

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

Date of decision: 19th October, 2012

+ **MAC.APP. 411/2012**

NEW INDIA ASSURANCE COMPANY LTD. Appellant

Through Mr. Abhishek Kumar, Adv.

Mr. Punit Vinay, Adv.

versus

RAJESH KUMAR & ORS. Respondents

Through Mr. Peeyush Sharma, 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 New India Assurance Company Limited impugns a judgment dated 04.02.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) in Case No.57/2010 whereby a compensation of ₹1,14,040/- was awarded in favour of the Respondent Rajesh Kumar for having suffering injuries in a motor vehicle accident which occurred in the early hours of 06.11.2009.
2. On the night intervening 05.11.2009 and 06.11.2009 at about 3:30 A.M. the first Respondent Rajesh Kumar along with his son Ashish Kumar (since deceased) and one Kamal Rajput was returning from DDU hospital on a two wheeler No.DL-4S-BM-4070. The two wheeler was being driven by Kamal Rajput. When they reached the traffic signal at Pankha road and were negotiating a right turn, a truck No.RJ-31G-4278, which was driven by Leelu Singh (Respondent No.2 herein) in a rash and

negligent manner travelled to the side of the two wheeler and rammed into it. On account of the forceful impact, all the three persons fell down. Respondent No.1 Rajesh Kumar survived with grievous injuries, while the injuries in case of Ashish Kumar proved fatal.

3. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of the offending vehicle by Respondent Leelu Singh.
4. At the time of hearing of the Appeal, the only contention raised on behalf of the Appellant Insurance Company is that the accident was caused on account of contributory negligence on the part of First Respondent Rajesh Kumar. Thus, the Appellant Insurance Company should not have been made liable to pay the full compensation of ₹1,14,040/-.

NEGLIGENCE

5. Respondent No.1 Rajesh Kumar who survived the injuries in the accident filed his Affidavit Ex.PW-1/A by evidence testifying about the manner of the accident. He deposed that he along with his son Ashish Kumar (the deceased) and one Kamal Rajput was returning from DDU hospital on a two wheeler No.DL-4S-BM-4070. The two wheeler was being driven by Kamal Rajput. When they reached the traffic point at Pankha road and the two wheeler driver was taking a right turn after giving proper indication, a truck No.RJ-31G-4278, which was being driven by Respondent Leelu Singh in a rash and negligent manner came from Uttam Nagar side. The truck driver took his truck towards the side of the two wheeler and hit it with great force. On account of the forceful impact, they fell down and were dragged upto a considerable distance. In cross-examination on

behalf of the owner and driver of the truck, it was suggested to PW-1 that the accident was caused as the two wheeler driver became nervous. It was, however, not disputed that the truck had not travelled to the side of the two wheeler and rammed into it.

6. Leelu Singh, driver of the truck also filed his own Affidavit Ex.R1W1/A and stated that the accident was caused on account of the sole negligence on the part of the two wheeler driver. The main thrust of Respondent Leelu Singh was on the fact that there were three persons riding on the two wheeler in violation of the provision of the M.V. Act. The exact manner of the accident was not disputed.
7. There is no presumption that there would be negligence on the part of two wheeler driver, if three persons are riding on a two wheeler. The negligence has to be established as a fact.
8. In the instant case, as stated earlier, the manner of the accident as deposed by PW-1 Rajesh Kumar was not seriously challenged. Thus, from PW-1's testimony coupled with the registration of a criminal case against the truck driver under Section 279/304-A IPC, an inference of culpable negligence can be drawn against Respondent Leelu Singh.
9. Thus, the finding of negligence, reached by the Claims Tribunal cannot be faulted.
10. The Appeal is devoid of any merit; it is accordingly dismissed.
11. The statutory deposit of ₹25,000/- be refunded to the Appellant Insurance Company.

12. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

OCTOBER 19, 2012
vk