

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

Date of decision: 9th August, 2012

+ **MAC.APP. 423/2004**

BHARAT SANCHAR NIGAM LTD. Appellant

Through: Mr. R.V.Sinha, Adv. with
Mr. A.S. Singh, Adv.

versus

KAMLA & ORS Respondents

Through: Mr. J.S. Kanwar, Adv. for R-1 to R-8.

+ **MAC.APP. 870/2012**

KAMLA & ORS. Appellants

Through: Mr. J.S. Kanwar, Adv.

versus

BHARAT SANCHAR NIGAM LTD. Respondent

Through: Mr. R.V.Sinha, Adv. with
Mr. A.S. Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Bharat Sanchar Nigam Limited (BSNL) impugns a judgment dated 11.05.2004 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹3,50,000/- was awarded in favour of Respondents No.1 to 8 for the death of Ramesh @ Bhagwan Dass in a motor vehicle accident which occurred on 01.08.2000.

2. MAC APP.870/2012 is the Cross Objections preferred by the Respondents No.1 to 8. For the sake of convenience the Cross Objectionists shall be referred to as the Claimants.
3. A Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act) was preferred by the Claimants alleging that while deceased was riding on his two wheeler, he was hit by a tempo traveler No.DL-2CB-6036 driven in a rash and negligent manner by the Respondent No.9 Ramesh Singh. It was stated that the deceased Ramesh @ Bhagwan Dass was a self employed person by carrying the work of a tailor i.e. overlocking of shirts and trousers.
4. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of tempo No. DL-2CB-6036 by Ramesh Singh.
5. In the absence of any cogent evidence with regard to the deceased's income, the Claims Tribunal took the minimum wages of a skilled worker i.e. ₹2948/- to compute the loss of dependency.
6. It is urged by the learned counsel for the Appellant that the Claimants failed to prove that the accident was caused on account of rash and negligent driving of tempo No.DL-2CB-6036 by the driver Ramesh Singh. Thus, the Claim Petition was liable to be dismissed.
7. On the other hand, it is urged on behalf of the Claimants that it was amply proved that the accident was caused on account of negligent driving by Respondent No.9. It is contended that the compensation awarded was inadequate as no addition was made towards inflation. Reliance is placed on *Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (4)*

SCALE 559 to urged that even in case of self employed person, addition of 30% was required to be made.

NEGLIGENCE:-

8. The learned counsel for the Appellant has taken me through PW-2's testimony to stress his point that although PW-2 claimed himself to be an eye witness of the accident, yet in cross-examination it was established that he did not actually see the accident. It is urged that if PW-2's evidence is excluded, there is nothing to prove that the accident was caused on account of rash and negligent driving of tempo traveler.
9. The learned counsel for the Appellant referred to the testimony of R.S. Rathore R3W1 who was stated to be sitting in the rear portion of the tempo, who testified that the accident was not caused by the tempo.
10. While dealing with the issue of negligence, the Claims Tribunal relied on PW-2's testimony and the registration of a criminal case against Respondent No.9. The Claims Tribunal observed that the driver of the tempo was not produced by the Appellant and relying on *Kaushnuma Begum & Ors. v. New India Assurance Co. Ltd. & Ors.*, 2001 ACJ 428, *Girdhari Lal v. Radhey Shyam & Ors.*, 1993 (II) PLR 109, and *Basant Kaur & Ors. v. Chatarpal Singh & Ors.*, 2003 ACJ 369 held that the negligence for the purpose of a Claim Petition under Section 166 of the Act was established.
11. In his examination-in-chief PW-2 was categorical that he saw the tempo hitting two wheeler from behind and that he reached the spot immediately. In cross-examination he deposed that he saw the accident from a distance of 100 yds. He admitted that he cannot give the speed of

the tempo with certainty. He stated that he reached the spot on hearing sound of collusion.

12. I have before me certified copy of the site plan which shows that the two wheeler No.DL-2SF-1363 and tempo traveler No. DL-2CB-6036 were standing in accidental condition at Point A. R3W1 who was Senior Officer working with the Appellant BSNL did not make any grievance with the IO of the case that the driver has been falsely implicated. No complaint was made either by R3W1 or by the Appellant to the higher officials regarding false implication of the tempo traveler and Respondent No.9 in the accident. Moreover, he was sitting in the rear portion of the tempo, so how could he see the accident taking place.
13. It is well settled that in a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act) negligence has to be proved only on touchstone of preponderance of probability.
14. In *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, the Supreme Court held that in a Petition under Section 166 of the Act, the Claimants were merely to establish their case on the touchstone of preponderance of probability and a holistic view is to be taken while dealing with the Claim Petition under the Motor Vehicles Act. Para 15 of the report is extracted hereunder:

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.”

15. The report in *Bimla Devi* was relied on by the Supreme Court in its latest judgments in *Parmeshwari v. Amir Chand*, (2011) 11 SCC 635 and *Kusum Lata v. Satbir*, (2011) 3 SCC 646.
16. In my view, the negligence was proved on touchstone of preponderance of probability which was sufficient for the purpose of a Claim Petition under the Act.
17. As far as quantum of compensation is concerned, I do agree that the Claimants were entitled to an addition of 30% towards inflation on the basis of judgment of the Supreme Court in *Santosh Devi* which was relied on by this Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012.
18. In this case the numbers of dependents were eight. Thus, deduction towards personal and living expenses was to be one-fifth instead of one-third made by the Claims Tribunal. The loss of dependency comes to ₹5,15,074/- (2948/- + 30% x 12 x 4/5 x 14).
19. The Claimants are further entitled to compensation of ₹25,000/- towards loss of love and affection and ₹10,000/- towards loss of consortium, ₹5,000/- each towards loss to estate and funeral expenses.
20. The overall compensation comes to ₹5,60,074/-.
21. The enhanced compensation of ₹2,10,074/- shall carry interest @ 7% per annum from the date of filing of the Petition till the date of decision as awarded by the Claims Tribunal and @ 7.5% per annum from the date of filing of the Appeal till its deposit with the Claims Tribunal within six weeks.

22. The enhanced compensation shall enure for the benefit of Smt. Kamla.
23. 30% of the enhanced compensation shall be released on deposit. Rest 70% shall be held in fixed deposit for a period of two years, four years, six years and eight years in equal proportion.
24. The Appeal and the Cross Objection are disposed of in above terms.
25. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 09, 2012

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