

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

Reserved on: 06th August, 2012
Pronounced on: 16th August, 2012

+ **MAC APP. 311/2004**

DELHI TRANSPORT CORPORATION Appellant
Through: Mr. Jyotindra Kumar, Advocate

Versus

GEETA DEVI & ORS Respondents
Through: Mr. S.L. Gupta, Advocate for the
Respondent No.8 Insurance Company.

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

J U D G M E N T

G. P. MITTAL, J.

1. This Appeal is directed against a judgment dated 22.11.2003 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of Rs.5,55,272/-, Delhi Transport Corporation, owner of bus No.DEP-8917 and insurer of private bus No.DEP-7336, were made liable to pay the compensation in equal proportion on the ground that the accident was caused on account of rashness and negligence on the part of the drivers of both the vehicles.
2. While dealing with the issue of negligence, the Claims Tribunal held as under:

“c. On the other hand, the respondents have produced R3W1 who has proved the attested photocopy of complaint book of the DTC bus Ex.R3W1/A. As per the said document the bus no.8917 of DTC on 20.1.88 at about 8.15 started of

its own suddenly and the accident had taken place and that in the said accident there is no fault on the part of driver and the conductor and the same has been signed by five witnesses.

d. In view of the said evidence on record the learned counsel for the petitioners has contended that drivers of both the said buses were negligent in their respective acts of driving and leaving the other bus unattended at a stop due to which it started rolling down on the road and ultimately collided with the private bus no.7336, the driver of which wanted to over-take the said self moving bus of DTC. The learned counsel for the petitioners has drawn my attention that there is sufficient evidence on the record with regard to the negligent conduct of R4(since deceased) the driver of bus no.DEP-8917 in leaving the bus unattended and that too at a stop due to which it started moving and rolling down without any driver and thus, facilitated the accident. He has further drawn my attention towards the certified copies of the judgment of the criminal court Ex.PW1/7 wherein the PW2 Sh. Rameshwar Rai appeared as PW1 before the criminal court where he had deposed that the bus no.8917 which was standing in front of Shadipur Depot in starting position without any driver started moving ahead. The learned counsel for the petitioners has further drawn my attention towards the statement of PW2 in the present case in which he has deposed that the DTC bus without the driver was ahead of the bus no.7336 and the DTC bus was stationary on a stop. Learned counsel for the petitioners has further drawn my attention towards Ex.r3W1/A, the complaint book of the said DTC bus which mentions that the bus started by itself and accident had taken place. From the said evidence on record the learned counsel for the petitioners has contended that three things emerged from the said deposition of witnesses and documents. Although, the eye witness PW2 Sh. Rameshwar Rai was not consistent with regard to his version before this Tribunal and the criminal court. First, that there was a DTC bus no.8917 which was present in front of Shadipur Depot and was left unattended by its driver and second, the said bus started moving without driver and third that the accident had taken place due to the

said movement of the bus and thus, the driver of the said DTC bus was equally negligent in his conduct of leaving the bus unattended resulting into the accident.

e. On the other hand, learned counsel for R3 has contended that the judgment of the criminal court Ex.PW1/7 is against R1 in which he was convicted and PW2 in the present case has specifically stated that the accident took place due to the negligence of the driver of the private bus and on the basis of the evidence the learned counsel for R3 has submitted that not even a single word has been uttered by PW2 against the driver of the DTC bus and as such no liability can be fastened on R3 for any negligence in the said accident.

f. I am not inclined to accept the contentions of the learned counsel for R3 and I find a great force in the contentions raised by learned counsel for the petitioners. No doubt that the PW2 in the present case has given a little contradictory version with regard to the DTC bus against whatever he has deposed before the criminal court vide judgment Ex.PW1/7. The learned Metropolitan Magistrate has specifically narrated the deposition of PW2 who appeared as PW1 before the said criminal court. The version of Sh. Rameshwar Rai as mentioned in the said judgment Ex. PW1/7 is that the bus no.8917 which was standing in front of Shadipur Depot in starting position without any driver started moving ahead. Whereas in his version given before this Tribunal as PW2 said Sh. Rameshwar Rai has deposed that a DTC bus without the driver was ahead of the present bus which was stationary on a slop. He has further deposed that the accident took place due to the negligence of the driver of the private bus. This Tribunal is not to weigh the evidence before the criminal court and before the tribunal with regard to the negligence of the driver in causing the accident in fine scales. It has to draw a broader conclusion from the circumstances and the evidence brought before the tribunal. Although, there was ample evidence before the criminal court with regard to the negligence of the driver of DTC bus 8917 which started moving without any driver which in itself was speaking the negligent conduct of the driver of the bus in leaving the bus

unattended but it seems that due to the adversary system which has been adopted in the trial of the criminal cases, the learned Magistrate although, having powers to summon and try any other person not made accused by the police, has not given any verdict on the issue of negligent conduct of the driver of the bus no.8917 which was involved in the accident. However, this tribunal is not bound by the evidence before a criminal court which decide the case on the basis of evidence beyond reasonable doubt nor this tribunal is bound by evidence before a civil court which goes by degree of probabilities. Taking into consideration the judgment Ex.PW1/7, the statement of PW2 before this tribunal that the DTC was stationary on a slop and the documents produced by the respondent Ex.R3W1/A which mentions that the bus started by itself resulting into the accident, I am of the opinion that the driver R4 was negligent in his conduct leaving the bus unattended at a place and in the circumstances which facilitated its movement resulting into the accident.”

3. It was established on record that the DTC bus was stationary on the slope at the time of the accident in front of Shadipur Depot. The extract of the complaint book Ex.R3W1/A proved by the Appellant DTC itself shows that the DTC bus started all of a sudden and the accident was caused. The driver of the DTC bus did not appear to depose about the circumstances under which the accident was caused. The conductor of the DTC bus was also not produced. It is not known whether the DTC bus engine was on when it was parked on the slope in front of Shadipur Depot and it started moving or that the engine turned on, on its own. Yet, in the circumstances in which the accident occurred, the Appellant DTC who was owner of bus No.DEP-8917 cannot be absolved of its liability. There was definitely some negligence on the part of the DTC bus driver in parking the bus in front of the Depot on a slope with the passengers

inside whether the engine was on or not. The finding reached by the Claims Tribunal that the driver of the DTC bus was also negligent cannot said to be perverted. I do not find any ground to interfere with the finding on negligence reached by the Claims Tribunal.

4. The Appeal is without any merit; the same is accordingly dismissed.
5. Statutory amount of Rs.25,000/- deposited shall be refunded to the Appellant.
6. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 16, 2012
pst