

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

Date of decision: 12th December, 2012

+ **MAC. APP. 748-752/2005**

BABITA RANI & ORS. Appellants

Through: Mr.R.D.Shahlia, Advocate

versus

HARINDER PAL SINGH CHAWLA & ORS. Respondents

Through: Mr.S.L.Gupta, Advocate

+ **MAC. APP. 1253/2012**

HARINDER PAL SINGH CHAWLA & ANR. Appellants

Through: Mr.S.L.Gupta, Advocate

versus

BABITA RANI & ORS. & ORS. Respondents

Through: Mr.R.D.Shahlia, Advocate

+ **MAC. APP. 1254/2012**

NEW INDIA ASSURANCE CO.LTD. Appellants

Through: Mr.S.L.Gupta, Advocate

versus

BABITA RANI & ORS. & ORS. Respondents

Through: Mr.R.D.Shahlia, Advocate

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These three Appeals (MAC. APP. 748-52/2005, MAC. APP. 1253/2012 & MAC. APP. 1254/2012) arise out of a judgment dated 25th May, 2005

passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while computing the compensation of ₹ 3,80,000/- for the death of Suraj Prakash Gupta, who died in a motor vehicle accident, which occurred on 04.04.2000 the Claims Tribunal held that the accident was caused on account of contributory negligence of the driver of the offending vehicle bearing No.DNA-7364 Respondent No.2 (herein) and also on account of the negligence of the deceased in driving TSR No.DL-1RD-6711. Thus, the Claims Tribunal assessed the deceased's negligence to be 25% and consequently reduced the amount of compensation payable by the Respondents.

2. For the sake of convenience, the Appellants in MAC APP 748-52/2005 shall be referred to as 'the Claimants' and the Appellants in the Cross-Appeals shall be referred to as 'the Respondents'.
3. In MAC APP 748-52/2005, the Claimants' plea is that the accident was caused solely on account of the negligence of the Gypsy driver. The Claims Tribunal erred in holding deceased Suraj Prakash Gupta to have contributed to the accident.
4. It is urged that future prospects/inflation were not taken into consideration while awarding the loss of dependency and that the compensation awarded towards non-pecuniary damages is also on the lower side.
5. On the other hand, the plea raised in the Cross-Appeals by the Respondents is that the accident was caused solely on account of the rash and negligent driving of the TSR No.DL-1RD-6711 by the deceased himself. Thus, the Respondents were not liable to pay any compensation. In any case, there was equal negligence on the part of the drivers of both the vehicles.

NEGLIGENCE

6. I have before me the Trial Court record. The Claims Tribunal dealt with the issue of negligence in Para 8 of the impugned judgment, which is extracted hereunder:-

“8. PW-2 Jai Shankar Verma deposed that on 04.04.01 at about 10:30p.m. he was going from Janak Puri to his residence on old Pankha road and when reached in front of Ram Dutt Enclave, a Gypsy no. DNA-7364 was parked in the middle of the road without any parking light or indication. The deceased Suraj Prakash who was going ahead in three wheeler scooter no. DL-1RD-6711 dashed against the stationery Gypsy no. DNA-7364. As a result of which the three wheeler scooter got smashed and Suraj Prakash received grievous injuries, was removed to hospital by R1. The injured died on 05.05.01 in the morning. He attributed this accident to the wrongful parking of Gypsy no.DNA-7364 by R1. During cross-examination he denied that he had not witnessed the accident or was deposing to benefit the petitioner.

Per contra, R1 deposed that he was driving the vehicle no.DNA-7364 and was going from Inder Puri to Mohan Garden with his family. At that time there was a Tazia procession coming from opposite direction and police had stopped the traffic movement. He stopped his vehicle on the correct side of the road, in the meanwhile a three wheeler scooter no. DL-1RD-6711 came from behind at a high speed and struck against his vehicle. The driver of the vehicle was injured and at the request of police he took him to DDU hospital. He stated that no criminal case was pending against him qua this accident. During cross examination he denied that he had parked his vehicle on the wrong side and head-lights of the vehicle were not on. He further denied that he had suddenly stopped his vehicle DNA-7364 in the middle without giving any indicator lights or no procession was proceeding at that time. He denied that accident occurred due to his negligence.

Ct. Naresh, RIW2 brought the original FIR pertaining to FIR no. 213/01 dt. 05.04.01 of PS Uttam Nagar. As per this

record FIR was cancelled, no charge-sheet was filed and file was sent to record room on 16.07.01. The documents seized alongwith this were placed on record from Ex-R1W2/A to R1W2/L.

In one another judgment of Punjab & Haryana High Court in **Amarjit Kaur & others Vs. State of Punjab & others 2001 ACJ 211** it was held that **Tractor-trolley was parked on half portion of the road and a motor-cyclist dashed against it in the night resulting in his death. No evidence that tractor-trolley had warning lights, red lights or reflectors to warn the drivers of other vehicles. Tribunal held that Tractor driver was rash and negligent.**

To decide this controversy I refer The rules of Road Regulations, 1989 and clause 15 of the same reads as under:

Parking of the vehicle—(1) Every drive of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and if the manner of parking is indicated by any signboard or markings on the road side, he shall park his vehicle in such manner.

(2)(iv) A driver of a motor vehicle shall not park his vehicle- in a main road or one carrying fast traffic.

The facts of judgment in Amarjit Kaur (supra) are almost similar to the facts of case in hand. In this case also the accident had taken place at the main road which carries fast traffic. There is no evidence that warning lights, red light or reflectors were put on to warn drivers of the other vehicles. Even If assertion of R1 is believed that there was some procession and traffic was stopped by police, it cannot be said that vehicle can be parked without warning lights, that too, at 10:30pm. The vehicle driving on the road has to follow the rules of Road Regulations, 1989 in order to secure the safety of other vehicles who also ply on the road.

On the other hand if deceased was vigilant and careful, this accident could have been avoided to some extent. It is observed that he was not careful enough to stop his vehicle before dashing into the parked vehicle. In this context I placed

*my reliance on the judgment of Div. Bench of three judges of Hon'ble Karnataka High Court in **Shrimanti and others Vs. Krishna Deva Madiwal & others, 205 ACJ 350.** In this case motor cycle had hit the on – going vehicle from behind and Hon'ble High Court had attributed this accident to the extent of 25% to the motor cyclist. So in the case in hand I take the contributory negligence of deceased to the extent of 25 %.*

So, after hearing both the parties, and perusing the evidence, adduced on record, I hold that Suraj Prakash died in the road accident on 04.04.01 due to rash and negligent driving of R1 to the extent of 75% and deceased himself contributed this accident to the extent of 25%. Issue No.1 is decided accordingly.”

7. The Claimants' version that Gypsy No.DNA-7364 was parked without any parking light or indication in the middle of the road was supported by the PW-2 an independent witness examined by the Claimants.
8. On the other hand, the Respondents' version is that the Gypsy had to be stopped as some procession was passing from the road.
9. The accident took place at 10.30 p.m., therefore, whether the Gypsy was stationary, or either because it was parked on the middle of the road or because it halted as procession was proceeding, there was no indication that Gypsy was stationary. Thus, the Gypsy driver cannot escape culpable negligence on his part as he was primarily responsible for the accident. At the same time, if the deceased had been fully cautious, he could have also averted the accident. The Claims Tribunal rightly held that the accident was caused on account of the contributory negligence of drivers of both the vehicles. Apportionment of negligence was also rightly made.
10. I am not inclined to take a different view other than the one taken by the Claims Tribunal.

QUANTUM OF COMPENSATION

11. As far as quantum of compensation is concerned, it is contended by the learned counsel for the Claimants that even if there is no evidence with regard to the deceased's future prospects, an addition of 30% should have been made on the basis of the report of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559.
12. I fully agree with the learned counsel for the Claimants.
13. During inquiry before the Claims Tribunal, it was claimed that the deceased was working as a TSR driver and was earning ₹ 5,000/- per month. In the absence of any evidence with regard to the deceased's income, the Claims Tribunal took the Minimum Wages of a skilled worker, that is, ₹ 3,000/- per month to compute the loss of dependency.
14. Thus, I am of the view that the Claimants would be entitled to augmentation to the extent of 30% towards inflation. There were five dependents and at the time of the accident the deceased was aged 46 years.
15. Following the report of the Supreme Court in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the loss of dependency comes to ₹ 4,56,300 (3000/- + 30% x 3/4 x 12 x 13).
16. The Claimants shall be entitled to a sum of ₹ 25,000/- towards loss of love and affection and ₹ 10,000/- each towards loss to estate, loss of consortium and funeral expenses.
17. The overall compensation thus comes to ₹ 5,11,300/-.
18. The Respondents would be liable to pay 75% of this amount, that is, ₹ 3,83,475/- along with interest @ 9% per annum as awarded by the Claims Tribunal.

19. By the impugned judgment the net compensation payable was computed as ₹ 2,85,000/-. The balance compensation of ₹ 98,475/- along with interest as awarded shall be deposited with the Claims Tribunal within six weeks.
20. The entire enhanced compensation shall enure for the benefit of the First Appellant in MAC APP. 748-52/2005, that is, Babita Rani, deceased's wife.
21. Sixty percent of the enhanced compensation shall be held in fixed deposit for a period of three years and five years in equal proportion and the Claimants shall be entitled quarterly interest on the deposit. Rest shall be released on deposit.
22. In view of the above, MAC APP. 748-52/2005 filed by the Claimants is allowed and the Cross-Appeals filed by the Respondents is dismissed.
23. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

DECEMBER 12, 2012

v