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

% Judgment delivered on: 20th May, 2013

+ MAC.APP. 561/2006

AMAR SINGH Appellant
Through: Mr. Sandeep Gupta, Adv.

versus

USHA RANI & ORS. Respondents
Through: Ms. Manjusha Wadhwa, Adv. with
Ms. Ragini Mehrotra, Manager, Oriental Insurance
Company for R3.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Instant appeal has been filed by the appellant to challenge the award dated 15.05.2006 whereby the appellant was held liable for 40% as contributory negligence of the accident in question.

2. Constable Mahavir Singh, who stated to be the eye witness of the accident, examined as CW3 and deposed that on 01.04.1995 at about 11.30 AM, when he was standing outside the police picket, Mahipalpur, he saw a motorcycle No. DL-1SP-6138 being driven by appellant from wrong side while coming from Dhaula Kuan side and one Scooter no. DL-1SC-1479 was going in right direction. The Motorcycle hit the scooter and scooterist fell down on the road. In the meantime, one Tanker no. DHL-5797 being

driven by Prakash Chand came from Gurgaon side and the scooterist came under the wheel of the aforesaid Tanker.

3. The appellant has put suggestions to the aforesaid witness in cross-examination that he was not coming from Dhaula Kuan side on motorcycle, but from the Gurgaon side. In the cross-examination, it is deposed that the distance between the point where the victim scooterist had fallen down after being collided with motorcycle, and the Tanker, before it ran over the victim, was enough for the Tanker to apply brakes and to avoid the accident.

4. The appellant examined Sh. Rajender Kumar as DW1, who deposed that on 01.04.1995, he was standing at bus stop to catch a bus for going to Sadiq Nagar. It was about 10.30 AM. As soon as the red light turned green one scooterist and one motorcycle came from the side of Gurgaon. Motorcycle was ahead of scooter. Both were running at speed. The scooterist hit the motorcycle from behind. The motorcycle fell on the left side of the scooter and the scooterist fell down a little ahead on the right side. Meanwhile, a tanker came and crushed the scooterist.

5. The appellant himself appeared in the witness box as R4W1. He filed his affidavit stating that on 01.04.1995, he had gone to see off his friend at bus stop on his motorcycle no. DL-1SB-6138 and was on the extreme left side of the road. After his friend alighted from the motorcycle, he was trying to park his motorcycle on extreme left side of the road. All of a sudden, a two-wheeler scooter came from the Gurgaon side and hit the motorcycle at its back, as a result, motorcycle fell down on the road. The scooter and scooterist also fell down in the middle of the road and was

crushed under the Tanker coming from Gurgaon side. He further stated that the police filed a false case against him.

6. While granting compensation, Id. Tribunal has not relied upon the deposition of DW1, who supported the case of the appellant. However, relied upon the statement of CW3, Const. Mahavir, stated to be eye witness of the accident in question.

7. From the above discussion, it is established that scooterist was crushed by the Tanker. If it is presumed that the motorcyclist / appellant hit the scooter, and the scooterist fell on the road, then the Tanker would have saved the scooterist, if driver of the tanker was alert.

8 It established that the Tanker was also being driven in a rash and negligent manner and therefore, without taking the due care has not applied brake properly and crushed the scooterist. Though the Id. Tribunal has held the appellant liable to pay 40% as contributory negligence in question, but in view of the evidence on record, justice will be met if the contributory negligence is reduced from 40% to 30%.

9. In view of the above, appellant is directed to deposit 30% of the award amount within three months from today with the Registrar General of this Court, who shall release the same in favour of the respondent no. 7 / Insurance Company.

10. I here make it clear that the appellant shall pay interest on the award amount up to the filing of the instant appeal and thereafter he is not liable to pay any interest.

11. Instant appeal stands disposed of on the above terms with no order as to costs.

12. Statutory amount, if any, shall be released in favour of the appellant on receiving the compensation amount of his share.

CM. No. 9103/2006

In view of the above, instant application has become infructuous and is disposed of as such.

SURESH KAIT, J

MAY 20, 2013

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