3,80,000/- is upheld but the liability of the appellants is reduced to 50% of the award amount and the remaining 50% of the award amount is payable by DTC.

14. The learned counsel for the appellant has handed over a calculation sheet along with a certificate of Punjab National Bank which has been verified by the Accounts Officer of this Court to be correct. As per the certificate of Punjab National Bank, a sum of Rs.5,01,552/- has been paid to the claimants. The claimants are entitled to a sum of Rs.5,20,600/-. The counsel for the appellant further submits that a sum of Rs.11,076/- has been deducted by Punjab National Bank towards TDS. The fixed deposit receipts were in the name of the Claims Tribunal and, therefore, the claimants cannot get the benefit of the TDS deducted. However, considering that the appellant has paid the amount, the TDS amount which has been lost in the process shall be borne equally by both the parties, the balance liability of the appellant is held to be Rs.12,500/-.

15. There is a statutory deposit of Rs.25,000/- by the appellant filed along with this appeal.

16. The Registrar General of this Court is directed to release a sum of Rs.12,500/- out of the statutory amount to

the appellant and remaining Rs.12,500/- to claimant/respondent No.1 through counsel within four weeks. With the release of Rs.12,500/- to claimant/respondent No.1, this judgment shall stand satisfied so far as the appellants are concerned.

17. DTC is directed to deposit 50% of the award amount along with up to date interest with UCO Bank A/c Sushma Bhasin, Delhi High Court Branch through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

18. Upon the aforesaid deposit being made, UCO Bank is directed to release 10% of the amount to claimant/respondent No.1 and 10% to claimant/respondent No.2 by transferring the same to their Saving Bank Account. The remaining amount be kept in fixed deposit in the following manner:-

- (i) Fixed deposit of 10% of the amount in the name of respondent No.1 for a period of six months.
- (ii) Fixed deposit of 10% of the amount in the name of respondent No.2 for a period of six months.
- (iii) Fixed deposit of 10% of the amount in the name of respondent No.1 for a period of one year.
- (iv) Fixed deposit of 10% of the amount in the name of respondent No.2 for a period of one year.
- (v) Fixed deposit of 10% of the amount in the name of respondent No.1 for a period of one and a half

years.

(vi) Fixed deposit of 10% of the amount in the name of respondent No.2 for a period of one and a half years.

(vii) Fixed deposit of 10% of the amount in the name of respondent No.1 for a period of two years.

(viii) Fixed deposit of 10% of the amount in the name of respondent No.2 for a period of two years.

19. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of respondents No.1 and 2.

20. Withdrawal from the aforesaid accounts shall be permitted to respondents No.1 and 2 after due verification and the Bank shall issue photo Identity Card to respondents No.1 and 2 to facilitate identity.

21. No cheque book be issued to respondents No.1 and 2 without the permission of this Court.

22. The original Fixed Deposit Receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to respondents No.1 and 2 along with the photocopy of the FDRs.

23. The original Fixed Deposit Receipts shall be handed over to the appellants on the expiry of the period of the FDRs.

24. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

25. Half yearly statement of account be filed by the Bank in this Court.

26. On the request of respondents No.1 and 2, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of respondents No.1 and 2.

27. Respondents No.1 and 2 shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

28. List for reporting compliance on 12th March, 2010.

29. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

J.R. MIDHA, J

JANUARY 21, 2010

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