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

Date of Decision: 3rd March, 2016

+ **MAC.APP. 414/2006 & CM No. 6967/2006**

**UTTAR PRADESH STATE ROAD
TRANSPORT CORPORATION**

..... Appellant

Through: Mr. Shadab Khan, Adv.

versus

SHRI RANA NAND & ORS.

..... Respondents

Through: Ms. Sonia Sharma & Mr. C.P.
Pandey, Advs. for R-4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant by the appeal at hand questions the conclusions reached by the motor accident claims tribunal (the tribunal) by judgment dated 14th February, 2006 in claim petition No. 376/2003 brought by the first respondent for compensation for injuries suffered by him in motor vehicular accident that occurred on 19.7.2002, involving its bus bearing registration No.UP 81F 3453 holding its employee (driver) Anil Kumar (fourth respondent before the tribunal) to be responsible and found him having contributed to the extent of 75% for the collision against truck bearing registration No. HR 47 8074, which was driven by the second respondent herein and owned by third respondent herein, it being concededly insured against third party risk with the fourth respondent herein.

2. The background facts have been succinctly noted by the tribunal in the impugned judgment as under:-

“Claimant Rama Nand son of Shri Ram Swaroop allegedly sustained grievous injuries in an automobile accident on 19.07.2002, opposite CISF Model Town, Sector 58, Noida. It is the case of the claimant that he was travelling in a UP roadways bus bearing No. UP-81F-3453 on way from Dadri which was driven by Respondent No. 1 in a rash, negligent manner and high speed; and the bus dashed against a wrongly parked stationary truck bearing No. HR-47-8074; that due to the impact, ten of the passengers in the bus sustained grievous injuries including himself and a boy sustained fatal injuries. It is the case of the claimant that accident occurred due to absolute rashness on the part of the driver of the bus. Respondent No. 1 happens to be the driver of the offending truck who was later identified as Mohd Hanif and examined as R2W16. Respondent No. 2 is the owner of the offending truck and Respondent No. 3 is the insurer of the truck; whereas Respondent No. 4 happens to be the driver of the ill fated bus and Respondent No. 5 is its owner. It is the case of the claimant that due to the injuries sustained in the accident he was under prolong medical treatment and he has claimed total compensation of Rs 10,00,000/- with interest jointly and severally against the respondents”.

3. The claim case was contested including by way of evidence of Hanif (R2W1), the driver of the truck and of Krishan Kumar Dikshit (R2W2), conductor of the bus. The tribunal found it to be a case of composite negligence and apportioned the liability amongst the two drivers on the following reasoning:-

“At the outset, the factum of accident and the use and involvement of the truck and the bus in the same resulting in injuries to the claimant are beyond any pale of controversy. PW1 in his evidence testified that he was travelling in the bus and sitting in the driver's cabine on the second seat on the left

side of the bus and he categorically deposed that the driver of the bus was driving it at fast and high speed and rammed into the stationary truck from behind . In this regard R2W1 Hanif also testified that his truck was stationary and parked at the octroi post in the queue with other trucks when the bus rammed into the same. However evidence of PW 1 Ramanand read in toto would reveal that the truck was wrongly parked on the single road for one way traffic and passage to the left of the middle divider on the road was merely wide enough to allow only one heavy vehicle to park there. He testified that the truck was parked in such a way that there was no space for the vehicle coming from behind to overtake it. R2W1 Hanif in his cross examination admitted the fact that the head lights of the truck have been put off and tail lights of the truck were also not working.

10. I may add here that evidence of R2W1 Krishan Kumar Dikshit that the truck was moving and suddenly applied brakes in front of the bus, is not reliable as he was sitting on the rear back seat of the bus and could not have possibly seen the position of the trucks or the other vehicles moving ahead of the bus. Evidence of R2W1 Hanif, however clarifies that although the road was wide enough to allow two vehicles on one side of the divider, the truck was parked on the road and the remaining road was full of pot holes and not conducive to normal driving. The evidence clearly suggests that the accident occurred due to composite negligence on the part of the drivers of the two vehicles. One for the fact that the truck was parked in the late hours of the 1st night just before the dawn without tail lights and the second for the fact that the driver of the bus could not have been unaware of the nearby Octroi post and he was driving it at fast and reckless speed so much so that he was not able to apply brakes on seeing the truck thereby ramming into it from behind. There is no way the claimant can be faulted for the accident and the issue is answered to the effect that the claimant sustained injuries due to composite negligence on the part of drivers of both the vehicles. It is immaterial if the police did not conduct any investigation and for that the claimant can not be faulted. Liability to my mind on the driver of the truck

and the driver of the bus can be apportioned in the ratio of 25 : 75 respectively. Issue no. 1 decided accordingly”.

4. Having heard the counsel on both sides and having gone through the tribunal's record, this Court finds no error in the conclusions arrived at by the tribunal. Reliance by the appellant on *Saudagarsing Chhajusingh vs. Ranjit Singh Valusing Jadeja II (1985) ACC 213*, a judgment of division of this Gujarat High Court is misplaced as the fact-situation is distinguishable. On facts, this Court is in full agreement with the reasons set out by the tribunal in the impugned judgment to apportion the liability between the two drivers and thus affirming the conclusion reached.

5. In view of the above, the appeal is liable to be dismissed.

6. It is noted that the appellant had been directed by order dated 17th May, 2016 to deposit 75 % of the awarded amount with upto date interest within four weeks thereof. The said order was not complied with. But later transpired that the entire compensation awarded by the tribunal with interest had been recovered from the fourth respondent, insurer of the other vehicle, the truck.

7. Later, under directions of the Court, the appellant deposited 75 % of its liability in the Court by two instalments. The said amount is still lying in the Court. Since the liability of the appellant is to the extent of 75 % of the awarded compensation, the amount paid by the insurance company (fourth respondent) in excess of its liability will have to be reimbursed. The Registrar General shall now ascertain the amount paid by the fourth respondent (insurer of the truck) and release it to the said respondent. If there is any excess lying in deposit, the Registrar General shall first confirm whether the entire liability of the appellant towards the claimants has been

satisfied or not. In case the finding is in the negative, the amount shall be made available to the tribunal for being disbursed to the claimants. Conversely, if the answer is in the affirmative, the excess deposited in the Court will have to be refunded with statutory deposit, if made. Needless to state the claimants shall have the liberty to take out appropriate execution proceedings before the Tribunal to recover any amount which has remained outstanding.

8. The appeal is disposed of in above terms.

MARCH 03, 2016

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**R.K. GAUBA
(JUDGE)**

