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

Date of Decision: 18th March, 2016

+ **MAC.APP. 193/2005**

DIKSHIT BHASIN & ANR. Appellants

Through: Mr. Deepak Sahni, Adv.

versus

LEELAWATI DEVI & ORS. Respondents

Through: Mr. J. P. N. Shahi, Adv. for R-6.
Mr. Wasim Ashraf, Adv. for R-7.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 05.01.1993 at about 09:00 PM on a public road in the area of police station Janakpuri, a motor vehicular accident occurred wherein Mishri Lal Mandal, a 19 years old person, crossing the road from one side to other with his bicycle was hit by a Maruti car bearing registration no.DAJ-4164 (the car) and in the consequence was flung off to the other side of the carriage way where he was crushed to death under the wheels of bus bearing registration no.DL-1P-1221 (the bus).

2. An accident claim case under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act) was brought before the motor accident claims tribunal (tribunal) on 18.03.1993 by the mother and other dependant

family members (collectively, the claimants), seeking compensation. In the claim case, registered as suit no.246/1993, the driver of the bus (Jagat Singh) was impleaded as the first respondent while that of the car (Dikshit Bhasin) was impleaded as the second respondent. The car was registered in the name of M/s Gulab Rai & Sons (fourth respondent before the tribunal) but admittedly was in use and occupation of its partner Tilak Raj Bhasin (third respondent before the tribunal). It may be mentioned here that Tilak Raj Bhasin is the father of Dikshit Bhasin (the driver of the car) who concededly was a person less than 18 years of age on the relevant date and was not holding any valid or effective driving license. The car was insured against third party risk with Oriental Insurance Co. Ltd. (fifth respondent before the tribunal), while the bus, registered in the name of S. S. Mota Senior Sr. Model School (sixth respondent before the tribunal), was similarly insured against third party risk with New India Assurance Co. Ltd. (seventh respondent before the tribunal).

3. In the case set up before the tribunal, the drivers of both the vehicles were impleaded as parties on the averments that the accident had occurred due to rash/negligent driving of the two vehicles by both of them. The registered owners and the person who was holding the possession of the car were impleaded as persons respectively vicariously liable, with the insurance companies also shown in the array on the averments that they were liable to indemnify and pay the compensation.

4. The allegations of the claimants before the tribunal were that Mishri Lal Mandal was in the process of crossing the road from one side to other with his bicycle and had gone up to central verge which divided the road

into two carriage ways, each meant for traffic in the opposite direction, when the car had suddenly come at breakneck speed and hit against the cyclist throwing him up in the air. It was alleged that the bus which was coming on the other side of the road from the opposite direction had come at a fast speed and the cyclist came to fall down on the road in its path to be crushed under its wheels.

5. At the inquiry, the claimants examined Vinod Kumar (PW2), brother of the deceased, as an eye witness. He affirmed on oath the facts pleaded in the claim case. The bus driver, on the other hand, joined issue, by examining himself (as RW2) affirming on oath that he was driving the bus and had seen the Maruti car come from opposite direction at a high speed hitting the cyclist from back side as a result of which the cyclist was thrown in the air to fall and came under the rear wheels of his vehicle. He also stated that the car had jumped over the divider of the road and had also hit the bus in the process. He referred to the judgment of the criminal court (Ex.RX) wherein he had been prosecuted for rash/negligent driving causing death but eventually acquitted. Noticeably, the car driver did not step into the witness box to give any version on his part.

6. In addition to the oral testimony of the eye witness (PW2) presented by the claimants and the bus driver (RW2), the claimants also relied on the copy of the record pertaining to the investigation of the corresponding criminal case that had been registered by the local police, which includes site plan depicting the layout of the road and the location of the respective vehicles after the collision (page 215 of the tribunal's record).

7. The tribunal considered the evidence adduced before it and concluded that there was no fault on the part of the bus driver, holding the car driver (first appellant before this court) to be wholly responsible for rash/negligent driving of his vehicle resulting in death of Mishri Lal Mandal. For reaching this conclusion, the tribunal set out its reasons as under:-

“The argument which has been advanced on behalf of R.1 is that he was not rash and negligent in driving the bus No. DL IP 1221 and the deceased did not receive fatal injuries on account of that. He has also argued that it is R.2 who was negligent in driving Maruti Car No. DAJ 4164 which firstly hit the deceased who received fatal injuries. Thus, Ld. Counsels for R.1 and R.2 have tried to shift negligence on each other. Similar stand has been taken on behalf of R.5 and R.7 who are the insurance companies of Bus No. DL IP 1221 and Maruti Car No. DAJ 4164. Ld. Counsel for R.1 has also placed reliance on judgment of Ld. M.M whereby he has been acquitted and certified copy of that Judgment has been placed on record as Ex.RX.

From the evidence on record, it has to be seen as to who is responsible for rash and negligent driving whereby deceased received fatal injuries. Firstly, the evidence on record against R.1 who was driving Bus No. DL IP 1221 is taken up.

If a look is made to the testimony of Vinod Kumar PW.2, it is noticed that he has stated in his testimony that one car No. DAG 4164 came from the side of Posaipur and hit his brother, as a result of impact, his brother fell down on the road and from the opposite direction a bus beating No. DL IP 1221 which was being driven by his driver at a high speed, passed over the body of his brother. This witness has attributed negligence to both the drivers i.e the driver of bus no. DL IP 1221 and driver of Maruti car No. DAJ 4164.

Jagat Singh (R.1) RW.1 has stated in his examination in chief that on 5.1.1993 he was working as driver on Bus No. DL IP 1221 which was a school bus owned by S.S. Mota Singh Sr. Sec. School, Janak Puri, New Delhi. At about 9 a.m he was going driving the bus from Dauli Piyau side towards S.S. Mota Singh Marg. He saw one Maruti Car came from opposite direction at a high speed and hit a cyclist from its back. As a result of this force, the cyclist was flown in

the air and fell near the rear wheel of his bus. It is further stated that the Maruti Car jumped over the divider in the road and hit his bus as well. The driver of said Maruti Car ran away leaving behind the car. The police came at the spot and arrested him.

One thing which comes out from the testimony of PW.2 Vinod Kumar and Jagat Singh R.W.2 is that deceased was firstly hit by the Maruti Car DAJ 4164 and with this impact he was thrown on the other side of the road where he came under the rear wheel of bus No. DL IP 1221 driven by R.1 Jagat Singh. This fact is also evident from the copy of chargesheet filed on court record. Ld. Counsel for R.1 has also placed reliance on the judgment of Ld. M.M whereby R.1 has been acquitted. It has come in the judgment of Ld. M.M that deceased Mishri Lai Mandal was thrown due to impact of hit by the car which was being driven at a high speed i.e up-to 100 kmph and that is why deceased Mishri Lai Mandal had come under the wheel of the bus, therefore, accused (Jagat Singh R.1 in the present case) was not aware of the fact that one like Mishri Lai Mandal would be thrown towards the side of his bus all of a sudden. Thus, on the basis of this he was acquitted.

The argument which has been advanced on behalf of R.1 that he was not rash and negligent in driving his vehicle holds good as deceased was forcibly hit by the Maruti Car No. DAJ 4164 by its driver and he was thrown under rear wheel of bus No. DL IP 1221 and he can not be expected to be aware of the same. Therefore, Jagat Singh R.1 escapes the liability for driving the vehicle rashly and negligently. If the deceased had not been hit by Maruti Car DAJ 4164 by its driver Dikshit Bhasin R.2, the deceased would not have been thrown and come under the wheel of bus no. DL IP 4164. Even the certified copy of chargesheet shows that Dikshit Bhasin has also been challaned under Section 279/304A of IPC, 3/181, 4/181, 134/187 of Motor Vehicle Act as he was driving the vehicle without licence and below 18 years. Thus, it is concluded that R.2 was rash and negligent in driving his car No. DAJ 4164 which hit the deceased forcefully who was thrown and came under the wheel of another bus and received injuries and succumbed to the same. Therefore, issue no. 1 is decided in favour of petitioner mid against R.2”

8. The tribunal also found, on the basis of material placed before it, that the first appellant herein was a minor and not holding valid driving license. On this, a view was taken that there had been a breach of terms and conditions of the insurance policy against third party risk taken out by the registered owner of the car. Whilst the insurance company was directed to pay, it was granted recovery rights against the second appellant.

9. The appeal is pressed by the appellants only on one ground, viz. that there was contributory negligence on the part of the drivers of both the vehicles. It has been submitted that the evidence of PW2 itself shows that even the bus had approached the place at a high speed. It is submitted that since the death had occurred not on account of impact by the car but due to the deceased coming under the wheels of the bus, the driver thereof cannot escape liability. In building argument to this effect, the learned counsel for the appellants referred to the testimony of PW2 where he had denied that the deceased had suddenly appeared before the bus to come under its wheels.

10. On scrutiny of the entire evidence on record, this court finds no substance in the contentions raised by the appellants. The tribunal has analyzed the evidence in detail and has correctly observed to conclude that it was the bus driver who would have been taken by surprise at a cyclist being thrown up in the air all of a sudden and falling in its path. Mere use of the expression “high speed” by PW2 is of no consequence. The adjective “high” is a relative term. It need not necessarily mean use of such high speed as amounts to rash/negligent driving. For a pedestrian, the speed of a motor vehicle passing by may be “high” but in reality it may not be so. The question as to whether high speed amounts to rash or negligent driving

has to be addressed in light of overall facts and circumstances including layout of the road (s), the volume of traffic etc.

11. The driver of bus (RW2) is on record to state that he had seen the car when it was at a distance of 10-15 yards. He could not have anticipated that the car would hit the cyclist with such force that he would be thrown up in the air to such a great distance as to come in the way of the bus on the other carriage-way.

12. In the facts and circumstances wherein in the unduly reckless and uncontrolled speed of the car has been proved by the very fact that after hitting the cyclist it had crossed over the divider and gone on to collide against the bus on the extreme left lane of the carriage way for the other direction, there can be no doubt about the fact that the bus driver cannot be held responsible. The accident has rightly been held to have been caused by the rash driving of the car by the first appellant.

13. For the forgoing reasons, the appeal is found devoid of substance and is dismissed.

14. By order dated 13.02.2012, the appellant had been directed to deposit fifty percent (50%) of the awarded amount with interest at the rate of nine percent (9) per annum from the date of filing of the petition till realization of the award and interest at the rate of seven & half (7.5) percent per annum from the date of award with up-to-date interest from the date of the said order within six weeks with the Registrar General of this court, whereupon the proceedings taken out by the insurance company against the appellant were to stand stayed. By order dated 23.03.2012, the Registrar General was

directed to hold the amount thus deposited in a fixed deposit receipt. The amount deposited by the appellants shall now be released to the concerned insurance company to satisfy its recovery rights to that extent. The appellants are directed to deposit the entire balance payable by them to the said insurance company by depositing the same in terms of the impugned judgment/award within 30 days of this judgment whereupon it shall be released to the concerned insurance company. In case of any default, the concerned insurance company will be at liberty to enforce the recovery rights.

15. The appeal is dismissed with above directions.

MARCH 18, 2016
ssc

R.K. GAUBA
(JUDGE)

