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

Decided on: 06th May, 2015

+ **MAC.APP. 668/2011**

NARESH KUMAR ETC.

..... Appellants

Through: Mr.Jatinder Kamra, Advocate

versus

SATENDER KUMAR ETC.

..... Respondents

Through: Ms. Archana Gaur, Advocate
for Respondent no.3

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 24.03.2011 passed by the Motor Accident Claims Tribunal(Claims Tribunal) whereby compensation of Rs.5,08,760/- was awarded in favour of the Appellants for the death of their bachelor son Yogesh Kumar @ Sonu who suffered fatal injuries in a motor vehicular accident which occurred on 26.11.2006.

2. There is twin challenge to the judgment. First, that the Claims Tribunal erred in holding that there was contributory negligence on the part of the deceased and second, that the compensation towards non-pecuniary damages is on the lower side.
3. The learned counsel for Respondent no.3, however, supports the judgment. She urges that the bus bearing no.DL-1PB-3441 was parked on the extreme left side of the road. The motorcyclist was himself negligent and dashed against the stationary bus. It was thus, evident that the Claims Tribunal rightly held 50% contributory negligence on the part of the deceased. It is argued that the compensation awarded is just and reasonable.

NEGLIGENCE:

4. I have the Trial Court record before me. I have perused the testimony of PW-3 Sandeep Malik, solitary witness produced by the parties with regard to the factum of negligence. He testified that on 26.11.2006, he was riding pillion on the motorcycle no.DL-8S-AH-4832 which was being driven by his friend Yogesh. At about 2:45 A.M., when they reached near

Bakshi Petrol Pump, suddenly a speeding vehicle came from behind and in order to give way to the vehicle, the deceased turned his vehicle towards left side where a bus bearing no.DL-1PB-3441 was left abandoned on the road without any indicator or signal. The motorcycle dashed against the rear of the bus due to which deceased Yogesh suffered fatal injuries. This testimony of PW-3 remained unchallenged and unrebutted. The Claims Tribunal, however, held the deceased to have contributed to the accident after relying on some photographs of the spot which reflected that the bus was parked on the left side of the road. I have been unable to find any photograph of the spot of accident in the Trial Court record nor there is any evidence to prove such photographs. The Claims Tribunal, therefore, ought not to have made use of the alleged photographs to hold that the deceased was himself liable for causing the accident.

5. It may be noted that the accident occurred at 2:45 A.M. It is established from PW-3's statement that the offending bus was left unattended without any indicator. Even if, the bus was

parked on the left side without any indicator at 2:45 A.M. on a village road, any unwary driver driving at a normal speed is bound to dash against such vehicle. In his testimony, an explanation has also been given by PW-3 as to how the accident occurred *i.e.* the deceased had turned the vehicle towards left side in order to give way to the vehicle coming from behind. In view of this, the finding that the deceased himself contributed to the accident cannot be sustained; the same is accordingly set aside.

COMPENSATION:

6. The loss of dependency without making any deduction for contributory negligence comes to ₹4,73,760/- as awarded by the Claims Tribunal.
7. As far as non-pecuniary damages are concerned, I grant Rs. 1,00,000/- towards loss of love and affection, Rs. 25,000/- as funeral expenses and Rs.10,000/- as loss to estate in consonance with the three judge bench judgment of the Supreme Court in *Rajesh and Ors. vs. Rajbir Singh and Ors.*

(2013) 9 SCC 54. The overall compensation hence, comes to ₹6,08,760/-.

8. The compensation is thus, enhanced by Rs.1,00,000/- which shall carry interest @ 7.5% per annum from the date of filing of the claim petition till its payment.
9. The enhanced compensation shall be equally shared between the Appellants who are the parents of the deceased. 50% of the enhanced compensation shall be released on deposit. Rest 50% shall be held in Fixed Deposit for a period of two years.
10. Respondent no.3 National Insurance Company Ltd. is directed to deposit the enhanced compensation in UCO Bank, Delhi High Court Branch, New Delhi within six weeks.
11. The appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

MAY 06, 2015
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