

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

Reserved on: 19th July, 2012
Pronounced on: 16th August, 2012

+ **MAC APP. 569/2011**

NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. Vishnu Mehra and Ms. Sakshi Gupta,
Advocates

Versus

BABY PANDEY & ORS Respondents
Through: Mr. S. Shahi, Advocate for the
Respondents(Claimants).

WITH

+ **MAC APP. 287/2011**

BABY PANDEY & ORS Appellants
Through: Mr. Vishnu Mehra and Ms. Sakshi Gupta,
Advocates

Versus

NEW INDIA ASSURANCE CO. LTD. Respondent
Through: Mr. S. Shahi, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. These two Appeals (MAC. APP.569/2011 and MAC. APP.287/2011) arise out of a judgment dated 20.11.2010 (corrected by an order dated 24.01.2011) passed by the Motor Accident Claims Tribunal(the Claims

Tribunal) whereby a compensation of Rs.10,97,975/- was awarded for the death of Suresh Kumar Pandey who died in a motor vehicle accident which occurred on 31.05.2006.

2. On appreciation of evidence, the Claims Tribunal while relying on *Union of India v. Rajo and Others*, 116 (2005) DLT 226, *N.K.V. Bros (P) Ltd. v. M. Karumai Ammal & Ors.*, (1980) 3 SCC 457 and *Basant Kaur and Others v. Chatarpal Singh and Others*, 2003 ACJ 369 opined that the accident was caused on account of rash and negligent driving of truck No.HR.38A-4881 by the Respondent No.4 Pawan Kumar. It was held that the deceased was employed as an Assistant Personnel with M/s. Workplace Management and Consultant Pvt. Ltd. and was getting a salary of Rs.8,000/- per month. The Claims Tribunal deducted 1/3rd towards personal and living expenses, applied a multiplier of 16 (as the deceased was aged 32 years) to compute the loss of dependency.
3. The compensation awarded is tabulated hereunder:

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Loss of Dependency	₹10,24,000/-
2.	Loss of Love and Affection	₹ 30,000/-
3.	Loss of Consortium	₹ 10,000/-
4.	Medical Expenses	₹ 13,775/-
5.	Loss of Future Prospects	Nil
6.	Pain and Suffering	Nil

7.	Funeral Expenses	₹ 10,000/-
8.	Loss to Estate	₹ 10,000/-
	Total	₹ 10,97,775/-

4. For the sake of convenience, the Appellants in MAC. APP. 287/2011 shall be referred as the Claimants, whereas the Appellants in MAC. APP.569/2011 shall be referred as the Insurer.
5. The following contentions are raised on behalf of the Appellant:
 - (i) The Claimants failed to prove that the accident was caused because of rash and negligent driving of truck No.HR.38A-4881. The negligence having not been proved, the Claimants were not entitled to any compensation. Reliance is placed on *Oriental Insurance Co. Ltd. v. Meena Variyal, 2007 (5) SC 428*.
 - (ii) In any case, it is a case of contributory negligence as the deceased Suresh Kumar Pandey also contributed to the accident. The compensation awarded ought to have been reduced.
6. On the other hand, it is urged by the learned counsel for the Claimants that the negligence was adequately proved on the touchstone of preponderance of probability. The compensation awarded is on the lower side. It was proved that the deceased had good future prospects and an addition of 50% towards future prospects should have been made. Reliance is placed on *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors. (1994) 2*

SCC 176, *Sarla Dixit v. Balwant Yadav*, (1996) 3 SCC 179, *U.P. State Road Transport Corporation v. Trilok Chandra*, (1996) 4 SCC 362 and *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr*, (2009) 6 SCC 121.

7. It is no longer *res integra* that to claim compensation under Section 166 of the Motor Vehicles Act(the Act), the Claimants are required to prove negligence on the part of the driver of the offending vehicle. In the instant case, no eye witness was examined. While dealing with the issue of negligence, the Claims Tribunal held as under:

“17. The petitioner no.1, as PW4, has also stated on oath that the accident in this case has taken place due to rash and negligent driving of respondent no.1. Petitioner no.1 has not been cross-examined by the respondents which indicates that they have impliedly admitted her testimony to be correct.

18. The evidence of PW4 is corroborated by the evidence of PW3 who has deposed that FIR had been lodged regarding the accident and he had been summoned from the criminal Court, Gurgaon where his statement was recorded.

19. It can be seen from the criminal case record that the IO has reached the conclusion after investigation that the driver of the offending vehicle is respondent no.1 and he was driving the offending vehicle in a rash and negligent manner and respondent no.1 is being prosecuted. It is clear that after due investigation, it has been concluded that it is the respondent no.1 and none else who has caused the accident.

20. Respondent nos.1 and 2 apparently did not care to appear before the IO of the criminal case, learned Magistrate or any authority to inform or complain that respondent no.1 has been falsely implicated. Neither respondent no.1 nor respondent no.2 have approached the High Court for quashing the FIR.

21. The conduct of respondent no.1 in the present matter appears to indicate that the accident has been caused by

him. It cannot be disputed that respondent no.1 is facing trial in a criminal case of accident and even the police investigation has concluded that he is the culprit.”

8. Prosecution of a person for rash and negligent driving by itself may not be sufficient to draw an inference of negligence. Yet, when driver of a vehicle is prosecuted for rash and negligent driving and Petition under Section 166 is filed impleading him as the principal tortfeasor and the owner is made vicariously liable, he must come forward to controvert the averments if the accident was not caused by his rash and negligent driving. Legal representatives of a victim, obviously, are not present at the time of the accident. They do not have first hand information as to how the accident occurred. Sometimes, they may be in a position to produce a witness who might have seen the accident taking place, and in some cases, they may not be able to produce an eye witness. When a criminal case is filed against the driver, the driver and the owner must come forward to state the manner of the accident.
9. 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.”

10. 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.
11. In the absence of any rebuttal to the prosecution of the driver under Section 279/304A IPC, the Claims Tribunal rightly took a holistic view to hold that the accident was caused by the rash and negligent driving of the offending vehicle by its driver (Respondent Pawan Kumar).
12. Turning to the quantum of compensation. The Claimants examined PW1 Abhishek Yaduvanshi, Sr. Executive, Human Resources, Workplace Management, who proved the deceased's appointment letter Ex.PW1/2 and his salary certificate Ex.PW1/5. He testified that increment of the employee varies from 10% to 30%. It was, therefore, established that the deceased was in a settled employment. He was a young person aged 32 years. Thus, 50% addition in deceased's income was required to be made as per *Sarla Dixit*, *Susamma Thomas* and *Sarla Verma*. Loss of dependency thus comes to Rs.15,36,000/- (Rs.8,000/- + 50% x 2/3 x 12 x 16) as against Rs.10,24,000/- awarded by the Claims Tribunal.
13. The award of compensation under other heads is not disputed.
14. The compensation is thus enhanced by Rs.5,12,000/- which shall carry interest @ 7.5% per annum from the date of the filing of the Petition till its payment. 50% of the enhanced compensation shall be payable to Ms. Baby Pandey, the First Claimant and 25% each to Ms. Rakhi and Ms. Roopa (Appellants in MAC. APP.287/2011). The compensation awarded

to Ms. Rakhi and Ms. Roopa shall be held in Fixed Deposit till they attain the age of 21 years. 70% of the compensation awarded to Ms. Baby Pandey shall be held in Fixed Deposit for a period of two years, four years, six years, eight years, ten years and 12 years in equal proportion. Rest shall be released on deposit.

15. The insurer The New India Assurance Company Ltd. is directed to deposit the enhanced amount along with interest in the name of the Claimants with UCO Bank, Delhi High Court Branch within six weeks.
16. Both the Appeals are disposed of in above terms.
17. Statutory amount of Rs.25,000/- deposited shall be refunded to The New India Assurance Company Ltd.
18. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 16, 2012
pst