

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

Date of decision: 6th November, 2012

+ **MAC APP.162/2004**

DEVI BAI THROUGH LR. Appellant
Through: Mr. Tarun Kashyap, Adv.

Versus

HOSHIAR SINGH & ORS. Respondents
Through: Mr. Yashpal Rangi, Adv. for R-2.
Mr. Pankaj Seth, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is directed against a judgment dated 04.08.2003 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a Claim Petition filed under Section 110-A of the Motor Vehicles Act, 1939 (the Act) was dismissed by the Claims Tribunal on the ground that the negligence was not established.
2. As per the averments made in the Claim Petition one Dropti daughter of the original Claimant (Smt. Devi Bai) was travelling in a bus No.HRX 1624 from Chandigarh to Delhi. At about 10:00 P.M. the bus reached near *Majnu Ka Tila*. The Appellant alleges that the bus was being driven in a rash and negligent manner by the First Respondent. The First Respondent in the process of overtaking a *Rehra* lost control of the bus and rammed into the back portion of a stationary truck which was loaded with steel pipes.

3. During pendency of the Claim Petition Smt. Devi Bai died and her legal representatives who are the Appellants herein were substituted. The Claims Tribunal found that the Appellant failed to adduce any evidence to prove the negligence. Hence, the Claim Petition was dismissed.
4. It is important to note that the driver and the owner of the bus, that is, Haryana Roadways (Respondents No.1 and 2 herein) were impleaded in the Claim Petition apart from the driver, owner and the insurer of the truck No.DEG-4364 which was parked on the road. While holding an inquiry under Section 168 of the Act, it was incumbent on the Claims Tribunal to have been elicited evidence to find out as to whether it was a case of composite negligence or of negligence on the part of driver of the bus or of the truck. In any case, the deceased herself was not to be blamed for the mishap. It is true that number of opportunities were granted to the Appellants to produce evidence. The Claims Tribunal could have exercised its own power to summon the record from the concerned Police Station and if need be the witness cited in the criminal case registered as FIR No.62/1986, Police Station.
5. Since this was an old case under the Act of 1939 an effort was made if the dispute could be amicably settled as the liability under Section 110-A of the Act in this case would not much more than the statutory liability. The Respondents, however, were not inclined to settle the dispute.
6. For the aforesaid reasons, the impugned order is set aside and the case is remanded back to the Claims Tribunal for decision in accordance with law.

7. It may also be noticed that even if no negligence is proved, the Appellants were entitled to compensation as payable at the relevant time on no fault liability.
8. The impugned order is, therefore, set aside. The case is remanded back to the Trial Court. It is made clear that the Appellants shall be granted two opportunities to produce its evidence. The Claims Tribunal shall be entitled to summon evidence from the concerned Police Station.
9. Parties are directed to appear before the Trial Court on 05.12.2012.

(G.P. MITTAL)
JUDGE

NOVEMBER 06, 2012

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