

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

Date of decision: December 08, 2016

(i) + **MAC.APP. 898/2014**

DELHI TRANSPORT CORPORATION & ANR. ... Appellants
Through: Ms.Avnish Ahlawat & Ms.Latika
Choudhary, Advocates.

Versus

SURENDER KUMAR & ANR. Respondents
Through: Mr.Saurabh Kansal, Advocate for
respondent No.1.
Mr.Priyadarshi Acharya, Advocate
for respondent No.2/Insurer.

(ii) + **MAC.APP. 899/2014**

DELHI TRANSPORT CORPOATION & ANR. ... Appellants
Through: Ms.Avnish Ahlawat & Ms.Latika
Choudhary, Advocates.

Versus

NEETU THAKUR & ORS. Respondents
Through: Mr.Saurabh Kansal, Advocate for
respondent No.1.
Mr.Priyadarshi Acharya, Advocate
for respondent No.6/Insurer.

(iii) + **MAC.APP. 316/2015 & C.M.No.6112/2015**

SURENDER KUMAR Appellant
Through: Mr.Saurabh Kansal, Advocate

Versus

DELHI TRANSPORT CORPORATION & ORS.

..... Respondents

Through: Ms.Avnish Ahlawat & Ms.Latika
Choudhary, Advocates for
respondent No.1/DTC.
Mr.Priyadarshi Acharya, Advocate
for respondent No.3/Insurer.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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1. In the above captioned first two appeals, challenge is on merits to the impugned Award of 3rd July, 2014 which assesses that compensation of ₹31,65,256/- with interest is payable to the legal heirs of deceased *Rishi Thakur*, who had died in a road accident on 23rd May, 2010 and grants compensation of ₹85,834/- with interest to injured- *Surrender Kumar*. Impugned Award grants recovery rights to respondent- Insurer of the Delhi Transport Corporation's bus (*henceforth referred to as the 'DTC bus'*) in question, as DTC had failed to produce the valid permit. Whereas, in the above captioned third appeal, enhancement of compensation is sought by injured-*Surrender Kumar*. The facts unfolded in the testimony of eye witness *Surrender Kumar (PW-2)*, as noted in the impugned Award, are as under:-

"PW-2 Surrender Kumar who has seen the entire accident has stated that on 23/5/2010 at about 6.00 AM he

alongwith Rishi Kumar Thakur were coming in Maruti car bearing no.DL-2CN-2472 from Rewari being driven by deceased Rishi Kumar Thakur. He further stated that when they reached NH-8 near Iron Foot Over Bridge in front of Shankar Vihar, PS Delhi Cantt a DTC bus bearing no. DL-1PC-7213 was going ahead of their car being driven by respondent no.1 Sh. Dalip Kumar rashly and negligently. He further stated that the driver of the bus suddenly and abruptly applied the brakes without giving any indications. Due to which their car collided with the offending vehicle. Rishi Kumar Thakur succumbed to his injuries on 2/6/2010 and Surrender Kumar received head injuries in his nasal bone.”

2. On the basis of evidence led by both the sides, learned Motor Accident Claims Tribunal vide impugned Award has granted the compensation after apportioning it while holding that there was contributory negligence of 50% each on the part of deceased *Rishi Thakur* and the driver of DTC bus in question. On the aspect of contributory negligence, after taking note of the relevant clauses of *Road Regulations, 1989* the finding returned by the learned Motor Accident Claims Tribunal is as under:-

“17. In view of the above clauses duty is cast upon both the vehicle first that the vehicle which is going in the front should not apply its brakes abruptly. At the same time duty is casted upon the vehicle which is following it, to maintain a sufficient distance to avoid any collusion, if the vehicle in

front should suddenly slow down or stop.

18. In the cross-examination Surrender Kumar has admitted that the distance between their car and offending vehicle was 5 to 6 feet meaning thereby their car perilously close to the bus and moment the bus had applied brakes the car collided with the bus causing an accident. The natural corollary is that both the vehicles have done what they were no supposed to do while driving their respective vehicle. And the car must have also been driven at a high speed as a result he could not stop his vehicle in time.

19. Therefore, the Maruti Car being driven by Rishi Kumar Thakur has also contributed towards the happening of the accident. Thus, there is a contributory negligence on the part of Rishi Kumar Thakur for causing the accident to the extent of 50%.”

3. counsel for DTC submits that finding of contributory negligence is unwarranted as negligence was of the car driver, who was driving the car in a rash and negligent manner on a high speed and his car had struck against the DTC bus in question and so, the awarded compensation ought to be paid by the Insurer of the car in question.

4. To appreciate the above contention of learned counsel for DTC, it is relevant to note that the Insurer of the car in question has not been made a party. Be that as it may.

5. Learned counsel for DTC submits that the grant of compensation

of ₹85,834/- with interest to injured *Surrender Kumar* is a just compensation and no case for enhancement of compensation is made out, as he has not produced any evidence regarding his income.

6. To the contrary is the submission of counsel for the injured *Surrender Kumar* who submits that the awarded compensation is on the lesser side and it deserves to be suitably enhanced because injured *Surrender Kumar* had sustained grievous injury i.e. fracture of the nazal bone resulting in disfigurement of his face and thereby reducing his marriage prospects and this fact has not been taken into consideration by the learned Motor Accident Claims Tribunal. It is submitted that reasonable compensation ought to have been granted to injured-*Surrender Kumar* to get plastic surgery done for restoration of his disfigured face.

7. At this stage, learned counsel for DTC submits that compensation awarded to injured *Surrender Kumar* needs to be proportioned in the same manner as has been done in the case of deceased *Rishi Kumar Thakur*. Nothing else is urged on behalf of the parties.

8. Upon hearing and on perusal of impugned Award as well as evidence on record, I find that evidence of DTC bus driver and of injured *Surrender Kumar* cannot be accepted to be gospel truth, as on perusal of the site plan of the spot, which is on record, it appears that the DTC bus driver had suddenly applied the brake and so, the car in question got struck underneath the back portion of the DTC bus at the time of accident. It is so said by injured *Surrender Kumar* in his evidence. In this view of the matter, I find that learned Motor Accident Claims

Tribunal had rightly concluded that the DTC bus driver as well as the car driver were negligent and their negligence has been aptly assessed to be 50% each. Thus, the compensation granted to the legal heirs of deceased *Rishi Kumar Thakur* has been correctly apportioned and on the same analogy, the compensation awarded to injured *Surrender Kumar* also needs to be apportioned.

9. So far as the enhancement of compensation in the case of injured- *Surrender Kumar* is concerned, I find that this injured has nowhere stated in his evidence that there was any disfigurement of his face due to fracture in his nazal bone or that there is need of plastic surgery. So, no case for enhancement of compensation is made out.

10. In view of the above, the impugned Award is modified to the extent that DTC will have the right to recover 50% of the compensation already paid to injured- *Surrender Kumar* from the owner/ insurer of the car in question.

11. With aforesaid modifications, the above captioned three appeals and application are disposed of.

(SUNIL GAUR)
JUDGE

DECEMBER 08, 2016

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