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

Decided on: 26th February, 2015

\+ **MAC.APP. 730/2012**

KALAWATI DEVI & ORS. .... Appellants

Through: Mr. Anshuman Bal, Adv.

versus

ANIL KUMAR & ORS. ..... Respondents

Through: Mr. R.K. Ahuja, Adv. for R-1 & R-2.
Mr. R.C. Mahajan, Adv. for R-3
Mr. R.K. Sahni, Adv. with Mr. Rajiv Raheja, Adv. for R-5.

\+ **MAC.APP. 978/2012**

BRAHM PRAKASH .... Appellant

Through: Mr. R.K. Sahni, Adv. with Mr. Rajiv Raheja, Adv.

versus

KALAWATI DEVI & ORS. ..... Respondents

Through: Mr. Anshuman Bal, Adv for R-1 to R-5
Mr. R.K. Ahuja, Adv. for R-6 & R-7.
Mr. R.C. Mahajan, Adv. for R-8

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

JUDGMENT

G. P. MITTAL, J. (ORAL)

1. These two appeals arise out of a judgment dated 28.04.2012 passed by the Motor Accident Claims Tribunal (the Claims

Tribunal) whereby compensation of ₹39,74,135/- was granted in favour of Appellants no.1 to 5 in MAC APP.730/2012 and Respondents no.1 to 5 in MAC APP.978/2012.

2. As per the case set up before the Claims Tribunal, the accident was caused because of negligence of drivers of van no.DL-7CB-3884 and truck no.HR-55G-9576. It was claimed before the Claims Tribunal that deceased Ramesh Kumar Singh was earning a salary of ₹36,760/- per month. After deducting allowance personal to the deceased, the Claims Tribunal deducted 1/4th towards the personal and living expenses and adopted the multiplier of 15 as per the age of the deceased (37 years) to compute the loss of dependency at ₹39,24,135/-. The Claims Tribunal further awarded certain sums towards non-pecuniary damages.

3. The Maruti Van bearing registration no.DL-7CB-3884 was allegedly owned and being driven by Sanjay at the time of the accident whereas Brahm Prakash was the registered owner of the van. The truck involved in the accident was being driven by Respondent Anil Kumar. It was owned by Rajan Dua and was

insured with the Oriental Insurance Company Limited.

4. In the absence of any appeal by the driver, owner or the insurer of the two vehicles, the finding on negligence has attained finality.

5. For the sake of convenience, the Appellants in MAC APP.730/2012, who are the Claimants before the Claims Tribunal and Respondents no.1 to 5 in MAC APP.978/2012 shall be referred to as the Claimants. Oriental Insurance Company Limited, who was the insurer of truck bearing registration no.HR-55G-9576 shall be referred to as the insurer. Sanjay, who was the purchaser of Maruti van bearing registration no.DL-7CB-3884 from Brahm Prakash shall be referred to as the owner, whereas Respondent Brahm Prakash, who is Respondent no.5 in MAC APP.730/2012 and Appellant in MAC APP.978/2012 shall be referred to as the registered owner.

6. Following contentions are raised on behalf of the Claimants:-

(i) Deceased Rakesh Kumar Singh was in permanent employment having good future prospects, the Claims Tribunal ought to have made addition of 50% towards future prospects;

(ii) Compensation awarded towards non-pecuniary damages is on the lower side; and

(iii) In case of composite negligence, the victim is entitled to recover compensation from either or both of the tortfeasors. Reliance is placed on the judgment of this Court in *Vivek Puri v. Man Mohan Singh & Ors., FAO 161/2000, decided on 03.09.2012.*

7. In the appeal preferred by the registered owner, the plea taken by him is that in accordance with the provision of Section 50 of the Motor Vehicles Act, 1988 (the M.V. Act), he had informed the concerned registering authority about the sale of the vehicle within the stipulated time and therefore, he had no liability at all.

8. The contention raised on behalf of the insurer is that since composite negligence has been held and the extent of

negligence of each vehicle was determined by the Claims Tribunal and the same has attained finality, the Claimants cannot be permitted to enforce the award in entirety against the insurer, *i.e.*, the insurer is not liable to pay the compensation which falls to the share of the owner and insurer of Maruti van bearing registration no.DL-7CB-3884. Further, in any case, if this Court finds that the insurer of the truck is liable to pay the compensation as a joint tortfeasor, it ought to be granted recovery rights.

MULTIPLICAND AND QUANTUM OF COMPENSATION

9. I have the Trial Court record before me. The salary slips of deceased Ramesh Kumar Singh for the period of April, 2009 to October, 2009 were placed on record. The salary slips reveal uniform gross salary of ₹23,358/- per month, there is a second salary slip for the month of October, 2009 which reflects that the revised salary *w.e.f.* 01.10.2009 was ₹36,760/- per month. The only difference in the salary from April, 2009 to October, 2009 and the second salary slip of October, 2009 is that payment under the head of other allowance has been shown as

₹16,822/- in this slip whereas in other salary slips this amount has been consistently shown as special allowance of ₹4200/-. In fact, in the salary slip, mark A also for the month of October, 2009, the special allowance of ₹4200/- has been reflected and there is no mention of the other allowance of ₹16,822/-.

10. The Claimants examined Bharat Bhushan Madan, Branch Manager of the deceased's employer as PW-2. He simply deposed and proved the salary slips from April, 2009 to October, 2009. He was categorical that the company used to give increase in salary in the month of April every year. A suggestion was given to this witness that the salary record has been forged and fabricated, which of course was denied by the witness.

11. At the same time, the witness stated that he had no personal knowledge regarding the record brought by him as he was not working in the account's department. The Claimants have not led any evidence as to what was this special allowance of ₹16,822/- suddenly granted in the month of October, 2009 just before the unfortunate accident which occurred on 01.11.2009.

A letter Ex. PW-1/7 has also been placed on record by Claimant no.1 wherein it was stated that the salary of the deceased (CTC) has been raised to ₹4,41,120/-. This letter was not got proved from the employer of the deceased. In view of the contradictory salary slips, I am of the view that the sudden increase just before the month of the accident, particularly when PW-2 was categorical that as per the policy of the company, increment is given only in the month of April every year, it is not believable that the salary of the deceased was increased suddenly *w.e.f.* October, 2009.

12. The Salary slips further reveal that the deceased was being paid a transport allowance of ₹800/- and conveyance allowance of ₹2,000/- per month. I am inclined to accept the gross salary as ₹23,358/- after deducting uniform allowance of ₹833/- and uniform maintenance allowance of ₹500/-. I will take the amount of ₹800/- transport allowance to be a part of the salary for the purpose of deduction towards personal and living expenses and the conveyance allowance of ₹2,000/- as an allowance incidental to employment. Thus, salary for the

purpose of computing the loss of dependency will be as under:-

Basic	9050/-
HRA	4,525/-
Transport Allowance	800/-
Education allowance	200/-
Medical Allowance	1250/-
Special Allowance	4200/-
Total	**20,025/-**

13. HRA of ₹4525/- will be non taxable if spent on renting a house. Similarly, transport allowance of ₹800/- will also be non taxable as per the Income Tax Act, 1961.

14. It has come on record that deceased Ramesh Kumar Singh was working with Innovators Façade Systems Pvt. Ltd. for the last four years. PW-2 testified that the deceased had joined the company before his appointment. He also stated that the salary of the employees used to be increased every year in the month of April. Since the deceased was in settled employment earning increments, I tend to award 50% towards future prospects even though previous salaries for the years 2006, 2007 and 2008 have not been proved.

15. After deducting HRA and transport allowance for the purpose of calculation of income tax, there will be liability of income

tax of about ₹1,640/- on the annual income of the deceased.

16. The loss of dependency thus, comes to ₹40,27,388/- (2,40,300/- - 1,640/- (income tax) + 50% x 3/4 x 15).

17. On the basis of the three Judge Bench decision of the Supreme Court in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54,* the Claimants are 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.

18. The overall compensation comes to ₹42,62,388/-.

LIABILITY

19. As far as liability of the registered owner Brahm Prakash (Appellant in MAC APP.978/2012) is concerned, Section 50 of the M.V. Act obliges the transferor to inform the registering authority of the State within 14 days of the transfer about transfer of the vehicle.

20. As per Section 50 (1) (b) of the M.V. Act the transferee is under

obligation to report the transfer to the registering authority within whose jurisdiction he has residence or place of business.

21. The learned counsel for the registered owner referring to Section 2 (30) of the M.V. Act which defines `owner' for the purpose of this Act submits that where a registered owner has performed his obligation under the Motor Vehicles Act by informing the registering authority within the stipulated period or before the date of the accident, the transferee becomes the owner and if the vehicle is not transferred in the name of the transferee, either for the fault of the transferee or the registering authority, the registered owner will not be liable to pay the compensation. He urges that if any tortuous act is committed by the rightful owner or his agent, then only the rightful owner will be liable to pay the compensation. The learned counsel places reliance on the judgment of this Court in *Pragati Paper Mill Ltd. v. British Motor Car Co. Ltd. & Ors., 174 (2010) DLT 502.* In para 6, the learned Single Judge held as under:-

> *"6. The aforesaid provision of the Motor Vehicles Act clearly shows that no vehicle can be driven on road unless the same is registered in the name of*

the owner. In the present case, the initial ownership of the said Opel Astra vehicle was in the name of Ms. Rewa but she was never in the picture as the said car was purchased by the appellant from the authorized dealer i.e. respondent Nos. 1 & 2 in whose favour alone the appellant had issued the cheque towards sale price of the vehicle. As per the defence of the respondent Nos. 1 & 2, their case is that all the transferred documents duly signed by Ms Rewa were handed over to the appellant and it was for the appellant to have acted to get the ownership of the said vehicle transferred in its name. On the other hand, the plea of the appellant is that the obligation was on the part of respondent Nos. 1 & 2 to get the ownership of the said vehicle transferred in the name of the appellant. Except one letter of the respondent Nos. 1 and 2 wherein they have confirmed that the said form Nos. 29 and 30 were submitted to the registering authority, there is no other evidence led by the appellant to show if any steps were taken by the appellant to pursue the respondent Nos. 1 & 2 to get the said vehicle registered in the name of the appellant. It is an undisputed fact that without the registration of the vehicle being transferred in the name of the appellant, the said vehicle was being driven on the road in contravention of the provisions of Section 39 of the Motor Vehicles Act. As per Section 50 of the said Act, it is the responsibility of the transferee also to report about the transfer within 30 days of the purchase of the vehicle and action U/s 50 (3) and 50 (5) r/w S. 177 can be taken against the transferor or transferee for not reporting to the registering authority about the fact of the transfer within the given time. As already discussed above, the transferor is not in the picture in the present case and therefore it was *the sole responsibility of the transferee to have reported the transfer of the said vehicle within the mandatory period of 30 days and in case the transferred documents were available with respondent Nos. 1 and 2 then transferee should have properly followed up with the respondent Nos. 1 & 2 to get the ownership of the vehicle transferred in its name within the said period. It is quite apparent from the facts on record that the appellant became active only when the said car met with an accident after 2-1/2 years from the date of the purchase and consequently had to get major repairs done. No letter of request was made by the appellant to the respondents during this period of 2-1/2 years, therefore it is quite evident that the appellant itself was negligent in taking proper steps to get the ownership of the said vehicle transferred in its name."*

22. Turning to the facts of the instant case, the registered owner filed his Affidavit Ex.R5W1/A and testified about the delivery of van no.DL-7CB-3884 to Sanjay Chauhan, the purchaser on 07.08.2009. The registered owner also examined R5W4 S.B. Mehto, Record Keeper from Transport Authority, Mayur Vihar Phase-I. He deposed that the letter dated 10.09.2009, which is the intimation regarding the transfer of the vehicle, was received in their office from the registered owner. He stated that the vehicle could not be transferred in the name of the purchaser as the purchaser did not submit Form 29 and Form

30. The purchaser has not come forward to contradict the testimonies of the registered owner or of R5W4.

23. In view of this, the registered owner cannot be blamed for non transfer of van no.DL-7CB-3884 in favour of the transferee. In view of this and the judgment of this Court in *Pragati Paper Mills (supra),* the registered owner, Appellant Brahm Prakash is not liable to pay the compensation.

24. His appeal being MAC APP.978/2012 is accordingly allowed. The other appeal being Mac Appeal 730/2012 is also allowed.

25. Coming to the contention with regard to enforcement of the award against both or either of the tortfeasor, the proposition of law is well settled in *T.O. Anthony v. Karvarnan & Ors., (2008) 3 SCC 748* wherein the Supreme Court distinguished between contributory and composite negligence and held that in case of composite negligence, the insured has a choice to proceed against all or any of the tortfeasors. Since in the instant case, the liability has been determined, it will be open to the Claimants to enforce the judgment against any of the

tortfeasors.

26. The owner and the driver of van no.DL-7CB-3884 have not come forward to contest these appeals.

27. The enhanced compensation of ₹2,88,253/- along with interest shall be paid in equal proportion (50% each) by the owner and the insurer of the truck bearing registration no.HR-55G-9576 and the owner of van no.DL-7CB-3884.

28. Since the award can be enforced against the insurer of the truck bearing registration no. HR-55G-9576, the entire compensation shall be deposited by Oriental Insurance Company Limited, insurer of truck no.HR-55G-9576 within six weeks.

29. It goes without saying that the Oriental Insurance Company Limited shall be entitled to recover 50% of the compensation paid, which is really the liability of the other tortfeasor, Respondent Sanjay from him.

30. The appeals are allowed in above terms.

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

32. Statutory deposit of ₹25,000/- made by Appellant Brahm Prakash in MAC APP.978/2012 shall be refunded to him.

(G.P. MITTAL)
JUDGE

FEBRUARY 26, 2015
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