

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

Date of decision: 16th July, 2012

+ **MAC.APP. 125/2011**

SUSHILA DEVI & ORS Appellants
Through: Mr.S.C. Singhal, Adv.

versus

YOGESH SINGH & ANR Respondents
Through: Mr. Pradeep Gaur, Adv.
Mr. Amit Gaur, Adv. for R-2.

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 heirs of deceased Lal Bahadur Singh who died in a motor vehicle accident which occurred on 02.07.2003, take exception to a judgment dated 29.10.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of ₹3,86,000/-, deduction of 50% was made on the ground that the deceased was sitting in the vehicle whose driver was also negligent for causing the accident. In other words, it was held that there was contributory negligence and thus, the Respondent National Insurance Company Limited was required to pay a

compensation of ₹1,93,000/- as against the compensation of ₹3,86,000/- payable to them.

2. Following contentions are raised on behalf of the Appellants:-

(i) The accident was caused on account of rash and negligent driving of a truck No.MP-20G-7500 whereas the deceased was sitting in a truck No.MP-17C-3303. The driver, owner and insurer of truck No.MP-20G-7500 were liable to pay entire compensation.

(ii) Even if, it is assumed that there was negligence on the part of both the drivers, it was not a case of contributory negligence but of composite negligence. The owners/insurers of both the vehicles were liable to pay the compensation jointly and severally. In other words, the Appellants could recover the compensation from the owners/insurer of either of the two vehicles.

3. The Appeal must succeed on both the grounds.

4. The Claims Tribunal dealt with the issue of negligence as under:-

“6. PW-2 Sh. Mahesh Singh deposed that he alongwith deceased and other traders was travelling in Truck bearing registration no.MP-17C-3303 on 2.7.2003 with their respective goods. When this ill-fated truck reached near village Gharpata, PS Dhuma, MP on National Highway No.7 there came a truck bearing registration no.MP-20G-7500 from Nagpur side. At that time he had

alighted from the truck to answer the call of the nature and driver of his truck was trying to park it on the left bank of the road. In the meantime, the truck bearing registration no.MP-20G-7500, driven by its driver in most rash and negligent manner and high speed, rammed into the front side of the truck. Due to collision, Lal Bahadur Singh died on the spot. Both the drivers also became victim of the accident and other occupants received injuries. In the end, he stated that accident in question has been caused due to the rash and negligent driving of the offending truck.

7. This witness was cross-examined at length by the Insurance Company. He could not remember the name of driver of his truck. He also failed to re-collect the names of the persons who sustained injuries in the said accident.

8. The police of PS Dhuma, Distt. Sivni, MP had registered two FIRs i.e. FIR No.67/2003 and 68/2003 regarding this accident. FIR no.67/2003 has been registered against the driver of victim truck i.e. truck bearing registration no.MP-17-C3303 and FIR No.68/2003 against the driver of Truck no.MP-20G-7500. In both cases the police has sent cancellation report saying that there was nobody to proceed against as both the drivers had perished. Police did not try to know during investigation which of the driver was at fault. Rough site plan of both FIRs mentions the position of two trucks at far way from each other and are lying on the directions in which they were going. So, these site plans also did not help this Tribunal reaching to any conclusion about the offending vehicle.

9. As per the FIR's, cancellation reports and rough site plans collectively exhibited as Ex.R-1, the position of victim as well as offending truck is evenly balanced because all these documents mention the drive of both

trucks as accused. So, in the opinion of the police, it was a case of contributory negligence.”

5. It may be noticed that PW-2 Mahesh Singh was empathic that the offending truck No.MP-20G-7500 was being driven rashly and negligently and in a zigzag manner, while the truck in which the deceased was sitting, was parked on the left side of the road. This part of PW-2's testimony was not challenged in cross-examination. Unfortunately, the Claims Tribunal held both the drivers to be responsible for the accident on the ground, inter alia, that PW-2's signatures were not appearing either on the inquest proceedings or on any other paper prepared by the police. It was also observed that PW-2 could not give the name of the driver. It is important to note that PW-2's presence at the spot was not disputed. Thus, from PW-2's testimony, it was established that the accident was caused on account of rash and negligent driving of truck No. MP-20G-7500 by its driver Inderjeet Singh, who also died in the accident.
6. Contributory negligence can be attributed to the victim when the victim himself contributes to the accident. When an accident takes place on account of negligence of two or more persons without any fault of the victim, it would be a case of composite negligence and not of contributory negligence.
7. 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.”

8. It is, therefore, clear that there was no contributory negligence on the part of deceased Lal Bahadur Singh. If both the drivers were negligent and both of them along with the owners and insurers were jointly and severally liable to pay the compensation.
9. No other contention has been raised.

10. In view of the foregoing discussion, the amount of compensation of ₹3,86,000/- calculated by the Claims Tribunal was payable by the Respondent No.2 National Insurance Company Limited.
11. The compensation of ₹1,93,000/- has already been paid/deposited. Rest of the amount of ₹1,93,000/- shall also carry interest @ 7.5% per annum from the date of filing of the petition till its payment, as awarded by the Claims Tribunal and shall be deposited by Respondent No.2, the Insurer of the offending vehicle within six weeks before the Claims Tribunal
12. The amount shall be payable to the Appellants in equal proportion.
13. Since this accident took place in the year 2003, 40% of the compensation amount shall be released to them on deposit. Rest shall be held in fixed deposit for a period of three years.
14. The Appeal is allowed in above terms.
15. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 16, 2012

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