

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

Date of decision: 1st November, 2012

+ **MAC. APP. 97/2012**

DARWAN SINGH ASWAL & ORS. Appellants
Through: Mr.Kundan Kumar Lal, Adv.

versus

THE UNITED INDIA INSURANCE COMPANY LTD. & ORS.
..... Respondents
Through: Mr. Sameer Nandwani, 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)

1. The Appellants who are the legal representatives of deceased Smt. Dilla Devi take exception to a judgment dated 01.10.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding compensation of ₹4,99,300/-, 30% of the compensation was deducted on the ground that there was contributory negligence as three persons were riding on a two wheeler which meet with an accident with truck No.DL-1GB-3276.
2. At the time of hearing of the Appeal the only ground raised by the learned counsel for the Appellants is that there was no material produced by the Respondents to prove that there was any contributory negligence on the part of deceased Smt. Dilla Devi. The Claims Tribunal, therefore, erred in

holding that the Appellants are entitled to compensation to the extent of only 70% as the motorcyclist also contributed to the accident.

3. The quantum of compensation is not challenged at the time of hearing of the Appeal.
4. While dealing with the issue of contributory negligence, the Claims Tribunal held as under:-

13. In the instant case, from the testimony of PW2 and PW3 I find that near the gate of Laxman Public School, Hauz Khas, when they were going on a motorcycle No. DL-9SM-1802 with Smt. Dilla Devi, a truck DL-1GB-3276 being driven by respondent No. 1 in a rash and negligent manner came at a high speed from behind and hit the motorcycle from its side. Due to this forceful impact, they all fell down on the road and sustained multiple injuries. Smt. Dilla Devi sustained head injuries which resulted in her death. They all were taken to Jai Parkash Narayan Trauma Centre where their MLC were prepared. The police also registered the case against the respondent No.1 vide FIR No. 366/10 at Police Station Hauz Khas. The investigating officer also filed the direct accident report alongwith the report u/s.173 Cr.P.C. Perusal of report and the documents including the site plan reveals that the truck had hit the motorcycle from behind. It perse amounts to negligence. The petitioners have also placed on record the criminal proceedings i.e. copy of FIR, post mortem report, MLC's etc. which clearly prove that respondent No. 1 was rash and negligent. No evidence contrary to this stand has been brought on record by the respondents. The Hon'ble High Court of Delhi in a case titled as 2009 ACJ 287 National Insurance Company Limited Vs. Pushpa Rana has held that where a petitioner files the certified copy of the criminal record showing completion of investigation, issuance of charge-sheet, certified copy of the FIR, all these documents are sufficient proof to come to the conclusion that the driver was negligent. Thus, it is established the offending vehicle was very much involved in the accident which ultimately led to the death of Smt. Dilla Devi and injuries on the persons of Sanjeev Aswal and Rekha. It is also established that Respondent No. 1 was driving the

offending vehicle on the day of accident which was owned by respondent No. 2 and insured with respondent No. 3.

14. It was argued by Ld. counsel for Insurance Company that it was a case of tripple riding which is violation of Motor Vehicle Act and as such it is a case of contributory negligence.

15. It is not in dispute that there were three persons riding on the motorcycle at the time when accident took place. The motorcycle is meant for two persons. Although, in the present case, the motorcycle was hit from behind by the offending vehicle but, when three persons were sit on it, it is in itself an act which shows that driver of the motorcycle was careless and negligent regarding the safety of the vehicle and the persons sitting on the same. Overloading of any vehicle, more so of the two vehiler (wheeler) is a matter which involves danger to the safety of the persons riding on the same. Thus, the motorcyclist is liable to contributory negligence to some extent. In these circumstances of the case and in view of the fact that the motorcycle was hit from behind, I feel that the motorcyclist should be liable for contributory negligence to the extent of 30 percent and the truck driver to the extent of 70 percent.”

5. I have before me the Trial Court record. PW-2 Sanjeev Aswal was the driver of two wheeler No.DL-9S-M-1802. He filed his Affidavit Ex.PW-2/A by way of examination-in-chief testifying that on 14.11.2010 at about 12:35 PM he was proceeding on a two wheeler with his wife Smt. Rekha and mother Smt. Dilla Devi on the pillion. The two wheeler was being driven by him at a normal speed. When they reached in front of the gate of Laxman Public School, PS Hauz Khas, a truck No.DL-1GB-3276 which was being driven by the First Respondent in a rash and negligent manner came from the back and struck against his two wheeler. He testified that all the three occupants fell down and suffered injuries which proved fatal in case of Smt. Dilla Devi. PW-2's testimony on the manner of the accident was not challenged in cross-examination.

6. PW-3 Rekha Aswal corroborated PW-2's testimony. Her version was also not challenged in cross examination except that three persons were riding on the motorcycle. It was not disputed that the truck came from behind and dashed against the two wheeler. The Claims Tribunal, therefore, rightly concluded that the accident was caused on account of rash and negligent driving of the truck driver, but fell into error while holding that the two wheeler driver contributed to the accident because of triple riding. Triple riding on a two wheeler is in contravention of the provisions of the Motor Vehicles Act, 1988 (the Act). Appropriate punishment is provided for triple riding on a two wheeler under Section 128 read with Section 177 of the Act. However, there is no presumption that there would always be negligence on the part of two wheeler driver if three persons are riding on a two wheeler. The negligence has to be established as a fact. In the instant case, as stated earlier, the manner of the accident has not been disputed in cross-examination of the two eye witnesses produced by the Appellants. The Claims Tribunal without any material on record simply on the ground that three persons were riding on the two wheeler concluded that there was contributory negligence. The conclusion of contributory negligence, therefore, cannot be sustained.
7. It is also noteworthy that the deceased Smt. Dilla Devi was not driving the two wheeler. Thus, even if, there was negligence on the part of two wheeler driver, it was a case of composite negligence and not contributory negligence. (*T.O. Anthony v. Karvarnan & Ors.*, (2008) 3 SCC 748) and the Claim Petition was maintainable against either of the tortfeasors.
8. In view of the above, the Appeal must succeed.

9. Respondent Insurance Company shall be bound to pay the entire compensation of ₹ 4,99,300/- awarded by the Claims Tribunal.
10. The balance 30% compensation deducted on account of contributory negligence shall be deposited with the Claims Tribunal within six weeks and shall enure for the benefit of the First Appellant.
11. Seventy five percent of the compensation awarded shall be held in fixed deposit for a period of two years. Rest shall be released on deposit.
12. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 01, 2012

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