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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 6th December, 2024*+ **MAC.APP. 423/2023 & CM APPLs. 46150/2023, 62215/2024, 62216/2024**

1. **HRTC, NALAGARH**
2. **SH. LEKH RAM** (Driver)

.....AppellantsThrough: Mr. Himanshu Tyagi, Advocate
through VC.

Versus

1. **SAVITA** (Widow)
2. **JYOTI** (Daughter)
3. **SAKSHI** (Daughter)
4. **SHUBAM** (Son)
5. **SURAJ** (Son)
6. **SMT. RAPPATI** (Mother)
7. **SH. KRISHNA DUTT** (Father)

.....Respondents/ClaimantsThrough: Mr. Manish Maini & Ms. Divya
Saini, Advocates for R-1 to 7.**CORAM:**
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**J U D G M E N T** (oral)



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1. The present Appeal under Section 173 of the Motor Vehicles Act, 1988 (*hereinafter referred to as “MV Act”*) has been filed on behalf of the Appellants against the Award dated 01.03.2023 *vide* which a compensation in the sum of Rs.39,35,000/- along with interest @ 7% per annum was granted to the Respondents/Claimants on account of demise of Shri Harish Pandey in a road accident, on 03.04.2018.
2. ***Briefly stated***, on 03.04.2018 at around 3:58 p.m., Shri Harish Pandey with Shri Vijay Ram (*the pillion rider*) while going on a Scooty, were hit by Bus bearing No. HP12-H-7433 (*the Offending Vehicle*) near khampur Red Light, opposite the Bus Stand, GTK Road going towards Bypass, Delhi, resulting in demise of Shri Harish Pandey and injuries to Shri Vijay Ram.
3. The FIR No.150/18 was registered under *Sections 279/337 of the Indian Penal Code, 1860* at Police Station Alipur. Charge Sheet was filed before the Ld. MM. DAR was filed on 03.04.2018, before the Tribunal.
4. The Award dated 01.03.2023 was passed *vide* which compensation in the sum of Rs.39,35,000/- along with interest @ 7% per annum was granted to the Respondents/Claimants on account of demise of Shri Harish Pandey.
5. ***The Insurance Company/Appellant has challenged the Award*** on the ground that the contributory negligence of the deceased Shri Harish Pandey has been wrongly assessed as 20% instead of 50%, as he was driving the Scooty in a rash and negligent manner at a high speed and was unable to control the Scooty and hit into the back side of the bus while it was standing at the red light.
6. It is, therefore, submitted that the contributory negligence of the deceased Shri Harish Pandey should have been assessed as 50% and the compensation amount be revised.



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7. *Learned counsel for the Respondents/Claimants has argued* that there was no contributory negligence on behalf of deceased Shri Harish Pandey.

CM APPL. 62215/2024:

8. The *Claimants have filed the Cross Objections* for challenging the attribution of 20% contributory negligence of deceased, Shri Harish Pandey. It is submitted that the accident was caused as the Bus Driver had applied the brakes suddenly. The negligence of the bus driver, Sh. Lekh Ram is further established from the fact that he has been Charge-Sheeted.

9. Submissions heard and Record Perused.

10. *The Appellants herein have challenged the Award on the ground of contributory negligence.* It has been contended that the contributory negligence of the deceased, Shri Harish Pandey has been assessed at 20%, when infact it should have been atleast 50%. *The Claimants*, on the other hand, have asserted that sole negligence was that of the Bus driver and even 20% contributory negligence as attributed to the deceased, is liable to be revised.

11. *From the facts as narrated above,* it is not in dispute that the accident occurred near the red light where the Bus was rammed into by the Scooty from behind resulting in demise of the Scooty driver.

12. The first material witness examined in this regard by the Claimants was *PW2-Sh. Vijay Ram*, the eye witness who was the pillion rider on the Scooty. He deposed that when they reached near Khampur Red Light, opposite Bus Stand GTK Road, the Himachal Roadways bus, which was ahead of them applied sudden sharp breaks in a rash and negligent manner, consequent to which the Scooty rammed into the back of the Bus and the



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Scooty driver, Shri Harish Pandey died while he suffered grievous injuries. PW2 in his cross-examination clarified that the Bus was going ahead at a distance of about 30-35 steps.

13. The defence of the Appellants, as suggested to PW-2 was that Respondent No.1 had applied the brakes because of the Red Light signal. He stated that the speed of the Bus was about 40-60 kmph. He denied the suggestion that deceased, Shri Harish Pandey had not applied the brakes of his Scooty, and consequently hit the bus from behind.

14. From the testimony of PW2 and the suggestions given by the Respondent/Appellant-the Insurance Company that the brakes had been applied by the Bus driver because of Red Light, corroborates the assertions of the Claimants that it is the Bus which had applied sudden brakes at the Red Light signal.

15. This finds further corroboration from the testimony of *RIW1- Shri Lekh Ram*, the Driver of the offending Bus and *RIW2-Rakesh Kaushal*, Conductor of the Bus who was sitting on his seat, who has deposed on similar lines. They have deposed that the Scooty was being driven by deceased Harish Pandey without maintaining safe distance between two vehicles as per Traffic Rules.

16. The Claimants had put a suggestion to both these witnesses that the driver had tried to cross the chowk on Yellow signal but it suddenly turned Red and he applied sudden breaks and that Harish Pandey tried to take his Scooty on the right side to save himself and also applied brakes but still he dashed into the offending vehicle.

17. From the comprehensive assessment of the evidence, it can easily be gathered that it is the Bus driver who had tried to cross the chowk at Yellow



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light, but because the signal turned Red, he had to apply brakes. The circumstances clearly define the negligence on the part of the Bus driver, who despite the signal being Yellow, had tried to cross the Chowk. It is further evident that the Scooty which was following the Bus, could not have been able to see the traffic signal and that he tried to avoid hitting into the Bus by swirling towards the right side, despite which the accident occurred.

18. This is also borne out from the damage to the two vehicles as mentioned in the Mechanical Inspection Report dated 05.04.2018 prepared during the Investigations which mentions that there was fresh damage on its *'rear right side body corner', lower side portion was found scratched and the right side tail light glass was broken.* Similarly, the Mechanical Inspection Report of the Scooty shows that there was *fresh damage on its front body and its body frame, handle system, headlight bracket, left side indicator light, electric wiring system was damaged. Front side body cover was missing and front number plate was bent.*

19. The Site Plan also corroborates the manner of accident as deposed by the three eye witnesses. It reflects that the accident occurred at point 'A' at the Khampur Bus stop which is close to the Traffic signal. Both the vehicles were going towards Delhi and the offending bus was travelling in front of the Scooty, being driven by the deceased.

20. It is abundantly clear from the testimony of the witnesses and the documents that the accident occurred because the Bus Driver, instead of stopping at the Yellow light tried to cross the signal but had to suddenly stop as the signal turned Red, resulting in the accident. The negligence of the Bus Driver is sufficiently established.

21. It is also established that the Scooty driver, Shri Harish Pandey had



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sufficient control and he also maintained proper distance of about 30-35 steps from the Bus. In the given circumstances, it cannot be said that there was any negligence on the part of the Scooty driver; he maintained safe distance from the Vehicle ahead and the accident occurred due to sole negligence of the Bus Driver.

22. In this regard, reference is made to Regulation 23 of the Rules of the Road Regulations, 1989 which reads as under:

“23. Distance from vehicles in front.- The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop.”

23. In the case of Nishan Singh & Ors. (supra), the Apex Court clarified Regulation 23 and observed that the expression ‘sufficient distance’ has not been defined in the Regulations or elsewhere. The thumb rule of sufficient distance is at least a safe distance of two to three seconds gap in ideal conditions to avert collision and to allow the following driver time to respond. The distance between the two vehicles was about 10-15 feet which was held to be certainly not a safe distance, for which the driver of the Car (which was behind) must take the blame.

24. In the present case, the evidence on record establishes that the driver of the offending bus was rash and negligent in driving as he failed to exercise due care at the Traffic Signal in endeavouring to cross the Signal at Yellow Light and then applying sudden brakes. The driver of the Scooty maintained a safe distance of about 30-35 steps from the bus, and despite applying brakes, the accident could not be averted. It cannot be overlooked that the Scooty is a small vehicle and while trailing the Bus, could not have



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seen the Traffic Signal. Also, while assessing the circumstances, it cannot be overlooked that accidents happen within seconds, on the spur of the moment and what needs to be analysed is whether due care and caution was observed by the Scooty driver. In the circumstances as discussed above, it cannot be said that there was any negligence attributable to the Scooty Driver.

25. *It is, therefore, concluded that the contributory negligence in causing the accident was incorrectly apportioned to the Scooty Driver in the ratio of 20%.*

26. Hence, the Compensation is re-calculated as under:

Sr. No.	Head of Compensation	Amount of Compensation awarded by the Tribunal	Amount of Compensation awarded by this Court
1.	Loss of Dependency	Rs.36,25,000	Rs.36,25,000 (Same)
2.	Loss of Consortium	Rs.2,80,000	Rs.2,80,000 (Same)
3.	Loss of Estate & Funeral Expenses	Rs.30,000	Rs.30,000 (Same)
4.	Less : 20% Contributory Negligence	- 7,87,000	NIL
	TOTAL COMPENSATION	Rs.31,48,000/-	Rs.39,35,000/-

Relief:-

27. The Appeal of the Insurance Company is dismissed while the Cross-



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Appeal of the Claimants is hereby allowed. The Claimants are awarded a *total compensation of Rs.39,35,000/-* along with interest @ 7% per annum from the date of filing of the Petition till the date of deposit. The enhanced compensation be deposited within eight weeks, and be disbursed in terms of the Award dated 01.03.2023.

28. The Appeals are accordingly disposed of along with the pending Applications.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 6, 2024

S.Sharma/va