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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 23rd February, 2015

+ **MAC.APP. 56/2015**

NEETU THAKUR & ORS Appellants

Through: Mr. Nitin Yadav, Adv.

versus

UNITED INDIA INSURANCE COMPANY LIMITED & ORS

..... Respondents

Through: Ms. Latika Chaudhary, Adv. for
Ms. Avnish Ahlawat, Adv. for
DTC.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is directed against the judgment dated 03.07.2014 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.15,82,628/- was awarded in favour of the Appellants for the death of Rishi Kumar Thakur, who died in a motor vehicular accident which occurred on 23.05.2010.
2. The only ground of challenge raised by the Appellants is that the Claims Tribunal erred in holding that there was contributory

negligence to the extent of 50% on the part of Rishi Kumar Thakur, who was driving the Maruti Car bearing registration no.DL-2CN-2472 involved in the accident and thereby reducing the compensation paid to the Appellants being legal representatives of Rishi Kumar Thakur.

3. The learned counsel for the Appellants has taken me through paras 14 to 19 of the impugned judgment which are extracted hereunder:-

“14 As per Appendix XI the maximum speed limit provide for medium and heavy passenger's motor vehicle in 65 Km. per hour.

15 Appendix IV provides rule of road regulations 1989. Clause 24 reads as under:

24. Abrupt brake – No driver of a vehicle shall apply brake abruptly unless it is necessary to do so for safety reasons.

16 Therefore, as per clause 24 no driver of vehicle is allowed to apply sudden brakes unless it is required for safety reasons. At the same time clause 23 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.

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 collision, 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 was 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 not 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%."

4. I have the Trial Court record before me. Surrender Kumar, who was sitting beside Rishi Kumar Thakur in the Maruti car was examined as an eye witness by the Appellants. Said Surrender Kumar filed his evidence Affidavit Ex.PW-2/A. The relevant

portion of the Affidavit with regard to the accident is extracted hereunder:-

“That on 23/05/2010 at about 06:00 AM I along iwth Rishi Kumar Thakur was coming in Maruti Car 800 bearing No.DL-2CN-2472 from Rewari, Haryana, the said car was driven by deceased/Rishi Kumar Thakur as per traffic rules and regulation and when we reached at NH-8, Near Iron Foot Over Bridge, in front of Shankar Vihar, PS Delhi Cantt, New Dlehi a DTC Bus bearing No.DL-IPC-7213 was going ahead of our car, being driven by respondent no.1 in a most rash and negligent manner, in a very high speed in a total contravention of traffic rules and regulations, without caring for the other traffic on the road and suddenly and abruptly respondent no.1 applied the break without giving any indication and caring for the other traffic on the road due to the impact of which our car which was driven by Rishi Kumar Thakur (since deceased) as per traffic rules and regulation and in a normal speed collided with the offending vehicle and I and Rishi Kumar Thakur (since deceased) sustained multiple grievous injuries.....”

5. Surrender Kumar was cross-examined on behalf of the driver and the owner of the offending DTC bus. The relevant portion of the cross-examination is extracted as under:-

“I have not mentioned in my claim petition that an accident had occurred due to the negligence of Rishi Kumar, since deceased. I have correctly mentioned the facts in paragraph 27 C of my claim petition. It is correct that Maruti 800 had gone underneath the back portion of the offending vehicle at the time of accident. It is correct that the aforesaid fact also finds mention in the FIR. The offending bus was running on the right side of the road. It is wrong to suggest that the offending vehicle was plying on the left side of the road. I am not aware as to whether Dilip Kumar /R1 has been charge-sheeted or not. My statement was not recorded by the police. I did not file any complaint against the IO to the higher ups. I did not notice the blue line marked on the road on the date of the accident. The Maruti Car 800 was being driven at the speed of 60 KMPH. There was distance between the Maruti Car and the offending vehicle of 5-6 feet on the date of accident. It is wrong to suggest that the accident was not occurred due to the negligence of the driver of the offending bus. Again said police officials had visited my residence where my statement was recorded. It is wrong to suggest that I had stated in my statement to the police that the offending bus was being driven at a very less speed. Vol. police officials had obtained my signatures on the blank papers stating that the statement shall be recorded as per my version. I did not sign the blank papers of my own. I had made the complaint against the police officials who had obtained my signatures on blank papers by exercising force. I cannot

produce the copy of the complaint made against the police officials in the police station itself. I have not mentioned the aforesaid fact in my claim petition. It is wrong to suggest that I had not made the complaint against the police officials who had obtained my signature on blank paper. It is wrong to suggest that I have falsely deposed about the aforesaid facts that is why I cannot produce the copy of the complaint...”

6. It is the case of the Appellants that while DTC bus bearing registration no.DL-1PC-7213 was being driven rashly and negligently at a very high speed, the Maruti car bearing registration no. DL-2CN-2472 driven by Rishi Kumar Thakur was being driven at normal speed. On common logic, it can very well be said that if the vehicle going in front is going at a very fast speed and the vehicle following it is going at a normal speed, the distance between the two will go on increasing. In the instant case, as per the cross-examination of PW-2, when the driver of the DTC bus applied brake the distance between the DTC bus and the Maruti car was just 5-6 ft. Thus, from the manner of the accident, it is evident that the Maruti car was being driven at a speed which must be more than the speed of

the DTC bus or at least the same speed if the deceased was maintaining the distance of 5-6 ft.

7. In respect of the accident, FIR No.78/2010 was registered in Police Station Delhi Cantt. A closure report was filed by the police in respect of the accident because Rishi Kumar Thakur, who was driving the Maruti car had died and no negligence was found on the part of the DTC bus driver. The Appellants filed a protest petition against the closure report which too was dismissed. It is stated that a Revision Petition was also filed by the Appellants against the dismissal of the protest petition. The learned counsel for the Appellants is not aware of the fate of the Revision Petition. Obviously, the accident occurred in the year 2010 and the closure report and the protest petition must have been filed in the year 2011. We are in the year 2015, if there would have been some favourable result, the same must have been informed by the Appellants to their counsel. In any case, from the material placed on record, the conclusion reached by the Claims Tribunal at least to the extent that there was contributory negligence which the Claims Tribunal assessed as

50% on the part of deceased Rishi Kumar Thakur cannot be faulted.

8. The appeal, therefore, has to fail; the same is accordingly dismissed *in limine*.
9. This will be without prejudice to the rights of the DTC to impugn the judgment on any grounds which may be available to it.
10. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 23, 2015
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