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

Date of decision: 21st May, 2012

+ **MAC. APP No.46/2009**

TUSHAR GOEL

Through:

..... Appellant

Mr. Rakesh Tiku, Sr. Advocate
with Ms. Manjusha Wadhwa,
Advocate

Versus

MUKESH KUMAR & ORS.

Through:

..... Respondents

Mr. K.L. Nandwani, Advocate
for the Respondent No.3
Insurance Company

WITH

+ **MAC. APP No.65/2009**

SHEFALI GOEL

Through:

..... Appellant

Mr. Rakesh Tiku, Sr. Advocate
with Ms. Manjusha Wadhwa,
Advocate

Versus

MUKESH KUMAR & ORS.

Through:

..... Respondents

Mr. K.L. Nandwani, Advocate
for the Respondent No.3
Insurance Company

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two Appeals are for enhancement of compensation awarded in favour of Appellant Tushar Goel (MAC. APP. No.46/2009) and Appellant Shefali Goel (MAC. APP. No.65/2009) of ₹7,000/- and ₹50,000/- respectively for having suffered injuries in an accident which occurred on 01.06.2002.
2. The Motor Accident Claims Tribunal (the Claims Tribunal) by an impugned judgment found that there was contributory negligence on the part of Rakesh Goel, driver of the Car No.DL7C-A-2877 and the Respondent No.1 driver of Car No.HR 02-H-9912 in the ratio of 50:50. Hence, while awarding a compensation of ₹7,000/- in favour of the Appellant Tushar Goel and ₹50,000/- in favour of the Appellant Shefali Goel, the Respondents were held liable to pay only 50% of the compensation.
3. In MAC. APP. No.64/2009 titled *Rakesh Goel v. Mukesh Kumar & Ors.* decided by a separate order today, I have already held that the judgment of the Claims Tribunal, Kurukshetra dated 26.04.2005 on the finding of negligence was *res judicata*. The negligence in the said judgment was apportioned as 30% against Rakesh Goel, driver of Car No.DL7C-A-2877 and 70% against the First Respondent driver of car No.HR 02-H-9912. The said finding does not affect the Respondent's liability to pay the compensation as it was not a case of contributory negligence but a case of composite negligence. The fact that

one of the tortfeasors i.e. driver of the Car No. DL7C-A-2877 was the Appellant's father/husband would not make any difference.

4. In *Bherlal v. Kamal Singh*, (2005) 2 TN MAC 39 (Mad), it was held by the Madras High Court that in case of composite negligence a third party travelling in one of the vehicles will not be guilty of contributory negligence. In *T.O. Anthony v. Karvarnani*, (2008) 3 SCC 748, the Supreme Court held as under: -

“6. ‘Composite negligence’ refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands

reduced in proportion to his contributory negligence.”

5. Thus, it is a case of composite negligence and the claimant could have proceeded against either of the tortfeasors.
6. As far as the case of Appellant Tushar Goel is concerned, he was found to have suffered minor bruises. He was examined by the doctors at AIIMS (Ex.PW1/39). There was found to be tenderness on his right thigh. A sum of ₹1500/- was paid to Dr. Sunil Garg, a private medical practitioner. Lumpsum compensation of ₹7,000/- awarded by the Claims Tribunal in the circumstances of the case was just and reasonable.
7. Coming to the case of Shefali Goel, it was claimed that she suffered injuries on her face, chest and left arm. She was discharged from AIIMS on the same day. She remained admitted in a private Hospital i.e. Sukhda Nursing Home for two days. Admittedly, the injuries suffered by her were simple. The Claims Tribunal dealt with the issue of the award of compensation to her as under:

“Shefali, injured aged 37 years complains of injuries head and the face, chest and left arm. She is examined as PW2. In her affidavit, she submits that she was discharged from the AIIMS on the same day and she took private treatment thereafter. She was treated at Sukhda Hospital. In the cross-examination, she admits that she was admitted for two days in Sukhda Nursing Home. She denies a suggestion that she is not engaged in organizing summer camps for the children and that

she is not earning. MLC of Shefali Goel, is produced at Ex.PW2/3 by PW6. The same shows that the patient was treated for lacerated wound above the elbow and two abrasions in the face. These are all simple injuries. Stitches were removed on 07.06.2002, as per Ex.PW2/5. Ex.PW2/6 also does not show that the injuries are grievous in nature which is issued by Sukhda Hospital. Exs.PW2/7 to 2/10 are for a sum of ₹10,000/- towards medical expenses of Sukhda Hospital. Ex.PW2/10 certificate of Dr. Sunil Garg, regarding the professional expenses of ₹4,500/- is not proved on record. In the result, considering the nature of injuries as simple in nature, a lumpsum compensation of ₹50,000/- is allowed on all the allowable heads of compensation. Considering the blameworthiness of respondents, the respondents shall pay 50% of the above sum i.e. a sum of ₹25,000/-(Rupees Twenty Five Thousand Only).”

8. The overall compensation of ₹50,000/- for the injuries suffered by her even if she was prevented from attending to her work for 15 days was just and reasonable. It does not call for any interference.
9. Since I have already held that it was a case of composite negligence, the Respondents No.1 to 3 are liable to pay the entire compensation. The Respondent No.3 United India Insurance Co. Ltd. being the insurer of the offending vehicle is directed to pay the balance compensation along with interest as awarded by the Claims Tribunal by depositing the same in the name of the Appellants in UCO Bank, Delhi High Court Branch within six weeks.

10. The compensation so deposited shall be released in favour of the Appellants.
11. The Appeals are allowed in above terms.

(G.P. MITTAL)
JUDGE

MAY 21, 2012
pst