

\$~6 to 9 & 11 to 14

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

Date of decision: 20th March, 2015

+ **MAC.APP. 313/2011**

RELIANCE GENERAL INSURANCE CO LTD Appellant

Through: Mr. Manish Kaushik, Adv. with
Mr. K.L.Nandwani, Adv. &
Mr. Sameer Nandwani, Adv.

versus

SHIV KUMAR SHARMA & ORS. Respondents

Through: Mr. Manu Shahalia, Adv. for R-1 &
R-2.
Mr. Shamindha Kadian, Adv. for R-3
& R-4.

+ **MAC.APP. 318/2011**

RELIANCE GENERAL INSURANCE CO LTD Appellant

Through: Mr. Manish Kaushik, Adv. with
Mr. K.L.Nandwani, Adv. &
Mr. Sameer Nandwani, Adv.

versus

RAJESH KUMAR SHARMA & ORS. Respondents

Through: Mr. Manu Shahalia, Adv. for R-1
Mr. Shamindha Kadian, Adv. for R-3
& R-4.

+ **MAC.APP. 335/2011**

RELIANCE GENERAL INSURANCE CO. LTD. Appellant

Through: Mr. Manish Kaushik, Adv. with
Mr. K.L.Nandwani, Adv. &
Mr. Sameer Nandwani, Adv.

versus

RAJESH KUMAR SHARMA & ORS. Respondents

Through: Mr. Manu Shahalia, Adv. for R-1

Mr. Shamindha Kadian, Adv. for R-3
& R-4.

+ **MAC.APP. 363/2011**

RELIANCE GENERAL INSURANCE CO. LTD..... Appellant

Through: Mr. Manish Kaushik, Adv. with
Mr. K.L.Nandwani, Adv. &
Mr. Sameer Nandwani, Adv.

versus

SUNIL & ORS.

..... Respondents

Through: Mr. Manu Shahalia, Adv. for R-1 &
R-2.
Mr. Shamindha Kadian, Adv. for R-3
& R-4.

+ **MAC.APP. 450/2012**

MASTER DHRUV MEHTA Appellant

Through: Mr. Navneet Goyal, Adv.

versus

VIRENDER SINGH & ORS.

.... Respondents

Through: Mr. Shamindha Kadian, Adv. for R-1
& R-2.
Mr. Pankaj Seth, Adv. for R-3
Insurance Company.

+ **MAC.APP. 490/2012**

MASTER DHRUV MEHTA Appellant

Through: Mr. Navneet Goyal, Adv.

versus

VIRENDER SINGH & ORS.

.... Respondents

Through: Mr. Shamindha Kadian, Adv. for R-1
& R-2.
Mr. Pankaj Seth, Adv. for R-3
Insurance Company.

+ **MAC.APP. 491/2012**

MASTER DHRUV MEHTA Appellant

Through: Mr. Navneet Goyal, Adv.

versus

VIRENDER SINGH & ORS. Respondents

Through: Mr. Shamindha Kadian, Adv. for R-1
& R-2.
Mr. Pankaj Seth, Adv. for R-3
Insurance Company.

+ **MAC.APP. 495/2012**

MASTER DHRUV MEHTA Appellant

Through: Mr. Navneet Goyal, Adv.

versus

VIRENDER SINGH & ORS. Respondents

Through: Mr. Shamindha Kadian, Adv. for R-1
& R-2.
Mr. Pankaj Seth, Adv. for R-3
Insurance Company.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. These eight appeals arise out of an accident which occurred on 20.04.2008 between a Trola bearing registration no.HR-46C-0308 and Santro Car bearing registration no.DL-4CP-0670. It appears that the eight Claim Petitions were filed both by the injured/legal representatives of the deceased for recovery of compensations.

2. Four Claim Petitions came up to be decided by four separate judgments dated 25.01.2012 by Mr. Chandra Bose, Presiding Officer of the Motor Accident Claims Tribunal (the Claims Tribunal), Rohini, Delhi, whereas the other four Claim Petitions were decided by four separate orders dated 04.02.2011 passed by Mr. Sanjay Kumar Aggarwal, Presiding Officer, Motor Accident Claims Tribunal, West District, Delhi posted at Tis Hazari, Delhi.
3. Two separate sets of decisions have led to an anomalous situation, in as much as the extent of negligence held by the respective Claims Tribunals is different. FIR No.88/2008 was recorded in respect of the accident at Police Station Parao, District Ambala. As per the allegations made in the FIR, on the fateful day, *i.e.* on 20.04.2008, Mr. Rajeev Mehta was travelling along with his family members in his Santro car bearing registration no.DL-4CP-0670 from Phagwara to Delhi. When the Santro car reached *Mohra Dukheri Mor*, a Trola bearing registration no.HR-46C-0308 was found to be wrongly parked on the road without any indication. The Santro car driven by Rajeev Mehta dashed in the rear portion of the Trola, as a result of which the driver of the Santro car Rajeev Mehta, Anju Mehta, Parul, Kamla Devi, Rozi Dutta, Sara and Lara, daughters of Late Shri Rajesh and

Piyush, son of Late Shri Rajesh suffered fatal injuries, whereas three other children travelling in the Santro car suffered injuries.

4. On appreciation of evidence in Claim Petitions bearing MACT Nos.399/8, 400/8, 401/8 and 402/8 concerning MAC APP.450/2012, 490/2012, 491/2012 and MAC APP.495/2012 respectively, the Claims Tribunal reached the finding that there was contributory negligence on the part of the driver Rajeev Mehta of Santro Car bearing registration no.DL-4CP-0670. Consequently, in MACT No.399/8, (MAC APP.450/2012), the award of compensation of ₹15,47,416/- was reduced to 50%, the liability of paying the same of the insurer of Trola bearing registration no.HR-46C-0308.
5. On the other hand, in four Claim Petitions being MACT Nos.579/08, 578/2008, 580/2008 and 577/08 concerning MAC APP.313/2011, 318/2011, 335/2011 and 363/2011 respectively, it seems that the eye witness was not produced and hence, by four separate judgments relying on *Kaushnumma Begum & Ors. v. New India Assurance Company Limited, 2001 ACJ 421 SC*, the Claims Tribunal held that there was negligence on the part of the driver of the Trola bearing registration no.HR-46C-0308. Consequently, the compensation awarded was directed to be paid by the driver-owner of the Trola and

in turn by its insurance company, Reliance General Insurance Company Limited.

6. In MAC APP. 313/2011, 318/2011, 335/2011 and 363/2011, the finding on negligence is challenged by the Reliance General Insurance Company Limited whereas in MAC APP.450/2012, 490/2012, 491/2012 and 495/2012, wherein the contributory negligence of the driver of the Santro car has been found by the Claims Tribunal, the finding on negligence is challenged by the victims/legal representatives of the victims.
7. It appears that the filing of the four Claim Petitions in West District and four Claim Petitions in North-West District escaped the attention of the concerned Claims Tribunals, although the Claimants/legal representatives of the deceased were close family members. The factum of eight Claim Petitions arising out of the same accident was not brought to the notice of the Claims Tribunals which has resulted into contradictory findings.
8. The only option which now appears is that the impugned orders have to be set aside and all the eight Claim Petitions have to be tried together so that there may not be any contradictory findings. The

impugned orders are therefore, set aside and all the eight Claim Petitions are remanded back to the Claims Tribunal.

9. All the Claim Petitions shall be tried by a Motor Accident Claims Tribunal of the West District. The learned District and Sessions Judge, West Delhi shall assign the eight Claim Petitions to the Claims Tribunal working in the District.
10. In some of the Claim Petitions, the entire amount has been released whereas in other Claim Petitions, part of the amount has been released. The amount lying deposited in the Court shall be released/refunded to the Reliance General Insurance Company Limited. The amount of compensation which has been released shall be subject to the orders that may be passed by the Claims Tribunal.
11. It is directed that the Claims Tribunal shall decide the question on negligence, quantum of compensation and the liability afresh. There will not be any bar for impleadment of any party/parties in the Claim Petitions.
12. Appeals are disposed of in above terms.
13. Trial Court record shall also be transmitted to the District and Sessions Judge, West Delhi.

14. It is expected that the Claim Petitions shall be disposed of expeditiously and in any case, within a period of four months from the date of first appearance.
15. All the parties shall co-operate in the expeditious disposal of the Claim Petitions. Parties shall be entitled to raise all the issues afresh in respect of compensation and liability.
16. Statutory amount, if any, deposited shall be refunded to the Appellant Reliance General Insurance Company Limited in MAC APP.313/2011, 318/2011, 335/2011 and 363/2011 respectively.
17. Pending applications, if any, also stand disposed of.
18. Parties are directed to appear before the concerned Claims Tribunal to whom the cases may be assigned on 10.04.2015.
19. A copy of the order shall be transmitted to the Claims Tribunal as also to the District and Sessions Judge, West Delhi.

(G.P. MITTAL)
JUDGE

MARCH 20, 2015
vk