

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

*Reserved on: 17<sup>th</sup> January, 2012*  
*Pronounced on: 29<sup>th</sup> February, 2012*

+ **MAC. APP. No.415/2011**

NATIONAL INSURANCE COMPANY LTD. .... Appellant

Through: Ms. Neerja Sachdeva, Advocate

Versus

SHYAM SUNDER & ORS

.... Respondents

Through: Nemo

**CORAM:**

**HON'BLE MR. JUSTICE G.P.MITTAL**

### **J U D G M E N T**

**G. P. MITTAL, J.**

1. The Appellant National Insurance Company Ltd impugns a judgment dated 02.02.2011 whereby a Claim Petition under Section 166 of the Motor Vehicles Act filed by the First Respondent was allowed. He was awarded a compensation of ₹51,000/- for having suffered injuries in a motor accident which occurred on 17.01.2006. By the impugned judgment, the Motor Accident Claims Tribunal (the Claims Tribunal) held that the accident was caused on account of rash and negligent driving of Taxi No. DL-IT-5649 which was driven by the Second Respondent, owned by the Third Respondent and insured by the Appellant.

2. Two Taxies were involved in the accident. According to the First Respondent's (the Claimant) version, on 17.01.2006 at about 7:30 p.m. he along with his nephew was returning from his office, and when they reached Ring Road within the jurisdiction of P.S. Naraina and were in the process of crossing the road, a taxi No.DL-IT-5652 (Taxi No.1) which was toeing Taxi bearing Registration No.DL-IT-5649(Taxi No.2) came from Raja Garden's side and struck against the First Respondent. He came under wheels of both the Taxies, due to which he suffered fracture of iliac crest. He was immediately removed to Dr. Ram Manohar Lohia Hospital, and was discharged on the next day. The finding on the quantum of compensation is not disputed by the Appellant who was the insurer of Taxi No.2.
3. The learned counsel for the Appellant urges that Taxi No.1 which was owned by the Fifth Respondent was responsible for causing the accident as it was being driven in a rash and negligent manner by the Fourth Respondent. It is urged that, in any case, the Claims Tribunal in the entire discussion and para 26 of the impugned judgment held that the accident was caused on account of rash and negligent driving of both the drivers, yet in para 27 of the judgment it erred that the Second Respondent was responsible for the accident and fastened the entire liability on the Appellant.

4. A perusal of the FIR, the examination-in-chief and the cross-examination of the Petitioner would reveal that the First Respondent was not consistent as to the manner in which the accident occurred. The Claims Tribunal held that in cross-examination it was not got clarified by the Appellant as to the manner in which the accident took place. The drivers of the two Taxies did not enter the witness box to give their version of the accident. Thus, as stated earlier, in para 26 the Claims Tribunal observed that the accident was caused on account of composite negligence of both the drivers. The Claims Tribunal dealt with the evidence on negligence as under:

*“18. First of all I shall take the contents of the FIR number 16/06 which was lodged by the petitioner. In the FIR it has been mentioned that taxi no. DLIT5649 had been towed with taxi no. DLIT5652. He (petitioner) was passing through from in between these two taxis. Mahesh, driver of taxi no. DLIT5649 had driven the vehicle in a rash and negligent manner and at a fast speed. His taxi had hit him (petitioner). Due to the impact he had fallen on the road. Both the wheels of taxi had passed over his legs. This accident had taken place due to fault of the driver.*

*19. Thus, in the FIR, the petitioner had blamed R1 for this accident.*

*20. I have reproduced the contents of para 23 (i) of the petition. In the petition it has been averred that he (petitioner) came under the wheels of both the offending taxis.*

*21. I have also reproduced the contents of para 2 of the affidavit. In the affidavit Ex. PW1/A it has been*

*averred that taxi no.DLIT5652, which was towing another taxi bearing no. DLIT5649 came from Raja Garden side in a zigzag manner, rashly, negligently without observing traffic rules and regulations and struck against the deponent (petitioner) with a great force.*

*22. Whatever may have been the reason for the petitioner not to incorporate the facts in an intelligible manner with regard to the fact as to which vehicle had actually hit him, the fact remains that in the cross examination conducted on behalf of the respondents nothing was got clarified. Therefore, we have to take into account the FIR, the petition and the affidavit of the petitioner. In none of these documents it is mentioned that only one of the taxis was involved. It was for the respondents, particularly R3, to get it clarified from the petitioner as to which particular taxi had actually hit him. The petitioner, in the petition, has made allegations against the drivers of both the taxis. R1 and R4 have not appeared. As mentioned earlier the written statement was filed only by R2. R1, R4 and R5 did not file their written statement. It is not the case of R1 and R4 that they were not driving their respective taxis. In the absence of any defence of R1 and R4, their plea cannot be accepted. They were the best persons to tell as to how the accident had taken place. In these circumstances, the argument of counsel for R3 that taxi no. DLIT5649 had not caused the accident, cannot be accepted. Here I would like to mention that R3 in its written statement, has, in para 23, denied the manner of accident. Each and every allegation made by the petitioner in para 23 (i) has been denied. R3 could have alleged that the accident had been caused by taxi no. DLIT5652 alone.*

*23. R2 in his written statement has blamed the petitioner for this accident. It has been mentioned*

*that there was no fault of R1. The alleged accident was never caused by R1. He was driving the vehicle with due care and diligence. He (R1) was not rash and negligent. He took every care to avoid the accident. Thus, involvement of taxi no. DLIT5649 has not been denied specifically.*

*24. In view of the above discussion I hold that both the taxis were involved in this accident, in one way or the other. The petitioner may not have been in a position to specifically assert the fault of the each drivers separately.*

*25. R4 could have drawn the attention of the petitioner towards the FIR to confront him (petitioner). It could have been done on behalf of R3. However, it was not done.*

*26. In such like cases, where injuries are suffered by the claimant due to fault of drivers of two vehicles i.e. where it is a case of composite negligence, he is at liberty to seek compensation from either of the two offending vehicles without impleading both of them in the claim petition. He may or may not implead the drivers of both the vehicles. Reliance can be placed on *Surender Bhai Chunni Lal Shah Vs. OIC 2009 ACJ 2527 (Gujarat)* and *New India Assurance Company Vs. Omvati 2010 ACJ 2281 (Delhi)*.”*

5. Whenever one vehicle tows another vehicle, drivers of both the vehicles are expected to be extra cautious because a pedestrian may not be aware that one vehicle is being towed by another. In such circumstances, the speed of the vehicles would depend on the vehicle going ahead (i.e. the vehicle towing another vehicle), but the driver of the vehicle being towed also has the equal responsibility and can warn the driver of towing vehicle

to slow down and to drive carefully. In the absence of any specific evidence, neither of the two drivers can be absolved of the responsibility of causing the accident. It is true that the Claimant's testimony is discrepant whether he was hit by the Taxi No.1 or the Taxi No.2, yet in the absence of either of the two drivers entering the witness box and the fact that Taxi No.1 was towing Taxi No.2 at the time of the accident, both the drivers were guilty of culpable negligence in causing the accident. After having held so, in para 26 of the impugned judgment the Claims Tribunal erred in shifting the entire responsibility of the accident on the Second Respondent. Since the Respondent No.2 and 4 being drivers of Taxi No.1 and Taxi No.2 respectively were guilty of composite negligence, their owners the Respondent No.3 and Respondent No.5 along with both the drivers were jointly and severally liable to pay the compensation. The Appellant being the insurer of Taxi No.2 was liable to indemnify the owner of Taxi No.2 i.e. the Third Respondent.

6. In law the First Respondent was entitled to recover the entire amount of compensation from the owner of Taxi No.2 and the Appellant was under obligation to pay the same.
7. The compensation having been deposited in terms of the order of this Court shall be released in favour of the First Respondent.

8. This order shall be without prejudice to the right of the Appellant to take appropriate proceedings for determination of the extent of liability vis-à-vis the Fourth and Fifth Respondent.
9. The Appeal is allowed in above terms.

**(G.P. MITTAL)**  
**JUDGE**

**FEBRUARY 29, 2012**  
pst