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

Date of decision: 21st September, 2012

+ **MAC. APP. No.89/2005**

STATE OF UTTAR PRADESH Appellant
Through: Mr. Anurag Kishore, Advocate

Versus

SHANTI DEVI & ORS Respondents
Through: None

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant State of Uttar Pradesh impugns a judgment dated 09.01.2004 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹8,55,424/- was awarded in favour of the Respondents (Claimants) for the death of Udey Vir Singh who died in a motor vehicle accident which occurred on 01.07.1997.
2. The only ground of challenge raised at the time of hearing is that the deceased himself was negligent in crossing the road. He was unmindful of the traffic coming from Delhi side and thus met with an accident resulting into injury on his person which proved fatal. The learned

counsel for the Appellant has taken me through the testimony of PW2 Jeetpal Singh Tomar and PW3 Ami Chand who were eye witnesses to the accident. PW2 in his examination-in-chief deposed as under:

“Udaiveer Singh was tried(sic trying) to cross Garh-Delhi road. This road was not meant for traffic. The traffic was coming from the Garh side. This road was meant for the traffic coming from Garh side. Since, it was not meant for the traffic coming from Garh side, therefore, Udaiveer Singh was looking towards the traffic coming from the Delhi Side. Thus, I say that the jail van had hit Udaiveer Singh.”

3. It is urged by the learned counsel for the Appellant that the police van had to come on the wrong side because one carriage way of the road was closed, as was admitted by PW3 in his cross-examination. The learned counsel for the Appellant places reliance on *Municipal Corporation of Greater Bombay v. Laxman & Anr*, (2003) 8 SCC 731 in support of his contention that in case of contributory negligence, the Claims Tribunal and Courts should apportion the negligence attributable to both the parties. There is no dispute about the proposition of law as laid down in *Laxman*. At this stage, I would refer to the discussion on negligence by the Claims Tribunal. Para 12 of the impugned judgment is extracted hereunder:

“Onus to prove the facts for this issue was upon the Petitioners and in discharge of that onus the petitioners had produced and examined six witnesses in all namely PW-1 Shanti Devi, the wife of the deceased, PW-2 Sh. Jeet Pal Singh Tomar, PW-3 Sh. Ami Chand, PW-4 Sh. Jaiveer Singh Tyagi, PW-5 Sh. Virender Singh, and PW-6 Dr. A.B. Garg, in all. In her statement PW-1 Smt. Shanti Devi had deposed that Sh. Uday Vir Singh was her husband and that he died in an accident and that he was about 55 years of age at the time of his death and his salary was about ₹10,000/- per month. PW-2 Sh. Jeet Pal Singh Tomar deposed that on 01.07.97 he was present in Delhi Road, Bijleeghar, being an

employee of UPSEB; that Sh. Udey Vir Singh was also attached in his office as a Cable Joinder; that he saw that Udey Vir Singh was coming from Tehsil, Hapur; that he was on foot and was in the process of crossing the road and the jail van came from his left hand side; that Udey Vir Singh tried to cross the Garh-Delhi Road; that this road was not meant for traffic; that the traffic was coming from Garh side; that this road was meant for traffic coming from Delhi side; that it was not meant for the traffic from the Garh side, therefore, Sh. Udey Vir Singh was looking at the traffic coming from the Delhi side. He further deposed that the said jail van had come on the wrong side; that there was middle parti; that the jail van hit the deceased; that Police officials who were in the jail van immediately stopped the vehicle; that they got down from the vehicle and removed the deceased to hospital in the jail van itself. He further deposed that he was about 50 yards away when the jail van hit the deceased; that the number of the jail van was UP-14-2293. He further deposed that the accident had taken place entirely due to the fault of the driver of the jail van. He further deposed that he alongwith other employees had gone to Sneh Nursing Home, where Udey Vir Singh had been taken; that the police officials had arrived there; that the Police officials tried to compromise the matter and hush up the matter and therefore, they did not made any enquiry from them as to who had witnessed the accident. PW-3 Sh Ami Chand also deposed as an eye witness regarding the accident with the said jail van in which Sh. Udey Vir Singh had been hit. Despite cross-examination of these two witnesses there appears no serious dispute or challenge on those material facts and therefore, I find that by the testimony of these two witnesses, the Petitioners have proved that Sh. Udey Vir Singh sustained injuries out of the accident with the jail van No.UP-14-2293, driven by the Respondent No.4. PW-4 Sh. Jaiveer Singh Tyagi has proved the salary of the deceased at ₹9,948/- in accordance with the revised pay-scale effective w.e.f. 1996 and the same are proved as Ex.PW-4/A and 4/B. PW-5 Sh. Virender Singh son of the deceased, who made written complaint against the Police and the same has been proved as Ex.PW-5/A. PW-6 Dr. A.B. Garg had proved the post mortem report of Sh.

Udey Vir singh as Ex.PW-6/A. In view of the testimony of these witnesses against which there is no serious challenge or dispute. I find that the Petitioners have proved that Sh. Udey Vir Singh had died due to the injuries sustained by him in an accident after he was hit by a jail van No.UP-14-2293, driven by Respondent No.4, rashly and negligently and owned by Respondents No.1, 2 and 3.”

4. From the testimony of the two witnesses examined by the Respondents(Claimants), it is apparent that the road on which the accident took place was not meant for the traffic coming from Garh side. The offending vehicle driven by the First Appellant's driver came from Garh side and thus it can be said that it came from the wrong side. A pedestrian while crossing a road must be vigilant enough to observe the traffic coming only from the side from which it is expected to come as per traffic rules. The learned counsel for the Appellant has referred to an Application dated 01.07.1997 where Virender Singh one of the Claimants stated to the SHO that the accident took place as the driver of the police van No.UP-14-2293 wanted to save the buffalo. Even if this application is accepted on its face value the driver cannot wash off his hands of culpable negligence if he mauled a human being to save a buffalo which was stranded on the road.
5. On the basis of evidence adduced before the Claims Tribunal, it was established that the police van No.UP-14-2293 came from the wrong side and struck against the deceased. There was utter negligence on the part of its driver. There is no contributory negligence on the part of the deceased Udey Veer Singh. The finding reached by the Claims Tribunal is well reasoned and does not call for any interference.
6. The Appeal is devoid of any merit; the same is accordingly dismissed.

7. The compensation amount has already been deposited by the Appellant State of Uttar Pradesh. The same shall be released/held in fixed deposit in the name of the Claimants in terms of the order passed by the Claims Tribunal.
8. Statutory amount of ₹25,000/-, if any, shall be refunded to the Appellant.
9. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 21, 2012

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