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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Mac. Appeal No.71 of 2005

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04.05.2010

ORIENTAL INSURANCE CO. LTD. Appellant
Through: Mr. L.K. Tyagi, Advocate.

Versus

SMT. MADHU VOHRA & ORS. Respondents
Through: Mr. Amit Kumar Pandey, Advocate for
R-1 to 3.

Reserved on: 5th April, 2010
Pronounced on: 4th May, 2010

JUSTICE SHIV NARAYAN DHINGRA

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

J U D G M E N T

1. By this appeal, the appellant has assailed an award dated 1st December, 2004 passed by learned Motor Accident Claim Tribunal granting compensation of Rs.12,75,000/- to the claimants.

2. Brief facts relevant for the purpose of deciding this appeal are that Mr. Amit Vohra, deceased was travelling in a Maruti Car bearing No.DL-8CB-4216 with his wife and children on 8th April, 2002. The car was being driven by his elder brother when near Akbarpur Chowk, Mathura Road, Police Station Chhata, District Mathura, U.P., a truck No.HR-38C-6746 suddenly stopped without any signal and indication and as a consequence, the car dashed against the tail board of the truck resulting into injuries to the occupants of the car and on spot death of one of the occupants, namely, Henna, daughter

of the family. Mr. Amit Vohra (since deceased) had received serious injuries and was removed to nearby Maheshwari Hospital, Mathura and thereafter to Apollo Hospital. He could not recover from the injuries and remained in comma till his death on 24th January, 2004.

3. Before learned Tribunal, a plea was raised that the accident was a result of contributory negligence. However, the Tribunal observed that the issue of contributory negligence does not arise since it was nobody's case that the deceased was driving the offending car and at the most it could be a case of composite negligence on the part of the truck driver and the car driver inasmuch as the car driver was not keeping a safe distance from the truck ahead.

4. The deceased was 36 years of age at the time of accident. It was testified that he was engaged in business of manufacturing steel knives. He was running this business from a portion of his house at ground floor by employing 7-8 persons, however, no documentary evidence was placed on record about this business. Admittedly, the deceased was not an income-tax payee and considering all facts, the trial court assessed annual income of the deceased at Rs.50,000/-. Based on this estimated annual income and taking into account the future prospects, the trial court calculated loss of dependency after giving deduction of 1/3rd of the income towards personal use and consumption of the deceased and applied multiplier of 16. The trial court also awarded an amount of Rs.20,000/- towards loss of consortium, Rs.1 lac towards mental agony and frustration, Rs.5,000/- towards funeral expenses and Rs.3,50,000/- towards reimbursement of medical expenses.

5. In appeal, the appellant has contended that the trial court despite holding that it was a case of composite liability had not apportioned the payment of award amount amongst the two tort-feasors. This issue was raised before the Tribunal also and the Tribunal relied on *Om Wati through L.R.s. Vs. Mohd. Din & Ors.*; 2002 ACJ 868 in which Division Bench of this court observed as under :-

“9. Coming to the question of 'apportionment' it seems to us that First Appellate Court was in error in holding that claimants would have to forego 30% share of their awarded compensation in favor of the joint tort-feasors of the truck present before the Court as they had failed to implead tort-feasors of the car as party-respondents in their claim suits. This is because the accident could not be wholly treated to be the result of contributory negligence. Even, if it was assumed that the drivers of the two vehicles contributed to the accident in some measure, the other two deceased who were traveling in the car could not be held responsible for any such negligence. Therefore, it was a case of composite negligence in their case. The principle of composite negligence is that where more than one person are responsible for commission of the wrong, the person wronged has a choice of proceedings against all or any one or more. Any one of the wrong doer is liable for the whole damage if it is otherwise made out. In other words the liability of two sets of tort-feasors becomes both joint and several.

*10. It logically follows from this that a claimant could choose to file a claim petition against all or any one of them and it was not necessary that he should implead all joint tort-feasors as party respondents because they were only proper parties and not necessary parties. It may as well be that claimant had not set up a case of composite negligence but if there was material on record to suggest so, neither Tribunal nor Court was disabled or incompetent to record a finding in this regard. Support for this is derived from a DB judgment of High Court in *Hiraben Bhaga v. Gujarat State Road Transport Corporation and Arn.* , 1982 ACJ (Supp.) 414, holding as under:*

"It passes one's understanding as to how could a passenger's compensation be deducted on account of the contributory negligence of the driver of a vehicle, it is entirely the choice of the claimants whether to implead both the joint tort-feasors or either of them. The claimants cannot be saddled with the liability for contributory negligence of one of the joint tort-feasors, if they fail to implead him as one of the opponents, in their claim petition. It would be for the imp leaded joint tort-

feasors to take proceedings to get the other joint tort-feasors imp leaded in the claim petition, or for that matter such an imp leaded joint tort-feasors may select to sue the other one after the decree or award is given and the other joint tort-feasor if held liable therein. It would be however quite a different argument to advance that because the claimants did not sue one of the tort-feasors, they themselves should be held liable for the deduction of the amount, which the omitted joint tort-feasor would have been called upon to pay. Thus, there would be no deduction in the amount of compensation awarded to the appellants as done by the Tribunal."

6. In the similar circumstances, the Division Bench of Allahabad High Court in *U.P. State Road Transport Corporation Vs. Rajani & Ors.*; 2007 ACJ 1771 observed as under:-

"When an accident takes place on account of composite negligence of two or more motor vehicles, the claimant is entitled to proceed against all or any of the joint tort-feasors for full compensation for the injuries suffered or death caused as the liability of joint tort-feasors is joint and several. The question of apportionment of negligence and liability to pay compensation does not arise if other joint tort-feasor has not been impleaded as party. However, after ascertaining other joint tort-feasor and impleading him as a party the tort-feasor who satisfied the award can exercise his right of contribution in accordance with law. In other words, when other joint tort-feasor is not a party, the Tribunal should refrain from giving any finding about apportionment of negligence in absence of other tort-feasor to avoid any exercise in futility and leave the said question of liability of joint tort-feasors to be adjudicated, if the joint tort-feasor, who satisfied the award is able to find out the name and address of other joint tort-feasor and seek to exercise his right of contribution in accordance with law. In a case, where all the Joint tort-feasors have been brought on record, it is needless to say that Tribunal is under statutory duty to specify the amount which shall be paid by driver or owner or insurer of the vehicles involved in the accident. The apportionment of liability amongst the individual joint tort-feasors has to be done by Tribunal to the extent their negligence contributed to the damage caused to the victim of the accident. Thus in case of insurers to the extent of their liability covered by insurance policy or under statute. The said provision, in our view, is only intended to the extent possible, to avoid multiplicity of proceedings inter se between the drivers, owners and insurers of the two vehicles and to the extent possible to give a finality to their

liability. That does not mean that the said provisions should be understood as taking away the common law rights, which have been enjoined by the victims of motor accidents and which are being followed by various Courts in the country and have stood the test of time.

Such duty to apportion the individual liability of joint tort-feasors under the provisions of Section 110B of Old Motor Vehicles Act and Section [168\(1\)](#) of New Motor Vehicles Act does not necessarily lead to a conclusion that Tribunal cannot direct any one of such joint tort-feasors to satisfy entire award by making payment to the claimants and thereafter realise the amount excess paid by him over and above from his liability from the other joint tort-feasors, to the extent of their liability determined by the Tribunal. Thus in case of an accident caused by composite negligence of two motor vehicles, where one vehicle is insured and another is not covered by valid insurance policy and both are impleaded as party and also heard, it is open to the Tribunal after specifying their respective liability to the extent of damage contributed, direct the owner or insurer of vehicle insured to pay entire amount of award to the claimants and recover the excess amount so paid over and above his or its liability from the owner or driver of the another vehicle involved in such accident.”

7. I, therefore, consider that the Tribunal rightly observed that the entire awarded amount could be claimed from the appellant.

8. The other plea raised by the appellant before this court is that the Tribunal awarded a sum of Rs.3.5 lac as reimbursement of medical expenses on the ground that during talks of compromise, the insurance company had agreed to reimburse this amount and there was no proof of this amount being spent on the medical treatment. This contention raised by the appellant must be rejected out rightly. The claimant had adduced documentary evidence before the Tribunal of spending a sum of Rs.1,42,757/- in Apollo Hospital (Ex. PW 1/D-1 to PW 1/D-150) and spending a sum of Rs.1,60,838/- for treatment of deceased in Indian Spinal Injuries Centre (Ex. PW 1/H-1 to PW 1/H-262). Apart from that, the deceased had remained on bed for about two years and an attendant was engaged to look after the deceased who was paid Rs.64,000/- as per the vouchers

(Ex. PW 1/A-1 to PW 1/A-41) produced in the court. The deceased was also subjected to regular physiotherapy and as per documents an amount of Rs.72,000/- was spent on physiotherapy. I, therefore, consider that taking into account the long drawn treatment of the deceased, the Tribunal had rightly allowed medical expense at Rs.3.5 lac.

9. No grievance can be made by the appellant in respect of non-monetary benefits. The battle for life waged by the deceased continued for two long years. The entire family of the deceased, that is, claimants had to undergo suffering and pain due to the agony being suffered by the deceased. Thus, the award of Rs.1 lac for mental agony and frustration is neither on higher side nor unjustified nor amount of Rs.20,000/- for loss of consortium is unreasonable.

10. I find no force in this appeal. The appeal is hereby dismissed.

SHIV NARAYAN DHINGRA J.

MAY 04, 2010
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