

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

Date of decision: 30th October, 2012

+ **MAC. APP. 412/2008**

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Ms. Nanita Sharma, Adv. with
Ms. Preeti Bhardwaj, Adv.

versus

SMT. SUNITA AGGARWAL & ORS. Respondents

Through: Mr. O.P. Mannie, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

CM APPL.10374/2008 (Exemption)

Exemption allowed, subject to all just exceptions.

The Application is allowed.

CM APPL.10375/2008 & CM APPL.10376/2008 (delay)

Delay of 21days in filing the Appeal and delay of 220 days in refiling the Appeal is condoned.

The Applications stands disposed of.

MAC. APP. 412/2008

1. Respondent Sunita Aggarwal was awarded a compensation of ₹93,000/- for having suffered injuries in a motor vehicle accident which occurred on 12.06.1997.

2. Respondent Sunita Aggarwal filed her Affidavit testifying that on 12.06.1997 she along with her son Master Rishabh @ Sonu was returning to her house in Maruti Zen No.DL-8C-B-7982 driven by her husband Mukesh @ Umesh. When they reached near bus stand Chatrasal Stadium, Ring Road, Model Town-III, Delhi a tempo No.DIL-7095 which was being driven rashly and negligently was going ahead of their car No.DL-8CB-7982. The tempo driver suddenly applied brakes, blocking the way for the Maruti Car. As a result of this their car rammed into the tempo.
3. On appreciation of evidence, the Claims Tribunal found that the accident was caused because of rash and negligent driving of the tempo as well as of the Maruti car and thus opined that both the vehicles were guilty of composite negligence and thus apportioned the liability to pay the compensation equally on the owner /insured of both the vehicles.
4. Para 15 of the judgment is extracted hereunder:-

15. The manner in which the accident had taken place shows that the car had infact hit the tempo from behind. The car was not being driven at safe distance from the tempo due to which it hit the tempo and sudden brakes were applied by the tempo driver. The car driver had appeared and stated that he was driving at a distance of about 20-25 feet and was at the speed of 40-45 Km/Hr. The tempo also was stated to be in same speed. The vehicles following are required to drive at a safe distance. If the vehicle is not driven at safe distance, there is likelihood of vehicle following dash against the vehicle going ahead in case of sudden brake. The tempo driver stopped without any indication and the car was following the tempo not at a safe distance, therefore, there is composite negligence. It can be apportioned to the extent of 50% to each. Therefore, I am of the opinion that the accident had occurred on account of composite negligence on part of both driver of the car as well as tempo in equal proportion which has resulted in injuries to both the Petitioners.”

5. The finding on negligence reached by the Claims Tribunal was well reasoned and logical. Apart from this, it is important to note that in the connected MAC APP.193/2008 the Appellant New India Assurance Company Limited has not disputed the finding on negligence. In this view of the matter, it would be estopped from challenging the finding on negligence in the instant case also. I am supported in this view by reports of the Punjab and Haryana High Court in *State of Haryana through Secretary Transport Chandigarh v. Sudesh Raizada & Ors.* 1991 ACJ 54; *State of Punjab v. Mehar Devi & Ors.* 1990 ACJ 274 and a judgment of the Karnataka High Court in *Sandhya v. Karnataka State Road Transport Corporation* 2000 ACJ 1565.
6. In *Sudesh Raizada* a number of Claimants had filed Claim Petitions in an accident involving car No.DET-9118 and a Haryana Roadways bus No.HBYX-2428. The Punjab and Haryana High Court noticed that in MACT Case No. 43/1985 titled *Deepak Gupta v. Tarsem Lal*, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of Tarsem Lal, Respondent No.5 driver of Haryana Roadways bus No.HYX-2428 and awarded a sum of ₹54,000/- as compensation to him. The said finding was not challenged by the Haryana Roadways. The Haryana Roadways sought to challenge the finding on negligence in other Claim Petitions. The Punjab and Haryana High Court held that it would not be permissible for the Haryana Roadways to challenge the said finding.
7. Similar view was taken in *Mehar Devi* and *Sandhya*. Thus, apart from the fact that the finding on negligence is logical and well reasoned. The

Appellant New India Assurance Company Limited is estopped from challenging the finding on negligence.

8. The Appeal, therefore, has to fail; the same is accordingly dismissed.
9. Deficiency, if any, in the Court fees shall be made up within four weeks.
10. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.
11. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 30, 2012

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