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

Pronounced on: 10th April, 2015

\+ **MAC.APP. 887/2012**

DELHI TRANSPORT CORPORATION & ANR..... Appellants

Through: Mrs. Avnish Ahlawat, Adv. with Ms. Anchal Chaudhary, Adv. & Ms. Latika Chaudhary, Adv.
Mr. Gopi Chand from DTC in person.

versus

NAVJYOT SINGH & ORS ..... Respondents

Through: Mr. Vikas Arora, Adv. with Mr. Dheeraj Manchanda, Adv., Mr. Manish Sharma, Adv. & Ms. Radhika Arora, Advocate
Mr. Amit Khatana, Adv. for R-4 & R-5.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellants impugn the award dated 03.05.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of ₹2,18,18,376/- was awarded in favour of Respondents no.1 to 5 for the death of Inderpal Singh (the deceased) who suffered fatal injuries in a motor vehicular

accident which occurred on 31.10.2001.

2. During inquiry before the Claims Tribunal, Respondents no.1 to 5 (Claimants before the Claims Tribunal) examined 7 witnesses to prove negligence and income of the deceased. PW-4 Kanhaiya Lal deposed about the negligence on the part of Appellant no.2 in driving bus no.DL-1PB-2508 belonging to Appellant no.1. Rest of the witnesses mainly deposed about the income of the deceased.

3. Appellants, on the other hand, examined R1W1 Attar Singh, driver of the Delhi Transport Corporation (DTC) bus (Appellant no.2 herein) and R1W2 Raj Kumar, conductor of the bus to prove that the accident was caused because of the deceased's own negligence.

4. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of bus registration no.1PB-2508 by Appellant no.2. On analysing the evidence of PWs 5 to 7 regarding the deceased's income, the Claims Tribunal held the deceased income to be

₹22,76,512/-, deducted 1/4th towards personal and living expenses and applied the multiplier of 14 (deceased being 42 years) to compute the loss of dependency as ₹2,18,03,376/-. The Claims Tribunal further added certain sums towards non-pecuniary damages and proceeded to award the overall compensation of ₹2,18,18,376/- to the Claimants.

5. Following contentions are raised on behalf of the Appellants:-

(i) The accident was caused on account of deceased's own negligence in driving Esteem car bearing registration no.DL-5C-6690. The Claims Tribunal erred in relying on the testimony PW-4 and discarding the testimonies of R1W1 and R1W2.

(ii) Respondents no.1 to 5 failed to prove the deceased's income to be ₹22,76,512/- per annum. The Claims Tribunal illegally took into consideration the evidence of PWs 5,6 and 7, it ought to have awarded compensation on the basis of income tax return (ITR) filed for the Assessment Year 1999-2000 which reflected the annual income of ₹1,29,654.15P.

6. On the other hand, learned counsels for Respondents no.1 to 5 support the impugned award and contend that the negligence on the part of bus driver was sufficiently established that the income of the deceased was duly proved and that the compensation awarded is just and reasonable.

NEGLIGENCE

7. As stated earlier, Respondents no.1 to 5 had examined PW-4 Kanhaiya Lal as an eye witness to the accident whereas Appellants had produced the driver and conductor of the bus in support of their claim that the deceased himself was negligent. It was also the contention raised on behalf of the Appellants that acquittal of the driver in the criminal case for the offence punishable under Section 304-A IPC concludes that there was no negligence on the part of Appellant no.2. The Claims Tribunal, however, made an independent assessment of the evidence to reach the conclusion that Appellant no.2 was negligent and was therefore, responsible for causing the

accident.

8. It is no longer *res integra* that standard of proof of negligence in a criminal case and in a claim petition under Section 166 of the Motor Vehicles Act, 1988 (the Act) are different. It is also well settled that *de hors* acquittal of the driver in a criminal case, the Claims Tribunal is expected to make an independent inquiry to reach a conclusion whether the negligence on the part of driver of the offending vehicle had been proved on the touchstone of preponderance of probability. Reiterating these principles in *N.K.V. Bros. (P) Ltd. v. M. Kurumai Ammal, (1980) 3 SCC 457,* the Supreme Court held as under:-

> *"2…….The plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected and rightly. The requirement of culpable rashness under Section 304-A IPC is more drastic than negligence sufficient under the law of tort to create liability"*

9. A Single Judge of this Court in *State of Haryana and Anr. v. Sh. Ajay Kumar & Ors., MAC APP.69/2005,* decided on 12.11.2007 held as under:-

> *"...Similarly the acquittal of the driver of the*

offending vehicle of the appellant by the criminal court cannot be taken to have any adverse effect on the findings reached by the Tribunal in an independent compensation case. The MACT cases have to be decided on their own footings and the same are not dependant upon the result or an outcome of a criminal case….."

10. In *Bimla Devi & Ors. v. Himachal Road Transport Corporation & Ors., (2009) 13 SCC 530,* the Supreme Court reiterated that the test of standard of proof beyond reasonable doubt could not be applied in a claim petition under Section 166 of the Act and that the Claimants are expected to establish negligence on the touchstone of preponderance of probability.

11. The issue of negligence was discussed at great length by the Claims Tribunal in paras 9 to 11 of the impugned award which are extracted hereunder:-

> *9 Since, the present petition is registered as claim petition under Section 166(4) MV Act, it was incumbent upon the petitioners to establish the factum of negligence attributable to driver, Attar Singh. In the petition itself, it has been detailed that the accident occurred under the circumstances where R-1, Attar Singh was plying the bus, which is a heavy vehicle, on the wrong side of the road due to disruption of traffic and closing of road from one side. Despite the above, the driver was not vigilant and in a head-on collision, struck against the maruti esteem. The above fact is also supported from the charge-*

sheet filed on record. Interestingly, the charge-sheet has been prepared consequent to the FIR lodged at the instance of Raj Kumar, R1W2, the conductor of the bus (who has deposed in favour of respondent No.1- driver in the present petition). The conductor has in no unequivocal terms cited and stated the circumstances in which the accident occurred. From the date of registration of the FIR till the culmination of the criminal proceedings, at no stage, the conductor has denied and disputed his statement made to the police. Neither the contents nor the veracity of the statement has been put to any denial. Even at the stage when he was brought as a witness in the criminal proceedings, he admitted the factum and the accident having been caused by the driver, Attar Singh while plying the bus. He also clearly admitted the site plan which had been prepared at his instance and the photographs of the occurrence taken by the police. For the obvious reasons, the conductor, being an employee of DTC, the respondent herein, has made efforts to conceal the entire truth while making his deposition before the criminal court which fact is now clearly reflected in the conduct of his supporting the erring driver by siding with him as a witness. It be observed that HC Nawab Singh who also tendered his statement before the criminal court, clearly supported the investigation and also affirmed the factum of the statement made by Raj Kumar to him directly. The site plan and the photographs corroborate that the accident occurred on the road meant for plying the vehicles in the directions in which the deceased was plying his maruti esteem car. The photographs as well as the statement made by Attar Singh before this Tribunal, sufficiently shows the impact of the accident as after the accident, the maruti esteem was badly tangled with the bus in such a manner that it continued to be dragged for few metres with the bus and could be separated only with the assistance of *external support on arrival of the police, resulting in immediate death of Inderpal Singh, driver of maruti esteem car, on the spot. Had the bus being plied at a normal manageable speed as is being claimed by the driver, Attar Singh, there was no occasion for the maruti esteem car to be so badly dragged for few metres. The width of the road is also reflective of the fact that the bus was being driven and maneuvered in the way leaving insufficient space for the vehicles coming from the opposite direction despite the two way traffic being managed on the same road by the police.*

10 Merely because the driver has been acquitted by the criminal court, it would not absolve the respondents from the liability as the principles for imparting the compensation under the Motor Vehicles Act are neither akin nor identical to the rigors set for dispensation of justice in the criminal trial where the accused is to be held guilty only when the charges are proved beyond doubt. At the cost of repetition, it be stated that the present proceedings are inquisitorial in nature and are based on the principles of social justice. The object and intent of the legislature while drafting the present enactment has been benevolent and the same is to be made effective. Having regard to the above, more so when the sole witness before the criminal court was the conductor of the bus who turned hostile, no parity can be drawn between the factum of bringing home the guilt of the accused in the criminal proceedings and holding him liable in the present proceedings. It be observed that the family of victim cannot be deprived of what is just to them, merely because an employee under presumable compulsions have opted to change his version, as an after-thought and in a belated act without even disputing his earlier statement rendered immediately after occurrence to the IO.

> *11 It be further observed that the investigation conducted by the IO has not been put to any dispute. There is no averment that the IO has not conducted the investigation fairly and in unbiased manner. The IO, HC Nawab Singh has completed his investigation expeditiously and has filed the chargesheet after having collected sufficient material. In the circumstances above, I am of the view that sufficient material has been placed on record to indite the erring driver for having caused the accident due to rash and negligent act.*

12. Thus, it may be seen that the testimony of R1W2, conductor of the bus was rejected as he himself had stated that he was sitting in the rear portion of the bus and had not seen the accident taking place. The Claims Tribunal further held that the conductor of the bus did not dispute his statement made to the police at any point of time. Thus, his not supporting the Claimants being an employee of the DTC was understandable.

13. It is important to note that the area in which the accident took place has wide road having dual carriageway. One of the carriageway was closed for the traffic as the road was under repair. It is admitted that for this reason, the DTC bus had to come on the wrong side on the single carriageway available

which was meant for the vehicle coming from the opposite direction. It is understandable that when one of the carriageway is closed then the vehicles from both the directions will be obliged to use the single carriageway available. At the same time, there will be an extra duty of care imposed on a driver of a vehicle who enters a carriage way not meant for the traffic coming from the direction for which such a driver is proceeding. In the instant case, not only PW-4, an eye witness has categorically deposed about the negligence on the part of driver of DTC bus (Appellant no.2) but the negligence on the part of driver is *writ large* from the photographs (Ex.PW-1/RC and PW-1/RP) available on the trial court record. It may be noted that the place where the accident occurred, the road has a slight curve. It is also apparent from the photographs that the DTC bus entered the other carriageway and was not on the extreme left of the road leaving insufficient space for the traffic coming from the opposite direction. The fact that the Maruti Esteem car driven by the deceased was dragged for several metres also speaks volumes for the high speed on which the

DTC bus was being driven. Thus, Respondents no.1 to 5 had sufficiently proved that there was culpable negligence on the part of the driver of DTC bus in causing the accident.

14. Consequently, I do not find any error or infirmity in the view taken by the Claims Tribunal with regard to the negligence on the part of the driver of DTC bus. I hereby confirm the finding on negligence.

INCOME OF THE DECEASED

15. There is a great dispute between both the parties as to the income of the deceased Inderpal Singh. It is not in dispute that the deceased had returned a gross income of ₹3,97,861.94P per annum and his net income (after deduction of all expenses being professional) was ₹1,29,654/-. It is urged by the learned counsel for the Appellants that it is this income only which can be taken into consideration as the income tax deducted or any ITR filed after the death of a victim is always suspicious and therefore, much reliance cannot be placed thereon. In support of the contention, the learned counsel referred to the report of

the Supreme Court in *V. Subbulakshmi & Ors. v. S. Lakshmi & Anr., 2008 ACJ 936* wherein it was held that normally the ITRs filed after the death of the victim ought not to be taken into consideration. In the said case ITR filed after ten days of the accident was discarded by the Supreme Court.

16. Turning to the facts of the instant case, Respondents no.1 to 5 examined three witnesses to prove the income of the deceased. There is no gainsaying that the income of the deceased at the time of the death is to be taken into consideration for computing the loss of dependency. First of the witnesses is H.C. Jain (PW-5). He testified as under:-

> *"I am working as Commercial Controller with M/s. Rediffusion DY&R Pvt. Ltd., Building No.9B, 3rd Floor, DLF Cyber City, Gurgaon. I have been deputed vide authority letter dated 15.10.2010, Ex.PW5/A to depose in response to the summons received from the Hon'ble Court. I have brought the record of service of Shri Inder Pal Singh who was working in the company as Creative Director. At the time of his death, he was working in New Delhi office and his remuneration per month was ₹67,750/-. The document is Ex.PW5/B, running into three pages. Over and above, he was also entitled for other annual benefits, LTA ₹9,000/-, Medical ₹5,000/-, Health Club Membership ₹10,000/- and white goods ₹5,000/- per annum. I identify Ex.PW1/6 which is issued from my*

office and the same is true and correct. It is a salary slip for the month of May, 2001 for Shri Inder Pal Singh, for a sum of ₹59,250/-. Over and above this, he was also entitled for ₹3,000/- per month as attire, ₹3,500/- for car allowance including petrol, servicing, repairs of company car, ₹1,000/- on telephone and ₹1,000/- on electricity, thereby making it a total of ₹67,750/- per month. Being a creative person, there was no impediment for Shri Inder Pal Singh to take up third party outside assignments, in his personal capacity."

17. There is a Salary Certificate Ex.PW-1/6 which reads as under:-

"REDIFFUSION-DENTSU, YOUNG & RUBICAM LTD.
7/2 & 7/3 KALU SARAI, VASISHT HOUSE, BEGAMPUR, NEW DELHI, 110017
Payslip for the month of May, 2001

EWMPLOYEE#	209	NAME	INDER PAL SINGH
Join Date :	01/07/2000	PF#	1079
Attendance :	31.00 Days		
Designation :			
DEPARTMENT :	DELHI		

PAYMENTS	**(Rs.)**	**(Rs.)**
BASIC	21,000.00	
CITY COMPENSATORY ALLOWANCE	27,250.00	
HOUSE RENT ALLOWANCE	11,000.00	
TOTAL PAYMENTS:		59,250.00
DEDUCTIONS		
PROVIDENT FUND	2,520.00	
INCOME TAX	15,000.00	
TOTAL DEDUCTIONS:		17,520.00
NEY PAY:		41,730.00

For REDIFFUSION-DENTSU, YOUNG & RUBICAM LTD.
Sd/-
Authorized Signatory"

18. There is another certificate issued by Rediffusion-Dentsu, Young & Rubicam Limited (Ex.PW-5/A) which shows that apart from the Basic pay, Special Allowance and House Rent Allowance as shown in the salary slip for the month of May, 2001, the deceased was also entitled to leave travel expenses of ₹9,000/- per annum and medicines/hospitalisation expenses to the extent of ₹5,000/- per annum.

19. There is a third letter dated 01.04.2000 which will go on to show that the deceased was further entitled to the following expenses:-

> *"1. On attire, subject to a maximum of ₹3,000/- per month.*
>
> *2.On petrol/ servicing/ routine repairs and maintenance of the company car provided to you for official duties, subject to a maximum of ₹3500/- per month.*
>
> *3. On your telephone, subject to a maximum of ₹1,000/- per month towards personal calls.*
>
> *4. On electricity charges subject to a maximum of ₹1,000/- per month."*

20. The salary for the month of May, 2001 is of great import. It does not make any mention of any allowances paid towards

attire, towards petrol and towards telephone or electricity charges. If this amount of ₹8,500/- per month was admissible it was also subject to income tax and the income tax would have been deducted every month on this amount had this been payable to the deceased. Certificate Ex.PW-1/6 reveals that on monthly salary of ₹59,250/-, income tax of ₹15,000/- was being deducted apart from the deduction of ₹2,520/- towards Provident Fund. I am inclined to believe that the multinational companies do pay certain sums towards purchase of medicines/hospitalisation and also leave travel expenses, if it is claimed. This amount was however, not claimed. Since this was reimbursement of expenditure, to my mind, the same cannot be taken into consideration. All the more, author of the letter dated 01.04.2000 who stated that the deceased was entitled to further allowances of ₹8,500/- per month in addition to the one mentioned in the Salary Certificate Ex.PW-1/6, was not produced. As stated earlier, since income tax was not being deducted at source on this amount, I am not inclined to rely on the same.

21. Although the Appellants had disputed the genuineness of the Salary Certificate Ex.PW-1/6 and it is urged that the loss of dependency ought to have been awarded on the basis of the ITR filed for the previous year, yet I see no reason to disbelieve the Salary Certificate Ex.PW-1/6 which mentions the PF number as 1079 and the income tax of ₹15,000/- per month being deducted at source on monthly basis.

22. Now, I turn to the deceased's salary from Arms Communications and Apra Motels. According to Respondents no.1 to 5, the deceased was also working as a Creative Consultant with Arms Communications. As per the Certificate Ex.PW-1/7, a sum of ₹63,225/- was paid to the widow of the deceased vide letter dated 16.08.2003. Similarly, by another Certificate Ex.PW-1/8 from Apra Motels a sum of ₹1,62,000/- was paid to the widow of the deceased Inder Pal Singh as Interior Designing Consultancy charges for the period from April, 2001 to October, 2001. Certificate Ex.PW-1/7 from Arms Communications was stated to be proved by one Praveen Kumar PW-6. However, the author of the same was not

produced. In cross-examination, PW-6 deposed that the Retainership agreement was executed between M/s. Arms Communications Pvt. Ltd. and the deceased. The said document was also not produced. Admittedly, before joining Rediffusion-Dentsu, Young & Rubicam Limited as a regular employee, the deceased was working of his own and was having a gross income of ₹3,97,861/- per annum. The deceased claimed the following expenditure and returned the net income of ₹1,24,697/- for the Assessment Year 1999-2000 as under:-

INDER PAL SINGH
CREATIVE CONSULTANT
PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDING 31ST MARCH, 1999

Particulars	Amount (₹)	Particulars	Amount (₹)
To Artwork/Artist Exp.	30,750.00	By Professional Receipts	3,97,861.94
To photography Exp.	3,464.00		
To Petrol	18,252.69		
To Rent	13,650.00		
To Copywriter Expenses	41,072.00		
To Bks & Periodicals	4,045.00		
To Entertainment	5,086.78		
To Travelling Exp.	25,198.75		
To Professional Charges	1,500.00		
To Bank Charges	200.00		
To Conveyance	4,475.00		
To Fees & Subs.	2,500.00		
To Telephone Exp.	29,009.00		
To Interest/Chg. On car loan	5,953.57		

To Printing & Stationery		1,068.00		
To Salaries		58,800.00		
To Car Repair		4,375.00		
To Depreciation:				
M. Car	21,005.00			
Furn & Fix	2,760.00	23,765.00		
To Net Profit		1,24,697.15		
		3,97,861.94		**3,97,861.94**

BALANCE SHEET AS AT 31ST MARCH, 1999

Capital & Liabilities		Amount (₹)	Assets	Amount (₹)
Inder Pal Singh Cap. A/c		M. Car	1,05,024.00	
		Less Depr.	21,005.00	84,019.00
Op. Bal on 1.4.98 (Cr)	87,778.57	Furn. & Fix.	27,599.00	
		Less Depr.	2,760.00	24,839.00
Add: Net Profit (Cr)	124,697.15	Cash in Hand		1,250.00
	2,12,475.72			
Less: Net Drawings	102,367.72	1,10,108.00		1,10,108.00

23. Of course, income of any person can suddenly increase in the next year, particularly of a professional engaged in creative work. But the same has to be proved by reliable evidence. Since the deceased was already working as an independent creative consultant, it was very easy to obtain the letters after his death to inflate the income.

24. Similarly, although PW-7 deposed that the deceased was working on retainership charges since April, 2001 on

retainership fee of ₹3,24,000/-, it is difficult to comprehend that no payment would be made to the deceased for his work for the period of six months. All the more, anxiety of K.M. Gupta (PW-7) to support the Respondents' case was evident from the fact that PW-7 went on to add that the deceased was entitled to annual appraisal, although if there is a retainership on yearly basis, its terms can always change as per the work performed by an independent person. The judgment in *V. Subbulakshmi & Ors. v. S. Lakshmi & Anr., 2008 ACJ 936* fully applies to the instant case and it is difficult to believe the income of the deceased working as independent Interior Designing Consultant from Apra Motels and Arms Communications.

25. At the same time, as stated above, I see no reason to disbelieve the deceased's income of ₹59,250/- per month or in other words an annual income of ₹7,11,000/-. In the Assessment Year 2002-2003, the liability towards income tax on an income of ₹7,11,000/- was about ₹1,75,000/- and that is why monthly income tax of ₹15,000/- was being deducted at source by the employer.

26. The deceased was survived by aged parents, a widow and two children. Even if father was not dependent, it will not make any difference as the deduction towards personal and living expenses in terms of *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121* will be 1/4 and on applying the multiplier of 14 (deceased being 42 years), the loss of dependency will come to ₹56,28,000/- (7,11,000/- - ₹1,75,000/- (income tax) x 3/4 x 14).

27. In view of the three Judge Bench decision of the Supreme Court in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54,* Respondents no.1 to 5 will be further entitled to a sum of ₹1,00,000/- each towards loss of love and affection and loss of consortium, ₹25,000/- towards funeral expenses and ₹10,000/- towards loss to estate.

28. The overall compensation thus, comes to ₹58,63,000/-. The compensation awarded is reduced accordingly.

<u>APPORTIONMENT</u>

29. While dealing with the question of apportionment, the Claims

Tribunal awarded 15% of the compensation to the two children *i.e.* Respondents no.2 and 3 herein. It is true that the children were young and yet to settle in their lives and Respondent no.1 being a widow has to struggle to rear and bring up the children. At the same time, responsibility to maintain the parents in their old age cannot be undermined. The apportionment made by the Claims Tribunal in the circumstances, giving 50% of the awarded amount to the widow cannot be faulted.

30. This accident took place long back and Respondents no.2 and 3 might have attained majority now. The execution of the impugned award was stayed, subject to deposit of ₹40 lacs, *i.e.* ₹30 lacs in the name of Respondent no.1 and ₹5 lacs each in the names of Respondents no.4 and 5.

31. Vide impugned award, the Claims Tribunal had awarded interest @ 9% per annum. Although, interest rates had started fallen since the beginning of this century, they started firming up since the year 2007. The rate of interest on long term deposit varies at present between 8% to 9%. Senior citizens get an addition of 0.25% to 0.5%. The Claims Tribunal in its wisdom

awarded interest @ 9% per annum with which I will not like to interfere.

32. As stated earlier, the accident took place long back and the execution of the award was stayed subject to deposit of ₹40 lacs. I have hereinabove, affirmed the apportionment of the compensation in favour of the Respondents. The balance compensation along with interest as awarded by the Claims Tribunal shall be deposited separately in the name of five Respondents. In other words, after deducting the amount of ₹30 lacs, balance amount shall be deposited in the name of Respondent no.1 and similarly 15% each of the compensation along with proportionate interest shall be deposited in the name of Respondents no.2 and 3. After deducting a sum of ₹5 lacs each deposited in the name of Respondents no.4 and 5, the balance amount payable along with proportionate interest shall be deposited in the name of Respondents no.4 and 5.

33. It appears from the record that a sum of ₹5 lacs was released in favour of Respondent no.1 and ₹1 lac each in favour of Respondents no.4 and 5. It is directed that on deposit of the

entire balance amount, as indicated above, in UCO Bank, Delhi High Court Branch, New Delhi within six weeks, 50% of the amount awarded (including the amount already released), if any, shall be released in favour of Respondents no.1 to 5. The balance amount awarded to the Respondents shall be held in Fixed Deposit as indicated hereunder:-

(i) Balance 50% of the awarded amount along with proportionate interest shall be held in Fixed Deposit in the name of Respondent no.1 proportionately for a period of 2 years, 4 years, 6 years and 8 years respectively;

(ii) 50% of the awarded amount along with proportionate interest shall be held in Fixed Deposit in the name of Respondents no.2 and 3 for a period of 2 years and 4 years respectively. These Respondents however, shall be entitled to premature withdrawal of the amount to meet the expenses for their higher education or for the purpose of their marriage;

(iii) 50% of amount along with proportionate interest payable to Respondents no.4 and 5 shall be held in Fixed Deposit for a period of 1 year and 2 years respectively in equal proportions; and

(iv) Respondents no.1 to 5 shall be entitled to quarterly interest, if they so desire.

34. The Appeal is allowed in above terms.

35. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

APRIL 10, 2015
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