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

% *Judgment delivered on: 10th April, 2013*

+ **MAC.APP. 528/2011 & CM No. 11130/2011**

HARYANA ROADWAYS DELHI Appellant
Through: Mr.Yashpal Rangi, Advocate.

Versus

SUSHILA DEVI & ORS. Respondents
Through: Mr.Vikas Yadav and Ms.Upma
Yadav, Advocates for Respondent
Nos. 1 to 5.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

MAC.APP. 528/2011

1. The instant appeal has been preferred against the impugned award dated 11.01.2011, whereby the learned Tribunal has granted compensation as under:-

“1.	<i>Loss of Income</i>	:	<i>Rs.16,71,705/-</i>
2.	<i>Love & Affection</i>	:	<i>Rs. 50,000/-</i>
3.	<i>Loss of Estate</i>	:	<i>Rs. 10,000/-</i>
4.	<i>Loss of Consortium</i>	:	<i>Rs. 10,000</i>
5.	<i>Funeral expenses</i>	:	<i>Rs. 20,000/-</i>

<i>Total</i>	:	<i>Rs.17,61,705/-</i>
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(Rupees Seventeen Lacs Sixty One Thousand Seven Hundred Five only)

2. Learned counsel appearing on behalf of the appellant has mainly argued that the respondent No.2, Sh. Sangram Singh, alleged to be the eye witness, was not in fact the eye witness, therefore, the learned Tribunal has wrongly relied upon his testimony considering him the eye witness of the incident.

3. The contents of the FIR lodged on the statement of Paras Prasad are as under:-

“.....It is stated that I am residing at the aforesaid address with my family. I am working as Mason. From my house, I started my journey on my scooter no. D.... for Shanti Bhawan Hotel, Mahipalpur. Today on 17/7/06 at 10.30 AM, the Haryana Roadways Bus No.HR 55 B hit with force from behind near Naraina to R.R. Line. Due to said accident, I and the driver of scooter, Sh. Nand Lal S/o Sh. Ram Kishan, R/o H.NO. 263, Pritampura, Shivaji Market, Near Saraswati Vihar, New Delhi got serious injuries and the scooter is also badly damaged. I and my friend Sh. Nandlal have been got admitted in the MI Room of Rajputaja Rifles for First Aid, where Doctor Saheb declared Sh. Nandlal as dead. The bus driver of Haryana Roadways accompanied us to MI Room, whom we have presented before you. Later on, he has been identified as Rupender Singh S/o Sh.Ram Singh, R/o V.P.O. Julana, Distt. Jind, Haryana. A legal action may be taken against him...”

4. Ld. Counsel submits, aforesaid Paras Prasad was the eye witness not respondent no. 2 Sangram Singh. The statement of Paras Prasad, who is informant of FIR and statement of PW2 Sangram Singh is contrary to each other, therefore, none of the statement can be relied upon.

5. To establish the rash and negligent act of the driver of vehicle No.H55B 8458, the learned Tribunal has framed the issue No. 1 as under:-

“Whether deceased Nand Lal had died in motor vehicle accident due to rash and negligent driving of vehicle No.H55B-8458, driven by R-1, owned by R-2and insured with R-3? OPP”

6. As per the deposition of PW-2 Sh. Sangram Singh, he was waiting for his father at RR Line Bus Stand on 17.07.2006 as he was directed to be there as he was working with his father. When his father and Sh. Paras Prasad reached near R. R. Line Bus Stand, a Haryana Roadways Bus bearing registration No. HR-55-B-8458 came from Naraina side, which was going towards Dhaula Kuan Side, driven by respondent No. 1 rashly and negligently and hit scooter bearing No. DDS-0332, driven by his father. After the accident, Sh. Nand Lal and pillion rider fell on the road. Large number of people gathered on the spot and took them in RR Line Hospital for first aid. Nand Lal was examined by the doctor but was declared dead on the same day.

7. However, on perusal of FIR, it emerges that the offending vehicle bearing registration No. HR-55-B-8458 came from the back side and hit the scooter of deceased. He along with pillion rider fell down on the road. Both got admitted in the hospital, thereafter, deceased Nand Lal was declared dead. I do not find any contradiction in the statements of respondent no. 2 and Paras Prasad, the informant of the FIR.

8. I note, in cross-examination of respondent no. 2, merely a suggestion has been put to him that he was not an eye-witness to the

accident, which was denied by him. He has not been confronted with the contents of FIR.

9. I further note, respondent No. 1 did not appear in the witness box to defend the case.

10. Learned counsel appearing on behalf of the appellant has clarified that the said respondent No.1 had expired on 31.07.2009, whereas the evidence was led in October, 2010 in the matter, i.e., much after the death of respondent No.1.

11. Moreover, the police has proved the case by filing the site plan Ex.PA/3, which shows that the deceased was driving the scooter on his correct side, i.e., on the left side. Still he was hit from backside by the offending vehicle. Post-mortem report is Ex.PA/7. The driver of the offending vehicle was arrested vide arrest memo Ex.PA/8.

12. The learned Tribunal taking into account all these documents and depositions of PW-2 (respondent No. 2 herein), decided the issue no. 1 in favour of the claimants (respondents herein) and against the appellant.

13. Secondly, the learned counsel has argued that since there was a contributory negligence on the part of the deceased, therefore, the appellant should have been held liable only for 50% of contributory negligence.

14. Perusal of the Trial Court record shows that the appellant has not produced any witness to prove the defence taken by them

regarding plea of contributory negligence. Therefore, in the absence of any rebuttal given by them, I find no force in the submission made by the learned counsel for the appellant.

15. In view of the above discussion, finding no merit in the instant appeal, the same is dismissed with no order as to costs.

16. The Registry of this Court is directed to release statutory amount of Rs.25,000/- in favour of the appellant.

CM No. 11130/2011 (for stay)

1. Pursuant to order dated 01.06.2011, the appellant has deposited the entire awarded amount with up-to-date interest with the Registrar General of this Court.

2. Learned counsel for the respondents/claimants has informed this Court that earlier an application bearing No.758/2012 for releasing 50% of the awarded amount in favour of respondent No. 1 was moved.

3. It is noted that the aforesaid application was allowed by this Court and 50% of the awarded amount was directed to be released in favour of respondent No.1/Smt. Sushila Devi, wife of the deceased and mother of the remaining respondent Nos. 2 to 5/claimants.

4. Perusal of the office report shows that 50% of the awarded amount, as directed by this Court, has already been released to respondent No.1/Smt. Sushila Devi, wife of the deceased on 23.02.2012.

5. Consequently, in view of the above and dismissal of the instant appeal itself, the Registrar General of this Court is directed to release the balance awarded amount along with up-to-date interest accrued thereon in favour of respondent No.1, named above, in terms of the award dated 11.01.2011 passed by the learned Tribunal.

6. The instant application stands disposed of accordingly.

SURESH KAIT, J.

APRIL 10, 2013

Sb/jg